OCTOBER 19

10:00 a.m.
Judiciary
Administrative Practice and Procedure Subcommittee
To hold hearings on proposed legislation dealing with the Department of Agriculture's policies, practices, and procedures regarding family farmers.
2228 Dirksen Building

OCTOBER 20

10:00 a.m.
Judiciary
Administrative Practice and Procedure Subcommittee
To continue hearings on proposed legislation dealing with the Department of Agriculture's policies, practices, and procedures regarding family farmers.
2228 Dirksen Building

OCTOBER 25

9:30 a.m.
Judiciary
Juvenile Delinquency Subcommittee
To hold oversight hearings on drug enforcement policies.
2228 Dirksen Building

OCTOBER 26

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings on the role of the FHA in home financing.
5302 Dirksen Building

OCTOBER 27

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the role of the FHA in home financing.
5302 Dirksen Building

OCTOBER 28

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on the role of the FHA in home financing.
5302 Dirksen Building

OCTOBER 31

9:30 a.m.
Judiciary
Juvenile Delinquency Subcommittee
To resume oversight hearings on drug enforcement policies.
2228 Dirksen Building

NOVEMBER 9

10:00 a.m.
Banking, Housing, and Urban Affairs
To resume oversight hearings on U.S. monetary policy.
5302 Dirksen Building

NOVEMBER 10

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue oversight hearings on U.S. monetary policy.
5302 Dirksen Building

DECEMBER 13

10:00 a.m.
Judiciary
Constitution Subcommittee
To hold hearings on S.J. Res. 67, proposing an amendment to the Constitution with respect to the proposal and the enactment of laws by popular vote of the people of the United States.
2228 Dirksen Building

DECEMBER 14

10:00 a.m.
Judiciary
Constitution Subcommittee
To continue hearings on S.J. Res. 67, proposing an amendment to the Constitution with respect to the proposal and the enactment of laws by popular vote of the people of the United States.
2228 Dirksen Building

SENATE—*Thursday, September 15, 1977*

The Senate met at 9:45 a.m., and was called to order by Hon. SPARK M. MATSUNAGA, a Senator from the State of Hawaii.

PRAYER

Mr. MATSUNAGA. Our guest chaplain for today is the undisputed religious leader of Hawaii and, to the people of Hawaii, its social conscience, the Reverend Abraham Akaka, pastor of the oldest church in Hawaii, Kawaiahao Church.

The Reverend Dr. Abraham K. Akaka, pastor, Kawaiahao Church, Honolulu, Hawaii, offered the following prayer:

Let us pray.

One nation, one world under God, with liberty and justice for all.

Almighty God, our Father, under whose mercy and judgment all people rise or fall, let Thy guiding hand be upon our beloved Nation like a gentle carpenter's level, that President Carter, Vice President MONDALE, the Members of this Senate, and all who bear responsibility for the peaceful future of our world may be clear and faithful in our common stewardship of power, justice, and aloha.

Whenever dark clouds may gather about us and our world, help us and all Americans to remember our precious heritage of faith, to exercise our puritan responsibility for the whole social order, to fulfill that responsibility in our private and public arenas and thus give vital moral and political direction to our Nation and the nations.

Help us to walk with integrity in Thy righteousness that we may fear no man or media. Let no evil have claim upon us and our Nation. Destroy, O God, what is evil. Establish what is good. Let the beauty and glory, the prosperity and peace, joy and aloha of the Lord our God be upon us and our Nation. For Thine is the kingdom and the power and the glory forever.

Hear, O America. Hear, O planet Earth, the Lord our God is one Lord. 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 second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 15, 1977.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SPARK M. MATSUNAGA, a Senator from the State of Hawaii, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the Journal of the proceedings of yesterday, Wednesday, September 14, 1977, be dispensed with.

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

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar, with one exception, that being Calendar Order 455.

There being no objection, the Senate proceeded to the consideration of executive business.

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

The second assistant legislative clerk proceeded to read nominations on the Executive Calendar.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered and confirmed en bloc, with the exception of Calendar No. 455.

The PRESIDING OFFICER (Mr. HUDDLESTON). Without objection, it is so ordered. The nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

NATIONAL ENDOWMENT FOR THE HUMANITIES

Joseph D. Duffey, of the District of Columbia, to be chairman of the National Endowment for the Humanities.

DEPARTMENT OF STATE

Lowell Bruce Laingen, of Minnesota, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malta.

John Richard Burke, of Wisconsin, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Cooperative Republic of Guyana.

Marshall Darrow Shulman, of Connecticut, for the rank of Ambassador during the tenure of his service as Special Adviser to the Secretary of State for Soviet Affairs.

Edward Marks, of California, a Foreign Service officer of class 3, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea-Bissau, and Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

Maurice Darrow Bean, of California, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America

to the Socialist Republic of the Union of Burma.

Mari-Luci Jaramillo, of New Mexico, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Honduras.

William B. Schwartz, Jr., of Georgia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Commonwealth of the Bahamas.

Raul H. Castro, of Arizona, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Frank H. Perez, of Virginia, to have the rank of Minister during the tenure of his assignment as the State Department SALT representative at Geneva, Switzerland.

Paul H. Boeker, of Ohio, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Bolivia.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

William P. Dixon, of Virginia, to be U.S. Alternate Executive Director of the International Bank for Reconstruction and Development for a term of 2 years.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Charles N. Van Doren, of the District of Columbia, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

DEPARTMENT OF THE INTERIOR

Forrest J. Gerard, of Maryland, to be an Assistant Secretary of the Interior.

ACTION AGENCY

Mary Frances Cahill Leyland, of New York, to be an Assistant Director of the ACTION Agency.

Irene Tinker, of Maryland, to be an Assistant Director of the ACTION Agency.

DEPARTMENT OF JUSTICE

John H. Shenefield, of Virginia, to be an Assistant Attorney General.

Jose Antonio Canales, of Texas, to be U.S. attorney for the southern district of Texas.

Hubert H. Bryant, of Oklahoma, to be U.S. attorney for the northern district of Oklahoma.

Bernal D. Cantwell, of Kansas, to be U.S. marshal for the district of Kansas.

Carl W. Gardner, of Oklahoma, to be U.S. marshal for the northern district of Oklahoma.

COMMUNITY SERVICES ADMINISTRATION

Frank Jones, of Virginia, to be an Assistant Director of the Community Services Administration.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to reconsider the vote en bloc by which the nominations were confirmed.

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

Mr. ROBERT C. BYRD. Mr. President, I make that motion.

Mr. SCHMITT. 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 that the President be immediately notified of the confirmation of the nominations.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

JOINT REFERRAL OF A COMMUNICATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a communication from the Secretary of Transportation, transmitting an option paper detailing major choices for refining the Nation's transportation grant programs, be referred jointly to the Committee on Banking, Housing, and Urban Affairs and the Committee on Environment and Public Works.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have no other need for my time, and I yield it back.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. SCHMITT. Mr. President, the leadership has no need for time. I have a special order.

The PRESIDING OFFICER. Under the previous order, the Senator from New Mexico is recognized for not to exceed 15 minutes.

THE LEGACY OF REGULATION—REPORT ON NEW MEXICO NO. 5

Mr. SCHMITT. Mr. President, since entering the U.S. Senate, I have made it a practice, after each recess or nonlegislative period, to report to my colleagues in the Senate the major items of concern or major issues in New Mexico, or mentioned to me by New Mexicans during the period of the recess.

Although in the last extended recess, covering most of the month of August, a number of specific issues were on the minds of New Mexicans—the question of the Panama Canal Treaties, the question of illegal alien policy—there was still one overriding issue that kept coming up again and again, and it is to this issue that I wish to address myself today. This issue is the legacy of regulation.

Mr. President, the people and local governments of New Mexico are more and more dissatisfied and disappointed with the Federal Government. This is the inescapable conclusion coming from this Senator's tour around the State during the recent recess.

The level of frustration and resentment directed at the Federal Government and its regulation of daily life is notably higher than in the recent election campaign.

After the elections of 1976 New Mexicans expected that government would start to be returned to the people as promised by the Carter campaign. They did not realize that in the dictionary of the Carter administration and the Congress, "the people" means "Washington."

In the first 7 months of the Carter administration and the 95th Congress, most of the major legislative and administrative actions have further concentrated power in Washington.

The new Department of Energy and the energy proposals now being considered, if passed, will further increase the regulation and taxation of business, with only additional increases in prices and decreases in supply being the inevitable consequences for the consumer.

The recently enacted strip mining legislation, rather than improving mining and mine reclamation, delays meeting the energy supply crisis and usurps personal and State property rights.

Federal control, and thus one-party control, of who can be elected is seen in the proposed changes to Federal election laws, including same-day voting registration, Federal financing of candidates for Congress, weakening of the Hatch Act protections, elimination of the electoral college protections, and outside income restrictions on those who hold a congressional office.

The new welfare "reform" proposals do not seem to be reforms at all to many New Mexicans when they see the vastly increased cost and the Federal takeover of local and State responsibilities.

The proposals for amnesty and employer sanctions to treat the symptoms of the illegal alien problems will not solve the problem but will clearly increase both the numbers of aliens trying to enter the United States and the discrimination against Americans of Spanish descent.

The schools, cities, and counties of New Mexico, having unfortunately allowed themselves to become dependent on Federal funding, now find the acquisition of Federal money increasingly complex and uncertain.

New Mexico's ever larger retirement community, its poor, and its average income citizens continue to stare inflation in the face, while Congress continues to feed that monster with larger and larger annual deficits.

Perhaps the most onerous and disturbing trends noted by New Mexicans are those showing ever-increasing militancy on the part of the Departments of the Interior and Agriculture in their interpretation of laws affecting the private use of public lands and water. It is New Mexico's strong feeling that, in addition to protecting public land from abuse, these Departments are obligated to allow and assist in the harvesting of the renewable resources of this land and in the reasoned extraction of mineral resources. The Secretary of the Interior has suggested a new Federal police force to oversee public lands. He has said he will break up farms of greater than 160 acres which utilize water from the Bureau of Reclamation projects. He appears to favor Federal usurpation of private and State water rights. He is

marching hand in hand with the Secretary of Agriculture who is allowing the western timber industry to be destroyed by massive and unnecessary withdrawals of forest lands from timber sales.

I might add, Mr. President, that this withdrawal of timber from the availability for sale and harvesting is affecting, and will continue to affect seriously, the housing industry in this great country.

Finally, of greatest immediate concern to many New Mexicans, the Secretary of Interior is permitting the Bureau of Land Management to exercise management control over the operations of individual ranches and farms. The assumptions appear to be that the users of public lands will intentionally destroy the land that provides their livelihood and that someone in Washington can manage a ranch better than the local rancher himself. These hardly seem to be rational assumptions; however, they are being sustained by regulations.

The message, then, from New Mexico is that New Mexicans are increasingly frustrated and resentful under the ever greater weight of regulations, taxation, and inflation. Permit me to cite a few examples:

The teachers who see more and more forms that continually reduce time with the students;

The city official who sees changing regulations and increasing paperwork delay required projects;

The energy producer and distributor who sees expanding regulations increase the prices he must charge the consumer at the same time, but decreases the supply of energy he can deliver;

The small businessperson and the minority businessperson who sees increasing taxes, paperwork interference and costs due to Federal action and inaction;

The retired, disabled, and unavoidably poor who see themselves at the mercy of an unfeeling, disinterested, impersonal bureaucracy and of unrelenting inflation;

The rancher, farmer, lumberman, and miner who see the balanced use of the resources of public lands and water prevented by those who misuse the law, the environmental impact statement, and the Wilderness Act.

Finally, there is the taxpayer who sees more and more taxes solving fewer problems and who sees the tax laws becoming so complex that he must hire an accountant to prepare the forms and a lawyer to negotiate the tax.

In this climate of frustration and resentment, a passive revolt is burning. It is not clear how much more the hard-working Americans will take before he or she stops fighting the present system of regulations, taxation, and inflation.

Before such a passive revolt occurs, before Americans shrug their shoulders and decide there is no point in fighting anymore, Congress must begin to side with the people whose goodwill and hard work are required to make our Republic function. Without them, without their spirit of enterprise, there will be no Republic.

ORDER OF BUSINESS

Mr. SCHMITT. Mr. President, I yield the remainder of my time to the Senator from Virginia (Mr. SCOTT).

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. SCOTT. Mr. President, I appreciate the Senator from New Mexico yielding the remainder of his time to me.

The PRESIDING OFFICER. The Senator is recognized for an additional 15 minutes on his own behalf.

TITLE TO THE CANAL ZONE AND PROPER METHOD OF TRANSFER

Mr. SCOTT. Mr. President, it appears that the proposed Panama Canal Treaties submitted by the President will be among the most important and controversial matters to be considered by the 95th Congress. Therefore, I believe we should attempt to review the treaties in detail to understand them fully and then vote the way we consider to be in the best interests of the people of the United States regardless of emotionalism, of pressure, or extraneous factors for or against the treaties. To that end, I have attempted to review the history of the Canal Zone, studied its status as a territory, reviewed legal authorities, listened to testimony of witnesses appearing before a subcommittee of the Senate Judiciary Committee, visited the Canal Zone and a number of South American countries to obtain the views of Latin American leaders. I have also read the correspondence coming into the office from constituents and am obtaining as much information as possible on this proposal.

Perhaps one of the basic matters to consider is the title and sovereignty of the United States to the property within the Canal Zone. The primary portions of the 1903 treaty with the Republic of Panama relating to these matters read as follows:

ARTICLE II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land underwater for the construction, maintenance, operation, sanitation and protection of said canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

ARTICLE III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

However, the first article of the proposed new treaty with the Republic of Panama now before the Senate for its advice and consent would terminiate and supersede the entire 1903 treaty. Therefore, it would seem that we should first examine what the United States would lose by ratifying the new proposal. Article II indicates that the United States is granted in perpetuity the use, occupation, and control of the Canal Zone. Article III says that this grant is what the United States would possess if it were sovereign of the territory to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority. This language would appear to convey the entire title to the property contained within the Canal Zone and to grant sovereignty over the area. To support this position, we have the opinion of John Hay who was Secretary of State at the time of the ratification of the treaty. I ask unanimous consent, Mr. President, that a copy of Secretary Hay's letter of October 24, 1904, with its enclosure be included in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SCOTT. Mr. President, you will note from the letter of Secretary Hay that in his opinion:

The United States at all times since the treaty was concluded has acted upon the theory that it had secured in and to the Canal Zone the exclusive jurisdication to exercise sovereign rights, power and authority.

In argument before the Supreme Court in the case of *Wilson* v. *Shaw*, 204 U.S. 24 (1906), The Attorney General of the United States said:

Title to the canal strip having been acquired, this suit in effect seeks to restrain the Government from improving its property.

In the same case the Supreme Court states:

This new republic has by treaty granted to the United States rights, territorial and otherwise, acts of Congress have been passed providing for the construction of a canal, and in many ways the executive and legislative departments of Government have committed the United States to this work and it is now progressing.

Further on in its decision, the Court stated:

It is hypercritical to contend that the title of the United States is imperfect and that the territory described does not belong to this Nation because of the omission of some of the technical terms used in some of the ordinary conveyances of real estate . . .

Alaska was ceded to us 40 years ago but the boundary between it and the English possessions East was not settled until within the last two or three years. Yet, no one ever doubted the title of this Republic to Alaska.

The question of sovereignty was also the subject of an opinion of the Attorney General on September 7, 1907 (26 Att'y Gen. 376). Then U.S. Attorney General Bonaparte stated:

In my opinion the sovereignty over the canal zone is not an open or doubtful question.

Article 3 of the treaty transfers to the United States, not the sovereignty by that term, but "all the rights, power and authority" within the zone that it would have if sovereign, "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign (sic) rights, power or authority."

The omission to use words expressly passing sovereignty was dictated by reasons of public policy, I assume; but whatever the reason the treaty gives the substance of sovereignty, and instead of containing a mere declaration transferring the sovereignty, descends to the particulars "all the rights, power, and authority" that belong to sovereignty, and negatives any such "sovereign rights, power, or authority" in the former sovereign.

The "rights" so transferred are to be enjoyed (Article 2) "in perpetuity," and no exception is made of any persons or things in the zone.

I am unable to perceive that this language is obscure or ambiguous or that we are warranted in resorting to any construction of it except by the first rule of construction—that plain and sensible words should be taken to mean what they say.

In 1971, the Fifth Circuit Court of Appeals in *United States* v. *Husband R. (Roach)* 453 F.2d 1054, stated:

The Canal Zone is an unincorporated territory of the United States. Laws applicable to the Canal Zone are enacted by the Congress—there is no local legislation . . .

And later in the decision states:

Congress has complete and plenary authority to legislate for an unincorporated territory such as the Canal Zone, pursuant to article iv, paragraph 3, clause 2 of the Constitution, empowering it "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Certiorary was denied by the Supreme Court in 406 U.S. 935 (1972). 406 U.S. 935 (1972).

It should be noted, Mr. President, that under the 1903 treaty, the United States guaranteed the independence of the Republic of Panama, paid Panama the sum of $10 million and agreed to the payment of an annuity of $250,000. We also paid the Republic of Colombia the sum of $25 million in consideration for which Colombia agreed that title to the Canal Zone was vested entirely and absolutely in the United States without any incumbrances or indemnities whatever. France was paid $40 million for its interest in the canal and the Panama Railroad and our Government also paid private landowners and squatters for their interests in the land. We paid Panama, Colombia, France, private owners, and squatters for the property. We built the canal, conquered disease in the area, established water and sewage facilities, a system of highways, and constructed numerous improvements within the Canal Zone. Therefore, in my opinion the Canal Zone and all of the improvements within the zone are the property of the United States.

In order to resolve a question, however, of the proper manner of disposing of property in the event such disposition should be made, I requested the Congressional Research Service of the Library of Congress to study this matter and furnish an opinion regarding it.

After extensive research, the Library concluded that an exclusive grant of authority is given to Congress to dispose of property of the United States by article IV of the Constitution. The research paper does suggest, however, that the cooperation of all three branches of Government is necessary for the effective implementation of American foreign policy.

It is a well-reasoned and well-documented legal memorandum.

Mr. President, I ask unanimous consent that the entire research memorandum be printed in the RECORD at the conclusion of my remarks for the information of other Senators.

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

(See exhibit 2.)

Mr. SCOTT. Mr. President, I realize this statement is somewhat legalistic and yet in a controversy that is so emotional it does appear reasonable to establish a solid foundation for further examination into the action that the Senate should take.

In connection with the proposed treaties, some have said we should be fair and I am in complete agreement that we should. But, fairness means doing what is right and proper not only for the Republic of Panama, but to do what is in the best interest of the American people. There should be mutuality in any agreement.

I shall take some time within the near future to discuss the value of the canal to the United States from an economic, political, and military point of view, including some of the views expressed by leaders of South American countries.

From the manner in which the signing of the proposed treaty was glamorized, one might be led to believe that all of Latin America is wholeheartedly in favor of this proposal, but my discussions with Latin American leaders indicate that they have reservations. Therefore, each week during the remainder of the session I hope to share my thinking on some phase of the canal question with the other Members of the Senate.

EXHIBIT 1

REPLY OF SECRETARY OF STATE TO SENOR DE OBALDIA

DEPARTMENT OF STATE,
Washington, October 24, 1904.

MR. MINISTER: I have the honor to acknowledge the receipt of your communication dated August 11, 1904, advising this Department that you have received instructions from the Republic of Panama "to take steps looking toward the obtaining of a satisfactory settlement of the difficulties which have unexpectedly arisen between the authorities of the Republic and the governor of the Canal Zone, owing to the interpretation given by the latter to some of the clauses of the agreement concerning the isthmian canal concluded between the two countries on November 18 last."

The action of the Zone authorities, of which complaint is made, was taken pursuant to orders, copies of which are herewith transmitted, issued by direction of the President of the United States, and therefore it is inaccurate to attribute said orders to the governor of the Canal Zone.

I have read with the care and consideration its importance required the argument set forth in your communication in support of the contention that the United States is acting in excess of its authority (1) in opening the territory of the Canal Zone to the commerce of friendly nations; (2) in establishing rates of customs duties for importations of merchandise into the Zone; (3) in establishing post-offices and a postal service in said Zone for the handling of foreign and domestic mailable matter.

The right of the United States to adopt and enforce the provisions of said orders is dependent upon its rights to exercise the powers of sovereignty as to the territory and waters of the Canal Zone, and whether or not the United States is authorized to exercise sovereign powers in that territory is to be determined by the terms of the convention of November 18, 1903, between the Republic of Panama and the United States, referred to in your communication as the Hay-Varilla convention.

The United States can not accede to the proposition advanced by you as follows:

"As an indispensable antecedent of the Hay-Varilla convention must be regarded the Hay-Herran treaty, concluded January 22, 1903."

Whatever could or would have been the effect of the stipulations of the proposed treaty with Colombia, known as the "Hay-Herran treaty," is rendered unimportant by the fact said treaty was not concluded, but was rejected by Colombia.

I note your reference to the provisions of said proposed treaty with Colombia (Art. IV):

"The Government of the United States * * * disclaims any intention * * * to increase its own territory at the expense of Colombia or of any of the sister republics of Central and South America; it desires, on the contrary, to strengthen the power of the republics on this continent, and to promote, develop, and preserve their prosperity and independence."

The policy thus announced did not originate with the proposed treaty with Colombia. It is the long-established policy of the United States, constantly adhered to; but said policy does not include the denial of the right of transfer of territory and sovereignty from one republic to another of the Western Hemisphere upon terms amicably arranged and mutually satisfactory, when such transfer promotes the peace of nations and the welfare of the world. That the United States may acquire territory and sovereignty in this way and for this purpose from its sister republics in this hemisphere is so manifest as to preclude discussion.

The Government of the Republic of Panama having seen fit to object to the exercise by the United States within and over the Canal Zone of the ordinary powers of sovereignty, this Government, while it can not concede the question to be open for discussion or the Republic of Panama to possess the right to challenge such exercise of authority, considers it fitting that the Republic of Panama should be advised as to the views on the subject entertained by the United States and the reasons therefor.

The United States acquired the right to exercise sovereign powers and jurisdiction over the Canal Zone by the convention of November 18, 1903, between the Republic of Panama and the United States.

The character and extent of the grant of

governmental powers to the United States and the resulting right and authority in the territory of the Zone are set forth in a separate article, as follows:

"ARTICLE III. The Republic of Panama grants to the United States all the rights, powers, and authority within the Zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II, which the United States would possess and exercise if it were the sovereign to the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such foreign rights, power, or authority."

Let us test the existing controversy by the provisions of this article. "If the United States * * * were the sovereign of the territory," would it possess the right and authority to regulate commerce therewith, establish customs-houses therein, and provide postal facilities therefor? This question must be answered in the affirmative.

If it were conceived that the abstract, nominal "rights, power, and authority of sovereignty in and over the Zone" are vested in the Republic of Panama, there would still remain the fact that by said Article III the United States is authorized to exercise the rights, power, and authority of sovereignty "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

If it could or should be admitted that the titular sovereign of the Canal Zone is the Republic of Panama, such sovereign is mediatized by its own act, solemnly declared and publicly proclaimed by treaty stipulations, induced by a desire to make possible the completion of a great work which will confer inestimable benefit upon the people of the Isthmus and the nations of the world. It is difficult to believe that a member of the family of nations seriously contemplates abandoning so high and honorable a position in order to engage in an endeavor to secure what at best is a "barren scepter."

Under the stipulations of Article III, if sovereign powers are to be exercised in and over the Canal Zone, they must be exercised by the United States. Such exercises of power must be, therefore, in accordance with the judgment and discretion of the constituted authorities of the United States, the governmental entity charged with responsibility for such exercise, and not in accordance with the judgment and discretion of a governmental entity that is not charged with such responsibility and by treaty stipulations acquiesces in "the entire exclusion of the exercise by it of any sovereign rights, power, or authority" in and over the territory involved.

Article II of the convention provides that "the Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal."

The Panamanian authorities now contend that the words "for the construction, maintenance, operation, sanitation, and protection of said canal," constitute a limitation on the grant; that is to say, that the grant is confined to the purposes so stated. The position of the United States is that the words "for the construction, maintenance, operation, sanitation, and protection of the said canal" were not intended as a limitation on the grant, but are a declaration, and appropriate words of conveyance. The compensation for the grant * * *.

A document evidencing a grant or transfer usually sets forth a description of the property granted, the inducement leading up to the grant, the compensation, and appropriate words of conveyance. The compensation for the grant under consideration is set forth in Article XIV of the treaty, as follows:

"As the price or compensation for the rights, powers, and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States * * *."

Article I of the treaty provides that "the United States guarantees and will maintain the independence of the Republic of Panama."

It would undoubtedly be offensive to the Republic of Panama to be placed before the world as having been induced to consent "to the entire exclusion * * * of any sovereign rights" in the territory of the Canal Zone by the payment of money or because of a want of ability to maintain its independence. It would, however, be highly honorable and entirely justifiable to consent to such exclusion of sovereign right when the moving cause or inducement is "the construction, sanitation, maintenance, operation, and protection" of a work of such stupendous magnitude and world-wide importance as the isthmian canal.

The grant to the United States provided for in said treaty included also property other than the territory of the Zone. Article VIII stipulates that—

"The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company, as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama * * *."

If the grant is subject to the condition and limitation contended for by the Panama authorities, and the United States is not entitled to the revenues or benefits of the territory of the Zone, or to regulate its commerce with foreign nations, or to control its international relations, it also follows that the United States, while it may use the Panama Railroad "for the construction, maintenance, operation, sanitation, and protection of said canal," is not at liberty to regulate the use of said railroad by foreign commerce, and such revenue as is received by virtue of the rights conferred by the treaty, excepting for local traffic, belongs to the Republic of Panama. The proposition refutes itself.

The great object sought to be accomplished by the treaty is to enable the United States to construct the canal by the expenditure of public funds of the United States—funds created by the collection of taxes and moneys derived from the revenue measures of the United States. For many years after the adoption of our Constitution the belief prevailed that the funds of the National Government could not be expended in the construction of public improvements, excepting those required for the use of the National Government, such as the Capitol, Executive Department buildings, arsenals, forts, custom-houses, post-offices, etc. The construction of highways, railroads, etc., the improvement of rivers and harbors, etc., the protection and improvement of water powers, construction of canals, and similar undertakings for the use and convenience of the general public and private enterprises was considered to be outside the competency of the National Government, although said works were to be constructed in territory subject to the national sovereignty.

Finally it was established that the National Government had the authority to enter upon the construction of public works of the character referred to, and to devote the public funds of the nation thereto; and the reasons inducing such determination are all predicated on the fact that such public works are to be situated in territory subject to the national sovereignty. It is quite probable that this phase of the situation is not considered by the Panamanian authorities, and that they do not distinguish the difference between the Government of the United States and the French canal company. The French company was a private enterprise and derived its funds from individuals who voluntarily devoted their private means to promoting the endeavor. Such funds could be expended anywhere and for any purpose sanctioned by the contributors.

But the Government of the United States in building the canal does not expend private funds, but public moneys derived by public taxation for public purposes. Moneys so realized may be used for national purposes outside the territory subject to the national sovereignty, such, for instance, as the promotion of a war in foreign territory, for in time of war the war powers of the nations are called into activity, and those powers are coextensive with the nation's necessities, and the conduct of war is especially enjoined upon the National Government by our Constitution; so also these funds may be expended for the purchase of ground for the erection of embassies, coaling stations, etc., for those are instrumentalities of the National Government; but the isthmian canal is an instrumentality of commerce, a measure for the promotion of the purposes of peace. Commerce is the life of a nation, but it is conducted by individual citizens in a private capacity and not as a governmental institution.

That the plain and obvious meaning of Article II was the one originally intended by the parties to the treaty is further shown by the provisions of Articles IX, X, XII, XIII.

For the proper understanding of the provisions of said articles it is necessary to bear in mind that the city of Colon, on the Atlantic, and the city of Panama on the Pacific, each has a harbor in which are constructed wharves and piers suitable for landing cargoes and passengers. Both of these cities are in territory of the Republic of Panama. On the Pacific side the canal pierces the Isthmus at a point nearly 5 miles distant, following the short line, from the ships landing in the harbor at Panama, and about 2½ miles distant straight across the peninsula. On the Atlantic side the canal pierces the Isthmus at a point half a mile across the bay from the piers in the harbor of Colon.

At the Pacific entrance to the canal the French company erected a large pier and dredged out a channel, so that vessels of deep draft might come up to the pier. This point is called La Boca. A branch of the Panama Railroad connects said pier with the main line. Vessels, however, continue to enter the harbor at the city of Panama and discharge their cargoes. The waters of this harbor are shallow, and deep-draft vessels anchor offshore and lighter their cargoes, as they did for more than a century before the pier was built and the city channel dredged at La Boca.

On the Atlantic side of the Isthmus the harbor and piers of the city of Colon are the ones of more convenient access to vessels. The entrance to the canal on the Atlantic side is called Cristobal, at which point there is a small temporary wharf, recently constructed, but a channel has not been dredged out. Consequently, practically all vessels sailing the Atlantic from the United States and elsewhere land at the Colon piers. The Panama Railroad Company has a line of steamers between Colon and New York, and there is also a steamship line between Colon and New Orleans. By far the greater portion of the commerce of Colon is with the United States, and it was obvious at the time the treaty was negotiated that a large quantity of materials and supplies and a large number of employees for the canal construction and the government of the Zone would arrive at Colon from the United States. Two piers in the Colon harbor belonged to the Panama Railroad Company and are now owned by the Government of the United States, but be-

tween said piers and the line of the Canal Zone there is a strip of land subject to the sovereignty of the Republic of Panama.

The provisions of Articles, IX, X, XII, and XIII are intended to provide for the proper exercise of governmental authority under these conditions of fact. Article IX relates to the exercise of authority by both Governments. When separated the provisions read as follows:

"The United States agrees that the ports at either entrance of the canal and the waters thereof shall be free for all time, so that there shall not be imposed or collected custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind upon any vessel using or passing through the canal, or upon the cargo, officers, crew, or passengers of any such vessels, except such charges as may be imposed by the United States for the use of the canal or other works."

If it were intended that the United States should not secure the right to regulate foreign commerce entering the Zone, why was it required to stipulate that it would not impose or collect custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind upon the cargo, officers, crew, or passengers of ships entering the canal? If the Republic of Panama is the sovereignty exercising jurisdiction over foreign commerce within the Zone, why was the exception respecting tolls and charges for the use of the canal and other works made in favor of the United States?

The stipulations of said Article IX respecting the exercise of authority by the Republic of Panama are as follows:

"The Republic of Panama agrees that the towns of Panama and Colon shall be free for all time, so that there shall not be imposed or collected custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind upon any vessel issuing or passing through the canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation, and protection of the main canal or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal."

The expression "the rest of the Republic of Panama" must be held to refer to that portion of the territory of the Republic as existing at the time the treaty was negotiated, lying outside the boundaries of the proposed Canal Zone, unless it is insisted that it refers to that portion of the Republic which is not included in the towns of Colon and Panama—a contention that would hardly find favor with the authorities of the Republic. Why this exception in favor of the Republic of Panama if that Government possesses the right to regulate foreign commerce with the territory of the Zone?

Article IX contains the further provision:

"The Government of the Republic of Panama shall have the right to establish in such ports [the ports at either entrance of the canal] and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama, and to prevent contrabrand trade."

Why this provision if the right existed?

For the proper understanding of Article X it is necessary to bear in mind that the French Canal Company owned and the United States purchased from it a large amount of real estate situated in the towns of Colon and Panama, which towns are subject to the sovereignty of the Republic of Panama. Among other pieces of property, the canal office building, a large structure in the center of the town of Panama, the railroad station and terminals at Colon and Panama, the large piers in the harbor at Colon, the steamships, tugs, and other water craft belonging to the Panama Railroad, and the canal company's warehouses filled with machinery, materials, and supplies.

Practically all the employees working in and around these structures, and many other employees of the government of the Zone, the Panama Railroad and the canal construction department, reside in Colon and Panama. To meet this situation the treaty provides as follows:

"ARTICLE X. The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class upon the canal, the railways, and auxiliary works, tugs, and other vessels employed in the service of the canal, storehouses, workshops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property and effects appertaining to the canal or railroad or auxiliary works, or their offices or employees situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the canal and railroad and auxiliary works."

Attention is directed to the fact that by the foregoing article the Republic of Panama foregoes the right to impose "any taxes, national, municipal, or departmental," on the property of the United States and its employees situated in the cities of Panama and Colon. If it had been contemplated that the Republic of Panama retained sovereign rights in the Zone or was at liberty to exercise those rights in that territory the United States would certainly have required the same exceptions for the large amount of its property in the Zone as it required for its property in the cities of Panama and Colon.

Perhaps no more complete refutation of the claims advanced by the Republic of Panama is necessary than to propound the inquiry, Is the Republic of Panama authorized to impose national, municipal, and departmental taxes on the property of the United States situated in the Canal Zone?

So well understood was it that the exercise of sovereign powers by the Republic of Panama was to be confined to the territory remaining to the Republic that in at least three articles referring to such exercise of power the territory of the Republic is not mentioned, although manifestly no other territory was under consideration.

The articles referred to are X, XII, and XIII.

Article X provides "that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the canal and railroad and auxiliary works."

Article XII provides: "The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the canal and its auxiliary works of all employees and workmen of whatever nationality, under contract to work upon or seeking employment upon or in any wise connected with the said canal, and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama."

It is perfectly plain that these stipulations relate to the exercise of governmental authority in the territory outside of the Canal Zone.

Let it be supposed that this treaty did not contain the provision "all such persons shall be free and exempt from the military service of the Republic of Panama." Would anyone contend, after reading Article III of the treaty, that a citizen of the United States employed on the canal and residing in the Zone owed such temporary allegiance to the Republic of Panama as to be liable to military service for that Government?

Article XIII must also be considered as relating to the territory of the Republic of Panama. That article provides that "the United States may import" (pass through the territory of the Republic) "into the Zone and auxiliary lands, free of customs duties, imposts, taxes, or other charges and without any restrictions," certain designated articles respecting which further provision is made, as follows:

"If any such articles are disposed of for use outside of the Zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama."

Manifestly it is not until the goods are "outside the Zone" and "within the territory of the Republic" that they are subject to "import or other duties under the laws of the Republic of Panama."

The Panamanian authorities insist that it is by virtue of Article XIII that the property of the United States acquires the right of free entry into the Zone. Such contention is not warranted. Said article is intended to give the right of free transit across the territory of the Republic of Panama for goods belonging to the United States. The right of the United States to take its property into the Zone results from the provisions of Article XIII. The construction contended for by Panama makes Article XIII contradict, if not nullify, Article III, for by title terms of Article III the Republic of Panama grants to the United States "all the rights, power, and authority of a sovereign to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority" in the Canal Zone.

When due consideration is given to Article III it is apparent that Article XIII relates to the exercise of sovereign powers by the Republic of Panama in territory wherein such exercise is contemplated by the treaty, to wit, the territory of the Republic.

Under the construction of Article XIII contended for by Panama the right of that Republic to tax the goods in question depends upon the ownership of the property without regard to the place of final destination; if the goods are the property of the United States they enter free and remain exempt from tariff imposts so long as they continue to be the property of the United States; if, however, the United States parts with the ownership the sovereignty of Panama may impose on said goods the customs duties prescribed by the laws of that Republic.

If the Republic of Panama is authorized to exercise sovereign powers in the Canal Zone, and the sovereign right to impose customs duties is restrained only by the fact of ownership by the United States, it would follow that if the United States transferred the ownership of property deposited in the Canal Zone such property would be subject to said right, whether it remained in the Zone or not. But said Article XIII expressly declares that the right to impose customs duties on such property is to be exercised in the event only that "such articles are disposed of for use outside the Zone and auxiliary lands granted the United States and within the territory of the Republic."

Clearly the exercise by the Republic of Panama of the sovereign right to impose customs duties on goods of its character under consideration is dependent upon two

facts: First, that the goods are owned by some one other than the Government of the United States; second, that the goods are to be used outside the Zone and within the territory of the Republic of Panama by some one other than the United States.

A careful examination of the provisions of Article XIII discloses that they combine definite description of specific articles and indefinite classification of property in general.

The article under consideration (XIII) reads as follows:

"The United States may import, at any time, into the Zone and auxiliary lands, free of customs duties, imports, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation, and protection of the canal and auxiliary works, and all provisions, medicines, clothing, supplies, and other things necessary and convenient for the officers, employees, workmen, and laborers in the service and employ of the United States and for their families."

Read by the light of contemporaneous history, it is difficult to see how this article can be considered as relating to the exercise of authority anywhere except in the territory of the Republic of Panama.

That the grant accomplished by the treaty was a grant of land and sovereign right thereover, and not a mere concession or privilege, is shown by the granting clauses and also by the references to the grant in subsequent clauses of the treaty; for instance, Article XIII employs the expression "outside the Zone and auxiliary lands granted to the United States and within the territory of the Republic."

In support of the contention advanced by the Government of the Republic of Panama, you quote Article IV of the proposed treaty with Colombia. The first stipulation of that article is as follows:

"The rights and privileges granted by the terms of this convention shall not affect the sovereignty of the Republic of Colombia over the territory within whose boundaries such rights and privileges are to be exercised."

No such provision as the foregoing appears in the convention between the United States and the Republic of Panama; on the contrary, Article III of the convention with Panama provides that—

"The Republic of Panama grants to the United States all the rights, powers, and authority within the Zone * * * which the United States would possess and exercise if it were the sovereign, * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

This stipulation is plain and its purpose manifest. If the powers of sovereignty are to be exercised in that territory the right to exercise them belongs to the United States.

Permit me to call your attention to certain official acts of the Government of the Republic of Panama which evidence that the legislative, executive, and judicial branches of that Government have heretofore accepted and acted upon the theory that the convention of November 18, 1903, conveyed the territory of the Canal Zone and sovereign jurisdiction thereover to the United States.

The constitution of the Republic of Panama was formulated during the time the treaty between the United States and Panama was pending before the Senate of the United States. The constitution was adopted on February 13 and proclaimed February 15, 1904. The Senate recommended the ratification of the treaty on February 23, and the President carried out the recommendation on February 25, 1904.

The constitution of Panama described the boundaries of that Republic as follows:

"ART. 3. The territory of the Republic is composed of all the territory from which the State of Panama was formed by the amendment to the Granada constitution of 1853 * * * together with its islands and of the continental and insular territory. * * * The territory of the Republic remains subject to the jurisdictional limitations stipulated or which may be stipulated in public treaties concluded with the United States of North America for the construction, maintenance, or sanitation of any means of interoceanic transit."

What is meant by "jurisdictional limitations" if it were intended that the pending treaty should convey nothing but rights of property? Why was this limitation placed upon the extent of the national domain, if the United States was to be a mere concessionaire subject to the jurisdiction of the Republic of Panama?

The legislative branch of the Government of the Republic of Panama has recognized the right of the United States to exercise the sovereign authority to regulate foreign commerce with the territory of the Zone and has enacted two statutes with reference to such exercise of authority by the United States.

Law No. 65, enacted by the National Assembly of Panama on June 6, 1904, "conferring certain authority upon the Executive," is as follows:

"ARTICLE 1. Authority is given to the Executive to reduce, as may be convenient, those duties, the collection of which, at the rates established by the present law, ordinances, or decrees, would be prejudicial to commerce and to the public because of great differences there might be between them and those established by the United States Government for the Canal Zone.

"ART. 2. Authority is also given to the Executive to enter into an agreement with the Government of the United States respecting the rates of duties to be collected in the Canal Zone and the cities of Panama and Colon: *Provided, however*, That the said duties shall be uniform throughout the territory named, which agreement shall remain in force until annulled by the National Assembly."

Your attention is directed to the fact that the foregoing act of the National Assembly of Panama was enacted eighteen days prior to the date of the order of the President of the United States opening the territory of the Canal Zone to commerce and establishing customs-houses therein.

Law No. 88, enacted by the National Assembly of Panama on July 16, 1904, provides as follows:

"Art. 23. The Executive is authorized to reduce the slaughterhouse duty on cattle killed in the districts of Panama, Colon, and Bocas del Toro when the fiscal system to be introduced into the Zone ceded to the United States, in his opinion, requires it."

It can not escape observation that the legislative branch of the Government of the Republic of Panama by legislative enactment declared the Zone to be "ceded to the United States," and dealt with accordingly.

The executive branch of the Government of the Republic of Panama, also, has recognized the right of the United States to exercise the powers of sovereignty in the Canal Zone. By July 17, 1904, His Excellency the President of that Republic officially advised the governor of the Canal Zone as follows:

REPUBLIC OF PANAMA PRESIDENCIA,
Panama, July 17, 1904.

Maj. Gen. GEO. W. DAVIS,
Governor of the Canal Zone, Present.

DEAR SIR: I have the pleasure to inform you that I am fully authorized by law recently enacted by the National Assembly, to reduce or increase our duties and taxes accordingly with the rates which your Government shall establish at the Canal Zone.

Yours, truly,

M. AMADOR GUERRERO.

To carry out the suggestion contained in the foregoing letter and to enable the executive branch of the Government of the Republic of Panama to pursue the course obviously intended and provided for by the National Assembly of Panama, it was necessary for the United States to make known what duties and taxes would be levied and collected in the Canal Zone. Whereupon the President of the United States directed the issuance of the order of June 24, 1904, of which complaint is now made.

Conclusive, as to the right of the United States to exercise sovereign jurisdiction in the Zone, is the fact that upon the arrival of Maj. Gen. George W. Davis, whom the President had appointed governor of the Canal Zone and delegated to administer the government of said territory, all the officials of the Republic of Panama ceased to exercise any authority respecting the administration of government in that territory, the soldiers and police of that Republic stationed in the territory were withdrawn, the officers of all branches of government stationed in the territory surrendered their offices and were superseded by appointees of the United States.

The withdrawal from the Zone of the officials of the Republic of Panama was pursuant to an order issued by the secretary of state and foreign affairs of that Republic, upon the signing of the agreement respecting the boundary line between the Zone and the cities of Colon and Panama. The order was dated June 17, 1904, and reads as follows:

"Governor Colon: "Districts of railway line are comprised within Canal Zone and from to-day authorities and public employees in said Zone cease in their functions as members of the Government of the Panama Republic, according to convention signed yesterday. Advise you for your information.

"Attentive servant,

TOMAS ARIAS."

Upon the assumption of governmental authority over the Zone by the United States it became important that the line of separation between the Zone and the Republic of Panama, especially that separating the Zone from the towns of Panama and Colon, should be ascertained and declared. Major-General Davis, governor of the Zone, on behalf of the United States, and his excellency Tomas Arias, secretary of government and foreign affairs, and Ramon Valdez, attorney-general of the Republic of Panama, on behalf of that Government, entered into and signed a provisional agreement as to such demarkation of boundaries on June 15, 1904.

This agreement was duly published in the Gaceta Oficial of the Republic of Panama. The following extracts are quoted from that publication:

"Whereas * * * it is necessary that the extent and boundaries of the territory ceded to the Government of the United States by the Republic of Panama under the terms and provisions of said convention shall be provisionally agreed.

"SECTION 1. The limits of the Canal Zone, including lands under water and islands ceded * * * delivery of which lands, waters, and islands has been made by Panama and possession of which has been taken by the United States are indicated and shown on the attached map * * * and said indicated boundary, or line of division, between the territory ceded by the Republic of Panama to the United States for canal purposes.

* * * * *

"That the entrance channel of the Panama Canal through said harbor of Colon * * * is hereby declared to be a part of the Canal Zone, under the exclusive jurisdiction of the United States."

It is manifest that at the time this agreement was signed both the secretary of state and the attorney general of the Republic of Panama considered that the rights of the United States in the Canal Zone were something more than those of a private concessionaire or lessee.

The judicial branch of the Government of the Republic of Panama has determined the question as to which government possesses sovereignty over the Canal Zone in favor of the United States. The question was presented by numerous cases of criminal offenses committed in the territory of the Zone since the transfer. The courts of Panama held that they are without jurisdiction and transmitted the papers to the foreign office of their government for transmission of the case and the person of the accused to the Zone authorities. From the correspondence in a large number of instances the following are selected:

Etienne Lamour was arrested, charged with the offense of assault and battery, committed at Emperador on July 5, 1904. The papers were transmitted to the second circuit court, one of the courts of the Republic of Panama, and submitted to the fiscal for report. The fiscal recommended that, as Emperador is situated in the Canal Zone, the court lacked jurisdiction, and therefore the papers should be transmitted to the secretary of justice for submission to the proper American authorities. The papers were so transmitted to the secretary of justice, who returned them to the court with a statement that the question be decided by the court "as the transfer of sovereignty in the districts of the railroad line has been officially communicated."

The letter of the secretary of justice is as follows:

[Republic of Panama, national executive power, department of public instruction and justice]

DIVISION OF JUSTICE, No. 423,
Panama, June 30, 1904.

To the Second Circuit Judge in Criminal Matters, City:

I return to you the proceedings and papers you sent to this office with note No. 275 of the 26th instant, tending to show that Etienne Lomour is guilty of the offense of assault and battery.

This office abstains from deciding what should be done with the said proceedings, as it considers that you are the one that should do so, as the transfer of sovereignty in the districts of the railroad line has been officially communicated.

God preserve you.

JULIO I. FEBREGA.

THIRD CIRCUIT COURT,
Panama, July 21, 1904.

As by reason of the delivery of the Canal Zone the jurisdiction which the judges of this circuit exercised over the districts of Emperador and Gorgona has ceased, the undersigned can not continue to take cognizance of this matter. Therefore let these proceedings be sent to the secretary of government, through the secretary of public instruction and justice, in order that he may transmit them to the North American authority competent to take cognizance of the case in question.

Let it be notified and recorded.

ALFONSO FABREGA, *Judge.*
RAFAEL BENITEZ, *Secretary.*

INVESTIGATION OF PANAMA CANAL MATTERS

Another case proceeded as follows:

Victor Guillot, a French citizen, was accused by his employer of stealing at Culebra on May 5, $65 gold, $4 in American bank notes, and about P 10 in silver. Preliminary investigation was conducted by the police inspector of Culebra, and showed that the money was stolen from the pockets of the complainant by cutting through them while he was asleep. The papers were transmitted by the police inspector to the first circuit court for criminal matters of the Republic of Panama, and thence to the second circuit court for criminal matters; they were referred to the fiscal of the latter court, who reported that the hamlet of Culebra was situated within the provisional demarcation of the Canal Zone, and that the circuit judge lacked jurisdiction, and that the papers should be transmitted to the secretary of public instruction and justice for submission to the proper American authorities.

The papers were transmitted by circuit judge to superior judge for decision. The fiscal of the superior court recommended the transmission of the papers to the department of foreign affairs and that the accused be held subject to said secretary's orders, which recommendation was approved by the superior judge.

The secretary of government and foreign affairs for the Republic of Panama transmitted the papers to the governor of the Canal Zone in a communication reading as follows:

DEPARTMENT OF GOVERNMENT
AND FOREIGN AFFAIRS,
Panama, July 9, 1904.

Mr. GOVERNOR: I have the honor to transmit to you herewith the record of the preliminary procedings instituted against Victor Guillot for robbery committed within the jurisdiction of the Canal Zone, with the request that you issue the proper orders to have these preliminary proceedings duly continued.

I have to inform you, for such action as you may deem proper, that the accused Guillot is confined in the jail of this city.

With expressions of the highest consideration, I have the honor to be,

Your obedient servant,

TOMAS ARIAS.

Gen. GEORGE W. DAVIS,
Governor of the Canal Zone, City.

Raimundo Lizano was brought before the superior court at Panama, charged with the crime of theft, perpetrated in the territory of the Canal Zone. The case was sent to the first circuit court for criminal matters. The decision of that court was as follows:

THIRD CIRCUIT COURT,
Panama, July 22, 1904.

Whereas the crime involved in these proceedings was committed on territory of the Canal Zone, where the undersigned has no jurisdiction, with the concurrence of the fiscal. It is decided that these proceedings be sent to the secretary of state for transmission to the proper person.

Let it be communicated and recorded.

ALFONSO FARRAGA, *Judge.*
RAFAEL BENITEZ, *Secretary.*

The United States at all times since the treaty was concluded has acted upon the theory that it had secured in and to the Canal Zone the exclusive jurisdiction to exercise sovereign rights, power, and authority.

On April 28, 1904, Congress enacted an act entitled "An act to provide for the temporary government of the Canal Zone at Panama, the protection of the canal works, and for other purposes."

Said act provided as follows:

"SEC. 2. * * * All the military, civil, and judicial powers, as well as the power to make all rules and regulations necessary for the government of the Canal Zone, and all the rights, powers, and authority granted by the terms of such treaty to the United States, shall be vested in such person or persons and shall be exercised in such manner as the President shall direct for the government of said Zone. * * * "

Pursuant to the provisions of said act, the President directed that all the government power in and over said Canal Zone should be vested in the Isthmian Canal Commission, to be exercised under the supervision and direction of the Secretary of War.

The power of legislation respecting the government of the Zone was conferred upon the Commission.

Maj. Gen. George W. Davis, U.S. Army, was appointed governor of the Canal Zone by the President and ordered to proceed at once to the Isthmus of Panama, and in the name of the President and for and on behalf of the United States, as the chief executive in the Canal Zone, to see that the laws are faithfully executed and maintain possession of said territory; he was also vested with pardoning power.

The President further designated what laws should be continued in force in the territory of the Zone, by what officials said laws should be administered, and provided for the temporary exercise of the judicial power.

The Isthmian Canal Commission, by the exercise of the legislative power vested in them, enacted laws for the organization and establishment of the executive and judicial branches of the government of the Canal Zone, the establishment and government of municipal subdivisions, and for the collection of revenues, a postal service, the sanitation of the Isthmus, quarantine of the ports, policing of the Zone, a penal code, and a code of criminal procedure, besides other enactments required for the proper administration of the government in the Zone.

In full confidence that it had secured the right to exercise all powers of sovereignty in the Zone, the United States paid to the Republic of Panama $10,000,000 in gold and to the French Canal Company $40,000,000. The Congress appropriated $150,000,000 to complete the canal. The President appointed the Isthmian Canal Commission, and the work of construction was immediately entered upon. Agencies of government have been established in the Zone and the necessities of the social organism provided at the expense of the United States.

I note your reference to the exercise of the sovereign powers by the United States over the harbors constituting the Atlantic and Pacific entrances to the canal.

As understood by me, your contention is that whatever may be the authority of the United States in other parts of the Canal Zone, this Government is without authority at these two points (Cristobal and La Boca) for the reason that these points are within the harbors adjacent to the cities of Colon and Panama, and therefore excluded from the grant made by Article II of the convention.

For convenient reference, I quote a part of said article:

"The Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal of the width of ten miles, extending to the distance of five miles on each side of the centre line of the route of the canal to be constructed, the said zone beginning in the Caribbean Sea three marine miles from mean low-water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three miles from mean low-water mark, with the proviso that the cities of Panama and Colon and harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant."

A strip of land 5 miles wide on either side of the entrances to the canal would include all of the city of Colon and substantially all of the city of Panama. The Republic of Panama desires to retain sovereign jurisdiction over the inhabited portions of the territory of these municipalities, hence the

exemption in the grant. In this connection attention is called to the fact that if the Republic of Panama intended to retain the right to exercise sovereign jurisdiction over the entire Zone, this exemption would have been unnecessary.

You will recall that when this convention was being considered by the United States Senate the opposition to its confirmation suggested the possibility that the Republic of Panama might advance, thereafter, the contention now presented. Thereupon the matter was brought to the attention of Mr. Banau-Varilla, the duly accredited representative of the Republic of Panama, by whom said convention was negotiated.

In response the representative of the Republic of Panama, by a letter dated January 19, 1904, advised the United States as follows:

"I do not hesitate, sir, to give you in my name and in the name of my Government the following explanation on the meaning of the clauses which have been deemed not sufficiently outlined by the committee of the Senate:

"First, Harbors adjacent to the cities of Panama and Colon. The harbors adjacent to the cities of Panama and Colon (adjacent of) are, in my understanding, the harbors in comes from adjacens—lying at the side contact of said cities, and putting them in communication with the sea. These harbors are completely separated from and independent of the harbors of the canal or the harbors situated at its two entrances, and which ships going through the canal will have to use.

"The harbor at the Colon end of the canal is an interior harbor, made by dredging in the bay of Fox River, adjacent to the city of Christopher Columbus, and protected by a breakwater.

"The harbor adjacent to the city of Colon is constituted by a series of wharves built in the open sea without any artificial shelter. A ship lying in the Colon Harbor and leaving it to go into the canal harbor will have first to go into the open sea, and then pass the breakwater which protects the entrance of the canal harbor.

"At Panama the canal harbor is also an interior harbor, situated at La Boca, several miles from the wharf which forms the Panama Harbor, a wharf built in open sea like those of Colon. The very same thing may be said of the Panama as of the Colon harbors. Both are local harbors, strictly limited to the service of the respective townships and out of the way of the canal and its approaches to its entrance.

"There is not a shadow of probability that the harbor adjacent either to Panama or Colon will ever be used for anything but the local trade of the town, and therefore the United States will never necessitate to do anything in relation to the canal with any part of them."

The administration of the Government of Panama, being advised by Bunau-Varilla of this letter, wrote him as follows:

"YOUR EXCELLENCY: Most opportune indeed was your excellency's communication of January 19 to the secretary of state, dissipating, as it did, the new obstacles raised to prevent the prompt approval of the treaty by the American Senate.

"All the matters which your excellency mentioned were at the same time discussed with the Hon. Mr. Buchanan.

"F. V. DE LA ESPRIELLA."

The foregoing correspondence being brought to the attention of the secretary of government and foreign affairs for the Government of Panama, he replied as follows:

"OFFICE OF THE SECRETARY OF GOVERNMENT AND FOREIGN RELATIONS, DEPARTMENT OF FOREIGN RELATIONS,

"Panama, August 23, 1904.

"SENOR MINISTER: I have before me your excellency's attentive communication, No. 23, of the 16th instant, wherein you refer to the letter which Mr. Bunau-Varilla addressed to Mr. Hay, Secretary of State, of the United States, on the 19th of January of the present year, with regard to the interpretation of certain clauses in the treaty of November 18, 1903, a copy of which your excellency was good enough to send me, and the existence of which I had forgotten. As was natural, I ordered that a search be made of the archives in this office for the missing document, and it was found, the original of which your excellency informs me will be presented to the minister plenipotentiary and envoy extraordinary of Panama in Washington."

The authorities of the Canal Zone report that for a limited period following the promulgation of the President's order establishing ports of entry at the harbors at the entrance of the canal said orders were acquiesced in by the Republic of Panama without protest. Several vessels were cleared from the port of Panama, in the Republic of Panama, for the port of Ancon (La Boca), in the Canal Zone, in which port the vessels were received by the American authorities.

In this connection attention is called to the following correspondence between the owners of the steamship *Loa* and the chief of the national customs service of Pamama:

PANAMA, *July 2, 1904.*

The CAPTAIN OF THE PORT,
Chief of the National Customs Service, Panama:

Please certify below whether the steamship *Loa*, which entered this port on the 26th of June last, was authorized to proceed to the La Boca wharf.

Yours, etc.

H. EHRMAN CO.

HEADQUARTERS OF THE NATIONAL CUSTOMS SERVICE,
Panama, July 2, 1904.

The writer, chief of the national customs service of Panama, certifies:

That the Chilean steamship *Loa* was duly received at 9 a.m. on the 26th ultimo, and was authorized to discharge and receive cargo where most convenient to do so. With regard to the observance of formalities in order to proceed to La Boca, this is a matter which pertains exclusively to the governor of the Zone, because that is American property.

As the boat was received by the Panaman authorities, it was natural that in order to enter and tie alongside of the wharves of the said port of La Boca, it was subject to comply with the formalities required by the authorities of that place (La Boca).

[SEAL] LEONIDES PRETEL.

The United States learns with regret that the officials of the Republic of Panama are apprehensive that the course adopted by the United States will substantially reduce the revenues of that Republic. Permit me to express the belief that future developments will show such fear to be without foundation. The construction of the canal will cause a large increase in the population of the Zone and of the Republic. Vast expenditures of money will be made by the Commission in canal construction, which will be expended largely in the commercial centers of the country, to wit, Panama and Colon. This will occasion increased importations, with resulting increase of revenue to the Government exercising sovereign jurisdiction over those cities.

The United States has sought at all times to secure and preserve for the Republic of Panama sufficient means for adequate revenues. In this connection, permit me to call your attention to the fact that the proposed treaty with Colombia contained the following provision (Art. VIII):

"The ports leading to the canal, including Panama and Colon, also shall be free to the commerce of the world, and no duties or taxes shall be imposed, except upon merchandise destined to be introduced for the consumption of the rest of the Republic of Columbia, or the Department of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal."

Under such a provision merchandise imported into the ports of Colon and Panama for consumption within those municipalities would have entered free of duty.

The convention between the Republic of Panama and the United States permits the Republic of Panama to impose customs duties on merchandise imported into those cities for consumption therein, as well as elsewhere in the Republic.

Your attention is directed to the fact that under the rule of law established by the United States Supreme Court, goods from the United States were entitled to free entry into the Zone as soon as the sovereignty of the United States permanently attached to the territory. (Vide Dooley *v.* United States, 183 U. S. 151; Cross *v.* Harrison, 16 Howard, 164.)

It was recognized that free entry into the Zone of goods from the United States might work a hardship on the trades people of the near-by cities of Panama and Colon, as the latter were obliged to pay customs duties to the Republic of Panama. To meet this contingency, the order of June 24, 1904, regulating commerce with the Zone, provides as follows:

"The governor of the Canal Zone is authorized to enter into and carry out an agreement with the President of the Republic of Panama for cooperation between the customs service of the Canal Zone and that of the Republic of Panama to protect the customs revenues of both Governments and to prevent frauds and smuggling.

"The governor of the Canal Zone is hereby authorized to enter upon negotiations and make a tentative agreement with the President of the Republic of Panama respecting reciprocal trade relations between the territory and inhabitants of the Canal Zone and appurtenant territory and the Republic of Panama; also a readjustment of the customs duties and tariff regulations, so as to secure uniformity of rates and privileges and avoid the disadvantages resulting from different schedules, duties, and administrative measures in limited territory subject to the same conditions and not separated by natural obstacles. The governor shall report as to such negotiations and proposed agreement to the chairman of the Isthmian Canal Commission for submission and consideration by the Commission and such action by competent authority as may be necessary to render said agreement effective in the Canal Zone."

Admiral J. G. Walker, chairman Isthmian Canal Commission, advises this Department that although several attempts have been made by the authorities of the Canal Zone to initiate negotiations contemplated by the foregoing provisions of said order and by the provisions of laws Nos. 65 and 88 of the National Assembly of Panama, the authorities of the Republic of Panama decline to enter upon such negotiations. Permit me to express the hope that the Government of Panama will recognize the desirability of taking up this matter with the governor of the Canal Zone and ascertaining if a satisfactory solution of the existing discrepancies in customs duties and administration is attainable. The Government of the United States sincerely desires to effect such an arrangement on terms both just and generous to the Republic of Panama.

Accept, sir, the renewed assurances of my highest consideration.

EXHIBIT 2

THE TREATY POWER AND CONGRESSIONAL POWER IN CONFLICT: CESSION OF U.S. PROPERTY IN THE CANAL ZONE TO PANAMA

INTRODUCTION

This report addresses the Constitutional issue of whether United States' territory and

property in the Canal Zone may be ceded to Panama by a treaty alone, or treaty accompanied by implementing legislation.

Article II, section 2, clause 2 of the Constitution authorizes the President to negotiate and enter into treaties:

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

Article VI, Section 2 of the Constitution declares treaties to be the supreme law of the land:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under Authority of the United States, shall be the supreme Law of the Land; . . .

However, Article IV, section 3, clause 2 grants Congress the power to dispose of territory and other federal property:

The Congress shall have Power to dispose of and make all Rules and Regulations respecting the Territory or other Property belonging to the United States; . . .

The constitutional issue at hand, then, is not, or should not be, involvement of the House of Representatives in treaty negotiation. "Into the field of negotiation, the Senate cannot intrude; and the Congress itself is powerless to invade it, . . ." [1] Nor is the issue an intrusion by the House of Representatives into the advice and consent powers of the Senate, since that function is explicitly assigned to the Senate by Article II of the Constitution.[2]

The proper issue for resolution is to determine whether, by virtue of Article IV, Congress exercises exclusive or concurrent power over the disposal of territory and property. If it can be clearly resolved that the grant is concurrent, then the Executive would be able to conclude a treaty disposing of the United States interest in the Canal Zone to Panama without the necessity for implementing legislation. The executive branch seems to believe that such a disposal may be effected by treaty alone, by joint resolution, or by a combination of treaty and implementing legislation.[3]

The House of Representatives appears to hold the opposite view. That is, that no treaty may convey U.S. property without the House consent. Attempts to leave the House out of this issue are seen as infringement on the basic duties of that body.[4]

I. General considerations regarding the scope of the treaty power

Treaties and statutes are of equal import. Both are the supreme law of the land.[5] In the event of a conflict between a treaty and a statute, the most recent is controlling.[6]

The scope of the treaty power is very broad. It extends to all matters usually considered as the proper subject of negotiation and relations between nations.[7] Treaties may and have addressed matters of a political, military, economic, cultural, scientific, or diplomatic nature.

The Constitution does impose limitations on the treaty making power. The major limitation, simply stated, is that a treaty may not violate the Constitution. "It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument."[8] It is interesting to note, however, that the Supreme Court has never ruled any treaty unconstitutional.

In most cases, treaties are binding on the United States, in an international sense, once an exchange of ratifications has occurred.[9]

There are two basic types of treaties, insofar as concerns their effectiveness as domestic legislation. Self-executing treaties are effective upon ratification. Non self-executing treaties require implementing legislation prior to being considered of equal status to statutes and effective as domestic law in the United States.[10]

When is implementing legislation required? One test is to determine whether the treaty itself requires implementation in provisions stipulating the need for legislative action.[11] Another test asks whether the treaty affects powers exclusively delegated to Congress by the Constitution. A treaty cannot alter the Constitution so as to permit another branch of government to exercise a power exclusively reserved to Congress.[12]

It was at first contended that the treaty power did not extend to any of the subjects of legislation in which the House of Representatives had a constitutional right to participate.[13]

The first conflict between the House of Representatives and the Executive on this issue arose during the administration of George Washington. The Jay Treaty of 1796 contained provisions requiring the United States to indemnify loyalists whose property had been expropriated after the Revolutionary War. The House sought information regarding the Treaty negotiations. Chief Justice Ellsworth, Alexander Hamilton, and various heads of the Executive Departments recommended that the President not furnish the information, since, in their view, the House obligation to vote appropriations arose from the existence of a binding treaty. Thomas Jefferson and Albert Gallatin conceded that the general treaty power was vested in the President and the Senate, but argued that when the general power of one branch conflicts with the specific power granted to another branch, the specific power acts as a limitation on the general power.[14] President Washington refused to furnish the requested papers. The House approved an appropriations bill, but also passed a resolution stating that when treaties contain provisions involving powers vested in Congess, those provisions would not be executed until Congress had passed implementing legislation.[15]

This narrow and limited view of the scope of the treaty power has long since been rejected.[16] It is now accepted that those grants of power that are not exclusive in nature, in other words, those that permit concurrent jurisdiction, do not require implementing legislation.[17]

The Supreme Court has never issued a comprehensive opinion specifying those powers of Congress regarded as exclusive. However, it has been the practice for the Executive and Senate to seek House consent through implementing legislation when treaties require appropriations or changes in revenue laws.[18]

II. Is the power to dispose of Federal territory and property exclusive?

A. The Constitution

The exclusive nature of the appropriations and revenue law powers granted to Congress is readily apparent from the language of the Constitutional provision. Thus, "All Bills for Raising Revenue shall originate in the House of Representatives; . . .",[19] and, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; . . ." .[20] Other provisions of the Constitution state the legislative powers of Congress in a permissive form, without the mandatory language used in the grants concerning appropriations and revenue powers. For instance, "The Congress shall have Power To . . . establish Post Offices and Post Roads;"[21]

The language of Article IV, Section 3, clause 2 is permissive, "The Congress shall have the Power . . .". Despite that language, the Supreme Court has constantly ruled that Congress' power to dispose of federal territory and property is exclusive.[22] Those decisions, however, involved situations concerning the locus of authority within the federal system. The Court did not consider the nature of the Congressional power as a limitation on the extent of the treaty power. In fact, Article IV itself is devoted to the distribution of authority between State and Federal governments. For this reason, it is asserted [23] that this Article does not at all pertain to the disposal of federal property by treaty to a foreign nation.

This assertion is entitled to much respect. However, since the matter has never been resolved by the Courts, the scope of Article IV is still unsettled. Some precedent does exist on which to base an argument that Article IV extends to the treaty making power.

Prior to 1872 the federal government concluded treaties with Indian tribes. Many of those treaties gave Indians some interest in federal lands.[24] The Indian Appropriations Act of 1872 [25] stated that, thereafter, Indian tribes would not be recognized as independent nations ". . . with whom the United States may contract by treaty:"

The debate surrounding passage of that provision was intense. Members of the House vigorously asserted that the power to dispose of territory was vested exclusively in Congress, and that the treaty power did not encompass the authority to cede land.[26] Since that Act received the blessings of a majority of both Houses, and was signed by the President, it would appear that the House, Senate and President all concurred in that belief.

The assertion that territory can be ceded by treaty may also be challenged on the basis of language in *Sioux Tribe of Indians* v. *United States* 316 U.S. 317 (1942). That case involved a claim by the Sioux that their tribe derived a compensable interest in lands conveyed to them by executive order.[27] The court ruled that no compensable interest had been created. It also found that Presidential power to withdraw land from the public domain was based on a delegation of authority—a delegation implied from long and continued Congressional acquiescence in that executive practice.[28]

The following language from the *Sioux* decision is pertinent to our inquiry as to the nature of the Article IV power when it involves a disposal to a foreign nation.

Concededly, where lands have been reserved for the use and occupation of an Indian Tribe by the terms of a treaty or statute, the tribe must be compensated if the lands are subsequently taken from them. . . Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive power to convey any interest in these lands must be traced to Congressional delegation of its authority. The basis of decision in *United States* v. *Midwest Oil Co.* was that, so far as the power to withdraw public lands from sale is concerned, such a delegation could be spelled out from long continued Congressional acquiescence in the executive practice. The answer to whether a similar delegation occurred with respect to the power to convey a compensable interest in these lands to the Indians must be found in the available evidence of what consequences were thought by the executive and Congress to flow from the establishment of executive order reservations.[29]

The court recognized that the nature of title held by Indians on executive order reservations was distinguishable from the interest possessed by them in statute or treaty reservations.[30]

If a Congressional delegation of authority was found necessary to create a compensable interest in lands granted to Indians by executive order, it seems possible that a Congressional delegation of authority would be necessary to convey a *total* interest in lands to a *foreign power*—whether the conveyance is by treaty or executive order.

It does not appear that there is any clear answer to be obtained from the Constitution as to the exclusive or concurrent nature of the Article IV practice as it relates to the disposal of property to a foreign power. Therefore, it is advisable to look to the past treaty prac-

Footnotes at end of article.

tice of the United States in order to determine if that practice reveals precedent that may be considered controlling.

B. Treaty Practice

Territory and property have, in the past, been ceded by treaty without accompanying implementing legislation. Are these instances valid precedent for the proposition that the House of Representatives has no role in the disposition of federal property?

1. Treaties involving boundary claims

On numerous occasions in its history, the United States has concluded treaties with foreign powers in order to adjust or locate its borders. These boundary treaties are often cited to support the proposition that federal lands have, in the past, been ceded by treaty.[31] It is submitted that most, if not all of these "cessions" involved circumstances in which the other party to the treaty had, in its own mind, well founded claims to the land in question. Two examples [32] will indicate the disputed nature of lands "conveyed" in those treaties.

In the Webster-Ashburton Treaty of 1842, both Britain and America made concessions on claims to some twelve thousand square miles of land on the Maine/New Brunswick boundary. At the time the treaty was being negotiated, it appeared that Britain had a valid claim to much of the disputed land. After the treaty was ratified, it was learned that the United States had ceded land to which it did have a valid claim. Nevertheless, (1) when ceded, the territory was considered to be disputed, and (2) the British made concessions on other points on our northern boundary, in areas that later proved to contain valuable mineral resources.[33]

Britain and the United States also had conflicting claims in the Oregon territory. American claims to land to the extent of fifty-four degrees forty minutes were met by British claims for land down to the forty-second parallel. Settlement was reached on a 49 degree boundary. One noted historian has written that, "On the basis of claims and possession, the English made the real sacrifice." [34]

It is submitted that instances of boundary resolution do not provide conclusive support for the proposition that the treaty making power extends so far as to include the power to dispose of federal lands without implementing legislation. "A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition." [35]

2. Other cessions by treaty and executive agreement without express legislative authorization

One primary example of a cession of property by executive agreement is the Lend-Lease program. President Roosevelt sent ships and other military material to Great Britain in exchange for rights in various British territories. Attorney-General Robert Jackson supplied the President with an opinion finding authorization for the disposal of property without implementing legislation in the President's exclusive powers as Commander-in-Chief. However, Mr. Jackson also found statutory authority supporting the disposal, and therefore found it unnecessary to rely on the President's inherent constitutional authority.[36]

Current legislative authorization for transfer of American property to foreign nations by the executive may be found in Title IV (Foreign Excess Property) of the Federal Property and Administrative Services Act of 1949, P.L. 81–152, 63 Stat. 377, c. 288, June 30, 1949, codified at 40 U.S.C. 511–514. Those sections authorize the disposal of foreign excess property by executive agencies. In addition, Part II (International Peace and Security Act of 1961) of the Foreign Assistance Act of 1961, P.L. 87–195, 75 Stat. 424, September 4, 1961 codified at 22 U.S.C. 2311–2320, authorizes the President to transmit (under certain conditions) defense articles and services to other countries.

A recent example of a cession of territory and property by the United States is the agreement concerning the Ryukyu Islands and the Daito Islands 23 UST 446; TIAS 7314. That Agreement was signed in June 1971, received the advice and consent of the Senate in November 1971, and ratified in January 1972. The ratification was exchanged in March 1972, and the Agreement entered into force in May of that year.

By Article I of the 1972 agreement, the United States relinquished in favor of Japan all rights and interests it received under Article III of the 1951 Treaty of Peace with Japan: 3 UST 3169; TIAS 2490. In Article III of the 1951 Treaty, the United States received the right to exercise ". . . all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."

The question that arises is whether the 1972 transfer of interests back to Japan involved cession of territory, in a Constitutional (Art. IV) sense.

An Armed Services Committee Report [37] (on a bill concerning economic and social development in the Ryukyu's) recognized that the Ryukyu's were not United States Territory and that American statutory law was generally inapplicable there. However the Committee used very strong language in stressing the nature of the United States interest in the area. It was stated that the United States possessed "de facto" sovereignty and that (after the 1952 Treaty) Japan possessed only a "residual" sovereignty; the only right Japan retained was ". . . the right to expect that the United States will not transfer the Ryukyu's, including Okinawa, to any third party." [38] The report concluded that the Committees approval of the legislation was

. . . given with the clear understanding that U.S. administrative control of the Ryukyus and the continued maintenance and operation of the U.S. Base there are inseparable and that, therefore, the United States will continue to retain its jurisdiction over these islands so long as required by the security interests of the United States.[39]

However, there is also reason to believe that the United States did not have territory to cede. In Article 2 of the 1951 Treaty, Japan renounced ". . . all right, title and claim . . ." to various pieces of territory. There was no similar renunciation as regards the territory discussed in Article 3 (concerning the Ryukyu's and Daito Islands). This implies that the Japanese retained their "right, title and claim" to the Ryukyu's.

Three courts have reached the conclusion that the United States never received sovereignty over this territory. In *United States* v. *Ushi Shiroma*,[40] the opinion contains excerpts from a letter written by the Legal Adviser of the Department of State

"1. A legal opinion is requested on the request of the Japanese Vice Minister for Foreign Affairs dated 10 December 1951, that the United States confirm that the 'Southern islands' (the Ryukyus and the Bonins) remain under the sovereignty of Japan and that their inhabitants remain Japanese nationals.

* * * * *

"6. It is concluded that sovereignty over the Ryukyu and Bonin Islands remains in Japan, and that the inhabitants thereof are Japanese nationals." [41]

In a statement before the Senate Foreign Relations Committee, Secretary of State Rogers discussed the nature of Japan's interest in the Ryukyu's.

JAPAN'S RETENTION OF RESIDUAL AUTHORITY

On September 5, 1951, in presenting the draft of the peace treaty to the Peace Conference, Ambassador John Foster Dulles noted that some of the allied powers had urged that the treaty require Japan to renounce its sovereignty over the Ryukyus in favors of U.S. sovereignty. Others had proposed that the islands be restored completely to Japan. "In the face of this division of allied opinion," Ambassador Dulles said, "the United States felt that the best formula would be to permit Japan to retain residual sovereignty, while making it possible for these islands to be brought into the United Nations trusteeship system, with the United States as administering authority."

It was decided at that time that although the United States had long-term security interests in the Ryukyus, the "peace of reconciliation," which we and most of our allies sought with Japan, would be vitiated by the islands' enforced, permanent detachment from Japan. The "residual sovereignty" formula was clearly designed to convey the thought to Japan and to the world that although the United States was obliged to retain control of the Ryukyus temporarily for security reasons, what had been Japanese territory was not being permanently detached from Japan and the principle of no U.S. territorial acquisitions as a result of war was being observed.[42]

As in the boundary dispute cessions, a question exists as to whether the territory transferred belonged to the U.S. The Ryukyu Island cession, therefore, is not conclusive as to the right of the Executive to cede federal territory without implementing legislation.

The 1972 cession did convey a good deal of federal property to the Japanese. This property seems to have been conveyed without Congressional approval. However, this transfer also seems not to be binding precedent for the following reasons.

(1) The Congress may have assumed that the Executive acted pursuant to powers contained in the Foreign Assistance Act of 1961 or the Federal Surplus Property Act of 1949. (It does not appear that the President ever submitted reports required by those Acts. However, the fact that Congress did not demand the reports does not mean that these Acts were not the source of the President's power to convey the property.)

(2) The Japan-United States Friendship Act P.L. 94–118 (1975) contains language 22 U.S.C. 2901(a)(2) that may be seen as a Congressional validation of the Executive action.

(3) Since Congress supported the transfer, it is possible that she may have not insisted on exercising her Article IV rights in this instance. If this is true, such a voluntary lapse does not preclude Congress from insisting upon exercise of that right at a later date.

3. Treaties with the Indian tribes

It has been contended [43] that the practice of conveying land to Indian Tribes by treaty during the nineteenth century supports the proposition that implementing legislation is not necessary in order to convey territory and property in the Canal Zone to Panama. Conveyances to the Indian Tribes appear to be distinguishable for several reasons.

First, the status of the Indian in American law is both unique and complex. Although it has been recognized that the Indians comprised a distinct people, the equivalent of nations, who could be dealt with by treaty,[44] it is also well established that, since the founding of our government, Indians have been considered as dependent political communities, wards of the nation, or in a state of pupilage to the United States.[45]

It is similarly well established that, through discovery and conquest of the "New World", the European nations, and eventually the United States, obtained title to the land, title that was complete, subject only to the continued use and occupancy of Indian Tribes on certain lands.[46]

The land interests received by the Indians in agreements with the United States govern-

Footnotes at end of article.

ment varied. In some cases the United States only recognized a right to continued occupancy and use of certain lands; in other cases, the United States granted, by treaty, a fee simple interest.[47]

When the Indian tribes were granted land in fee, however, their interest in that land was no more extensive than the interest of any other fee simple owner of land in the United States.

The fact that the Cherokee Nation holds these lands in fee simple under patents from the United States, is of no consequence in the present discussion; for the United States may exercise the right of eminent domain, even within the limits of the several States, for purposes necessary to the execution of the powers granted to the general government by the Constitution.

* * * * *

It would be very strange if the national government, in the execution of its rightful authority could exercise the power of eminent domain in the several States, and could not exercise the same power in a Territory occupied by an Indian nation or tribe, the members of which were wards of the United States, and directly subject to its political control. The lands in the Cherokee territory, like the lands held by private owners everywhere within the geographical limits of the United States, are held subject to the authority of the general government to take them for such objects as are germane to the execution of the powers granted to it; provided only, that they are not taken without just compensation being made to the owner.[48]

At least one authority has commented that in most of the treaty grants to the Indians the United States retained a higher interest than a mere right of eminent domain.[49]

If the proposed treaty recognizes that Panama has a complete sovereignty over the Canal Zone, any conveyance of territory and property will be absolute. The United States would not have any of the eminent domain or other interests she possessed in lands granted to the Indians.

C. Past Practice in Disposal of U.S. Property in the Canal Zone to Panama

The remainder of this report contains material that establishes considerable precedent demonstrating that both the Executive Branch and the Senate have considered it necessary to obtain the consent of the House prior to ceding U.S. property in the Canal Zone to Panama.

In 1932, the United States wanted to build a new legation building on land within the Canal Zone. Since it is improper to build a legation on territory under American jurisdiction, the State Department drafted a bill by which Congress would authorize the Secretary of State to modify the boundary line between Panama and the Canal Zone so as to temporarily cede the land back to Panama, so that the proposed legation could be built on "Panamanian territory."[50]

In 1942 the Senate debated approval by Joint Resolution of an Executive Agreement transferring land and property in the Canal Zone to Panama.[51] One of the most acrimonious points of debate concerned whether the transfer should have been effected by treaty, requiring only the consent of the Senate, rather than by an Executive Agreement which required consent of both Houses. The Chairman of the Senate Foreign Relations Committee, Mr. Connally, stated:

"Those who are opposing the measure object because the matter is brought before the Senate in the form of a joint resolution. They say it should be in the form of a treaty."

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

"Another reason why it is not necessary to embody the provisions of the joint resolution in a treaty or treaties is that so far as Panama is concerned, most of the results sought to be attained by means of the joint resolution have already been accomplished. We already have the sites; we already are occupying them; we already are putting installations upon them for the proper defense of the Canal Zone. The instrumentalities involved comprise not only airfields, but detector stations, searchlight stations, and all the other various instrumentalities for the proper protection of the Canal and its approaches."[52]

Despite calls that the Joint Resolution be rejected because it infringed upon the Senate's right to pass upon treaties (88 Cong. Rec. at 9320), the measure was approved (88 Cong. Rec. at 9328).

The House Committee on Foreign Affairs held hearings on that transfer[53] in early 1943. In its Report the Committee stated that—

Congressional approval of the Executive commitments to Panama is sought in the form of legislation because there is involved (a) a disposition of property of the United States and (b) an appropriation of funds, both requiring an exercise of the legislative power, independently of the treaty-making power. Article IV of the Constitution provides that the Congress shall have power to dispose of * * * the territory or other property belonging to the United States.[54]

A 1955 treaty provided for the transfer of real property to Panama. By terms of the treaty the transfer of some property was to be immediate, and the transfer of the remainder was dependent upon Congressional authorization. A representative of the State Department testifying at Hearings on the Treaty admitted that legislation would be needed to implement the transfer of *all* the territory and property mentioned in the treaty.[55]

In addition, those sections of the Treaty (Articles VI and VII) alleged not to require implementing legislation amended the Boundary Convention of 1914 between the U.S. and Panama. The transfer in these Articles, then, may be distinguished from a transfer of the entire Canal Zone or a major portion thereof to Panama. Certainly there is a difference between a boundary adjustment, and the cession of the entire Canal Zone.

III. Conclusion

We have seen that the treaty making power, vested in the President to be exercised with the advice and consent of the Senate, is extremely broad in scope. That power is limited when the Constitution confers an exclusive grant of authority on Congress. Although there are excellent arguments in favor of the proposition that the authority to dispose of property is concurrent and may therefore be exercised under the treaty making power, those arguments are not altogether free from doubt. Supreme Court decisions have recognized the exclusive nature of congress' Article IV powers as they relate to the federal-state relationship. Those rulings have never been qualified by other decisions characterizing those powers as concurrent when used by the executive under the treaty making power. It does not appear that past treaty practice with either foreign nations or Indian tribes provides authoritative precedent establishing, with any degree of certainty, the exclusive or concurrent nature of Article IV, as that provision relates to disposal of land to a foreign sovereign.

It is clear that Congress has often asserted an exclusive right to dispose of federal territory and property. It is also apparent that both the Executive and the Senate have recognized that claim in past dispositions of property in the Canal Zone to Panama. Therefore, while it is impossible to make a categorical assertion that Article IV Section 3, clause 2 is either exclusive or concurrent, it appears that those powers have been recognized as exclusive for purposes of disposal of property in the Canal Zone to Panama.

Finally, regardless of the exclusive nature of the Article IV power, the co-operation of all three branches of government is necessary for the effective implementation of American foreign policy. Although the President is the sole organ of communications with other nations, conclusion of a treaty without prior regard for Congressional attitudes might adversely affect the continuing Executive/Congressional relationship.

It is a very serious matter for the treaty-making power to enter into an engagement calling for action by Congress unless there is every reason to believe that Congress will act accordingly.[56]

KENNETH MERIN,
Legislative Attorney,
American Law Division.

AUGUST 4, 1977.

FOOTNOTES

[1] *United States* v. *Curtiss Wright Corp.*, 299 U.S. 304, 319 (1936).

[2] S. Crandall, Treaties, Their Making and Enforcement, Washington: 2nd ed., 1916, section 25 at page 48.

[3] Green H. Hackworth, Legal Adviser, Dept. of State, Hearings before the Committee on Foreign Affairs, on H.J. Res. 14, "Authorizing the Execution of Certain Obligations Under the Treaties of 1903 and 1936 with Panama, and other commitments." 78th Cong. 1st Sess. page 9. (1943);

Carl F. Salans, Deputy Legal Advisor, Department of State, at Hearings before the Subcommittee on the Panama Canal, of the Committee on Merchant Marine and Fisheries on "Treaties Affecting the Operations of the Panama Canal" 92nd Cong. 2nd Sess. p. 16.;

A similar conclusion was drawn by Ralph E. Erickson, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, *Id.* at page 97.

See also, statement of Herbert J. Hansell, Legal Adviser, Department of State, at Hearings before the Senate Subcommittee on Separation of Powers, July 29, 1977.

[4] H.R. Rep. No. 1629, 92nd Cong., 2nd Sess., 21. (Report of the Committee on Merchant Marine and Fisheries.)

[5] Article VI, cl. 2.

[6] *United States* v. *The Peggy*, 1 Cr. (5 U.S.) 103 (1801); *Foster* v. *Neilson*, 2 Pet. (27 U.S.) 253 (1829); *The Head Money Cases*, 112 U.S. 580 (1884); *Whitney* v. *Robertson*, 124 U.S. 190 (1888).

[7] *Holden* v. *Joy*, 17 Wall. (84 U.S.) 211 (1872); *Geofroy* v. *Riggs*, 133 U.S. 258 (1890).

[8] *The Cherokee Tobacco*, 11 Wall (78 U.S.) 616, 620 (1871); *Doe* v. *Braden*, 16 How. (57 U.S.) 635, 656 (1853); *Geofroy* v. *Riggs*, supra, note 7, at 267; *Asakura* v. *City of Seattle*, 265 U.S. 332, 341 (1924); *Reid* v. *Covert*, 354 U.S. 1, 17 (1957).

[9] Crandall, supra note 2, at section 155, p. 343.

[10] *Foster* v. *Neilson*, supra note 6, at 314; *The Head Money Cases*, supra note 6, at 598; *Whitney* v. *Robertson*, supra note 6, at 194.

[11] *Foster* v. *Neilson*, supra note 6, at 314–315.

[12] Second Restatement of the Foreign Affairs Law of the United States, (1965) part III, at 432–436; C. Anderson, "The Extent and Limitations of the Treaty Making Power Under the Constitution", in 1 American Journal of International Law 636, 653–655 (1907).

[13] Thomas Jefferson, Manual of Parliamentary Practice, Article 52, cited in Moore, 5 Digest of International Law. 162.

[14] Crandall, supra note 2, at 165–171.

[15] 5 Annals of Congress 771–772, 4th Cong. 1st Sess.

[16] Moore, Id at 166; L. Henkin, Foreign Affairs and the Constitution (1972), at 148–149, 155.

[17] W. Willoughby, The Constitutional Law of the United States, (1910) section 306; Q. Wright, The Control of American Foreign Relations, 1922, section 248, p. 344.

[18] Turner v. American Baptist Missionary Union, 24F. Cas. 344 (No. 14251) (C.C. Mich. 1852).

It appears that the exclusive nature of the grant concerning changes in revenue laws is as much a matter of political expediency as constitutional necessity. Willoughby, supra note 17, at 559. Henkin, supra note 16, at 149; see also H.R. Rep. No. 1569, 68th Cong. 2nd Sess. 8 (1925), for a general discussion of implementing legislation.

[19] Article I, Section 7, cl. 1.

[20] Article I, Section 9, cl. 7.

[21] Article I, Section 8, cl. 7.

[22] *Sere v. Pitot* 6 Cr. (10 U.S.) 332 (1810); *American Insurance* v. *Canter* 1 Pet. (26 U.S.) 511 (1828); *United States* v. *Gratiot* 14 Pet. (39 U.S.) 526 (1840); *Cross* v. *Harrison* 16 Har. (57 U.S.) 164 (1853); cf. *Holden* v. *Joy* 17 Wall (84 U.S.) 211, 247 (1872), dictum.

[23] Statement of Ralph Erickson, supra note 3, at 97.

[24] See infra, section II B, for further analysis of the analogy between transfer of land to Indians by treaty, and transfer of the Canal Zone to Panama.

[25] 16 Stat. 544, 546, c. 120, 41st Cong. 3rd Sess.

[26] 97 Cong. Globe 764, 766–767, January 26, 1871 41st Cong., 3rd Sess., and 99 Cong., Globe at 1811–1812, 1821–1825, March 1, 1871.

[27] Although the transfers at issue occurred after the Indian Appropriations Act of 1872, the court indicated that the practice of withdrawing lands from sale by executive order for the purpose of establishing Indian Reservations extended back to 1855. See infra, at section II, B, 3, for an expanded discussion of the quasi foreign-dependent status of the Indian tribes.

[28] Sioux, at 324–326; see also, *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 464–470 (1915).

[29] *Sioux* at p. 326, citation omitted.

[30] *Sioux* at 329.

[31] See Statements of Erickson and Hansell, supra, note 3.

[32] Other "cessions" referred to are the Treaty of Amity Settlement and Limits, with Spain, 1819 to settle our southern boundary (Florida); and Conventions with Mexico in 1933 and 1963 concerning border problems with that country.

[33] A. DeConde, A History of American Foreign Policy, 1963, pgs. 155–162.

[34] Id at 174.

[35] S. Crandall, supra note 2, at p. 226.

[36] 39 Op. A.G. 484, August 27, 1940.

[37] H.R. Rep. No. 723, 90th Cong. 1st Sess. (1967).

[38] Id. at p. 6.

[39] Id. at 16.

[40] 123 F. Supp. 145, 149 (Hawaii, 1954).

[41] Id., see also *Burns* v. *United States* 142 F. Supp. 623 (E.D.Va., 1956), affirmed, 240 F. 2d 720 (4th Cir., 1957).

[42] Reprinted at 92 Cong. Rec. 40371, November 10, 1971.

[43] See Salans, Erickson and Hansell, supra, note 3.

[44] *Worcester* v. *Georgia*, 6 Pet. (31 U.S.) 515, 558 (1832).

[45] *Cherokee Nation* v. *Southern Kansas*, R. Co. 135 U.S. 641 (1890); *Jones* v. *Meehan*, 175 U.S. 1, 10 (1890).

[46] *Johnson and Graham's Lessee* v. *McIntosh*, 8 Wheaton (21 U.S.) 543 (1823).

[47] *Lone Wolf* v. *Hitchcock*, 187 U.S. 553, 564–565 (1903); *United States* v. *Santa Fe Pacific R. Co.*, 314 U.S. 339, 345, 347 (1941); L. Schmeckebier, The Office of Indian Affairs, 1927, pgs. 5–6.

[48] *Cherokee* v. *Southern Kansas R. Co.*, supra note 45, at 655–659.

[49] Schmeckebier, supra note 47; The Non-Intercourse Act (1 Stat. 137, originally passed in 1790 and currently codified at 25 U.S.C. 177) limits the situations in which Indians can transfer tribal lands to those situations when the grant is effected ". . . by a treaty or conventions entered into pursuant to the Constitution.

[50] H.R. 7119, 72nd Cong., 1st Sess., 72 Cong. Rec. 4652–4657 (1932). The legislation was approved, 72 Cong. Rec. 4657.

[51] S.J. Res. 162, 77th Cong., 2nd Sess.; 88 Cong. Rec. 9266–9287, 9320–9328.

[52] 88 Cong. Rec. at 9267.

[53] H.J. Res. 14.

[54] H. Rpt. No. 78–271, pg. 6.

[55] Hearings before the Senate Foreign Relations Committee on the Panama Treaty, Exec. F., 84th Cong., 1st Sess., pp. 60–61. Authorizing legislation discussed property conveyed in all three Articles. P.L. 85–223, 71 Stat. 509 (1957).

[56] Secretary of State Hughes, in an address concerning the League of Nations Covenant, in March, 1919, cited in Wright, supra, note 17, at 356–357 (n. 48).

Mr. SCOTT. Mr. President, I yield the remainder of my time to the distinguished Senator from Alabama (Mr. ALLEN).

The PRESIDING OFFICER. Without objection, the Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I thank the Chair, and I thank the distinguished Senator from Virginia (Mr. SCOTT).

Do I understand then, Mr. President, that I have such time as the distinguished Senator from Virginia did not use plus 15 minutes in my own right?

The PRESIDING OFFICER. That is correct.

Mr. ALLEN. I thank the Chair.

I will not use any additional time, however, than was originally allotted to me, in my judgment.

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, Senators, I am sure, over the past few days have been studying carefully the details of the Panama Canal Treaty and its associated executive agreements. In my own review of the proposed treaty, one aspect is particularly disturbing to me because it is so obviously unnecessary to the basic provisions of the treaty and because it so totally favors the Panamanian position to the great detriment of our own country. I refer, Mr. President, to the treaty provision forbidding the United States to agree with any other country except Panama for the construction of a new Western Hemispheric Interoceanic Canal, unless expressly permitted by Panama in some further future agreement. The treaty reads in relevant part as follows:

During the duration of this Treaty—

And that would be the year 2000—

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—

I find it astonishing that the negotiators for the United States saw fit to preclude any possibility of construction of a new interoceanic canal, perhaps at sea level, without our first obtaining the express consent of a pro-Marxist and highly unstable military dictatorship. Why was this concession necessary? What did we gain from this concession?

I notice with some amusement, Mr. President, that the Republic of Panama purports to grant to the United States of America the right to add a third lane of locks to the existing canal. Inasmuch as the United States already has the right to add a third lane of locks to the existing canal, surely our negotiators did not think that a meaningless concession of that variety was sufficient consideration for giving the Panamanians a veto over any other project we may wish to undertake to connect the two oceans. Certainly, the negotiators for the United States could not have felt that the Panamanian agreement to commit Panama "to study jointly the feasibility of a sea level canal" warranted a countervailing commitment from the United States not to do anything whatsoever without Panamanian permission—but perhaps so. The bizarre behavior of our negotiators has produced other results equally as startling.

In any event, Mr. President, one thing is sure and that is that the Panamanians know they got the best of this bargain. Discussing the sea level canal issue, chief Panamanian negotiator, Romulo Escobar Bethancourt, on August 19, 1977, explained to the Panamanian National Assembly the unilateral benefits of the so called sea-level canal options. Dr. Bethancourt's remarks on the subject are illuminating and are worth studying in full. Instead of obtaining an option to build a sea level canal, our negotiators gave to the Panamanians the option to veto construction of a sea level canal by the United States anywhere in the Western Hemisphere. But here are Dr. Bethancourt's own remarks.

I am quoting them at some length for the benefit of the Senate and the public.

I believe we can find out more from the Panamanian negotiators as to what this treaty really means than we find out from listening to our own negotiators. Here is what Dr. Bethancourt, the Panamanian negotiator had to say:

The other problem we—

Speaking of the negotiators on both sides—

The other problem we discussed was that of the option for the construction of a sea-level canal. In all these years the problem of a sea level canal was hardly discussed at all at the negotiating table. There were about two talks on this. We discussed this,

nothing came out of these discussions and then came the Bogota conference with the presidents.

That is, the Presidents of the various countries.

That is where the option problem really reached a crisis. It reached a crisis because a very direct and continuous communication was established among all the presidents meeting there and President Carter through negotiators Bunker and Linowitz as well as with us through Dr. Giogenes de la Rosa, who was there at the time, and our Ambassador Gabriel Galindo.

This is Dr. Bethancourt, the Panamanian negotiator, talking. Continuing with his remarks:

But they made a proposal to us—

That is, our negotiators made the proposal to Panama—

But they made a proposal to us on that option and that is why the issue reached a crisis. They proposed that Panama grant them an option to build a sea-level canal without setting any date. Second, they wanted Panama to promise that no other country would construct a sea-level canal.

These are very fine proposals that our people made. Let us see if they won out.

We rejected that proposal in Bogota. We read it to the presidents. That was the proposal brought the previous evening by several of our negotiators and we read it to them. The negotiations between the two countries was practically broken in Bogota. So much so that I remember that at one point General Torrijos told the presidents: "Well, we called this conference several days ago for a celebration of a new treaty and it turns out that we have come for the wake." The struggle between the two countries began in Bogota. And I say the two countries because the rest of the presidents got as involved as if they had been Panamanians. We must really be very grateful to the presidents that met with the general in Bogota. Regarding this problem they acted just like any of us; they even wanted to walk out mad. The Mexican president wanted to get on his plane and leave; he was very furious. They all became Panamanians regarding the option problem.

When the United States finally realized that there was no way in which an agreement would be reached regarding this option in the terms they were proposing and that the issue had reached an impasse, they asked for a recess. During that recess, we continued our discussions with the presidents meeting in Bogota.

The Panamanian delegation then prepared a draft which all presidents liked. They said it was correct and fair. We then called the United States, they examined it for a while and finally accepted it. I think that it would be a good idea to read the text of this draft to you so that you will see how the option problem came out. I read:

Article 3. Possibility of building a third set of locks or a sea-level canal.

First, the Republic of Panama and the United States of America acknowledge that a sea-level canal can be important for future international navigation. As a result of this, after supporting the treaty of the existing canal and for the duration of this treaty, both countries promise to study jointly the viability of such a canal. In the event that the need for such a canal is viewed favorably, they will negotiate its construction in the terms agreed on by both the countries. This is how the option issue came out. (Applause.)

This is Dictator Bethancourt, still quoting him.

As you can see, it is not even an option to build a sea-level canal. It is an option to promise to study the viability of it.

He is letting the cat out of the bag, Mr. President, in his comments there to his people.

That is the true option. The true commitment is to sit down with the United States to study whether or not it is viable to build a sea-level canal. If the two countries feel it is viable, then they will sit down to negotiate the terms agreed on by the two countries. . . .

You know, Mr. President, this fellow Bethancourt has been very helpful to me in understanding the true implications of the Panama Canal Treaty. From him, I learned the true meaning of the so-called neutrality pact. From him, I learned that the neutrality pact was a sham and of no true benefit whatsoever to the security of the United States. I cannot help but note, Mr. President, in reviewing Dr. Bethancourt's August 19 speech that he explains that the real purpose of the neutrality pact is to propagandize the U.S. Congress and the people of the United States with the myth that the neutrality of the canal will be insured after December 31, 1999. But I would prefer that Dr. Bethancourt answer in his own words the question, "Why this neutrality pact?" He states this:

. . . Because they think—

That is, the United States—

. . . Because they think that maybe in the year 2000 this country will become socialist and will turn into their enemy and they feel it is better to make sure right now that even if our country becomes socialist—

Panama, that is—

it cannot prevent them from using the canal. To be even more frank, they do not need that neutrality pact to tell them whether or not they may intervene. They need it to show to their Congress in order to be able to tell their Congress: "Look, we are turning the canal over to the Panamanians, but we still have the right to watch over them so they behave." That is the truth. It is a question of their internal policy. They are solving an internal problem regarding a Congress that is largely opposed to these negotiations and which even has members who have not been elected of their own free will—

I do not know whether that is a substantive loss in translation or not, because I do not know of any Members of the House of Representatives who were not elected of their own free will. I know of no Senator or House Member who was forced to run for the position he holds.

turned into members of the U.S. Congress. They are Panamanians who lived here and in Miami.

There is a parenthetical statement that that was "as heard," and there was great applause, as shown by the transcript of his remarks.

Mr. President, it strikes me that there is an awful lot of eyewash in these treaties fcr the benefit of Congress and mighty little in them for the benefit of the United States.

We have obtained a neutrality pact which is meaningless, and we have foregone the right to construct a new canal without the express consent of a gangster dictator. What a spectacle this situation must present to the world—the United States required to seek the consent of a reprehensible and repressive minor autocrat before even undertaking canal discussions with another sovereign nation.

How does that strike the average American? We cannot even negotiate with another country for 23 years about building another canal without the express permission of the Panamanians. It just humiliates the United States.

Before even undertaking canal discussions with another sovereign nation, the United States is surrendering control of a vital international waterway to the Communist advisers of a bandit government.

Mr. President, I have availed myself of this opportunity of discussing two features of the canal treaty. At other times I plan to discuss other sections of the treaty, in order that Members who care to read the RECORD will see the views that I have expressed, and will have a right to consider whether these provisions are in the interest of the United States. I do plan, as does the distinguished Senator from Virginia (Mr. SCOTT), to make other speeches here on the floor of the Senate, in the hope that those who read the Record will be able to see just what is involved, and in hopes that others throughout the country may be advised.

Mr. SCOTT. Mr. President, will the Senator yield to me?

Mr. ALLEN. Yes, I am delighted to yield to the Senator from Virginia.

Mr. SCOTT. Mr. President, I commend the distinguished Senator from Alabama for the statement that he has made, for his penetrating analysis of Article 12 with regard to the construction of an additional lane or an additional set of locks in the existing canal, and the prohibition against the United States constructing an additional canal at any other spot in the isthmus outside of Panama.

I agree with the distinguished Senator; there seems to be absolutely no reason why our Government should agree with another nation not to construct something outside of their territory.

Frankly, Mr. President, if someone in the committee does not strike that provision of the treaty under the amending process, I believe it should be done on the floor of the Senate and I will be prepared to do so unless another Senator does.

I would like to go further than the remarks the distinguished Senator has made on the floor today and commend him as chairman of the Subcommittee on Separation of Powers of the Senate Judiciary Committee for holding hearings, as he has done, in attempting to find out the legalities of this proposed treaty which has been signed by the President, which was obtained by the State Department.

I believe we need reason and we need to determine just how we should proceed.

Mr. President, it is basic in the laws of contracts that there be some quid pro quo, that there be some consideration flowing from one party to another. I do not see any quid pro quo in this treaty.

The distinguished Senator from Alabama, and the subcommittee on which I am privileged to serve with him, is attempting to delve into this question.

I would hope, Mr. President, that somehow we can eliminate the emotionalism and do some straight thinking as to what is best for our own Government in determining whether the Senate should advise and consent to this treaty. I appreciate the Senator yielding.

Mr. ALLEN. I thank the distinguished Senator for his comments. I commend him for his hard work on this issue and the leadership he has exerted in seeking to point out the dangerous provisions, the unfair provisions, in the treaty. I commend him for his work on the Separation of Powers Subcommittee of the Judiciary Committee. I also appreciate his enlightening the Senate and the country on these issues.

The Senator mentioned that there needs to be a quid pro quo in a contract. There also needs to be a meeting of the minds between the contracting parties. Obviously, there is no meeting of the minds on many, but certainly two, very important issues. One is the priority of our ships in the canal. Apparently there is no priority as the Panamanians regard the construction of the treaty. Second is the misunderstanding about the neutrality of the canal; whether we have a right to determine whether their neutrality is in danger; whether we have a right to land troops there or not. The Panamanians say not.

So there is no meeting of the minds here.

The distinguished Senator from Virginia raises another most important point and it will be asked of the Chair at the proper time, though not now, when the treaty is before the Senate.

He feels in the committee, and I feel on the floor certain action should be taken; the committee should strike this provision requiring the United States to get the permission of Panama before even negotiating with another nation for another canal, a sea level canal. I feel reasonably sure that the committee will strike this very dangerous provision, and I feel the Senate will back up the committee.

Having seen one of its provisions stricken, and the Senate if it should approve the treaty with major amendments made to the treaty, would that require the execution of another treaty? There are constitutional authorities to the effect that once a treaty is amended it cannot then be approved by the other party without entering into a new treaty. If that be the case, if major amendments are made to the treaty, it may well be that that, in itself, will defeat this treaty, because it will require entering into a new treaty.

It will be an interesting constitutional question about which the Chair will be asked. That question may have to be submitted to the Senate for the Senate's view. That would not necessarily be binding if, in fact, that would vitiate the treaty in the absence of another treaty submitted to both countries.

Mr. SCOTT. Will the Senator yield on that point?

Mr. ALLEN. I yield.

Mr. SCOTT. It would appear to me that in the event the Senate does offer amendments and they are adopted by the Senate, and the treaty, as amended, would later be ratified by the Senate, this would influence the executive branch of Government in its efforts to negotiate a new treaty. I feel, quite frankly, Mr. President, that the Senate is somewhat closer to the people of the United States than the executive branch. Certainly, it is closer than the unelected negotiators of this treaty. In fact, no one within our State Department or within our diplomatic corps has had to face the electorate as has each Member of the Senate. I feel someone must speak for the people, and I hope it will be the Senate.

Mr. ALLEN. I thank the distinguished Senator.

There is one other point I would like to make as we suggest guidelines for the consideration of this treaty. I do not foresee here on the floor of the Senate a filibuster against this treaty. I believe there will be a long discussion, a legitimate debate. Though I have not discussed the matter with the leadership, I feel sure that the leadership would not file any cloture petition as long as the debate is legitimate debate. It may last for weeks without being a filibuster. I do not believe a filibuster will ensue, one reason being the difference in what it takes to cut off a filibuster, 60 votes, and 67 votes to approve the treaty, assuming all Senators are present.

Far more than that, the reason there will not be a filibuster is if the treaty is defeated by extended debate, the treaty would still remain on the Executive Calendar for the next session of this Congress and for succeeding Congresses, to be brought up by the leadership at any time.

What I am going to be working toward is a vote up or down on the treaty. Once it is defeated by the Senate, it becomes a complete nullity. If other negotiations are held and other treaties are submitted to the Senate, we would have to consider them ab initio. But there will be no filibuster, as such, and no need to invoke cloture.

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

SACCHARIN STUDY, LABELING, AND ADVERTISING ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the unfinished business, S. 1750, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1750) to amend the Public Health Services Act and the Federal Food, Drug, and Cosmetic Act, as amended, to conduct studies concerning toxic and carcinogenic substances in foods, to conduct studies concerning saccharin, its impurities and toxicity and the health benefits, if any, resulting from the use of nonnutritive sweeteners including saccharin; to ban the Secretary of Health, Education, and Welfare from taking action with regard to saccharin for eighteen months, and to add additional provisions to section 403 of the Federal Food, Drug, and Cosmetic Act, as amended, concerning misbranded foods.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The time for debate on this bill is limited to 4 hours, to be equally divided and controlled by the Senator from Massachusetts and the Senator from Pennsylvania, with 2 hours on any amendment in the first degree, 30 minutes on any amendment in the second degree, and 20 minutes on any debatable motion, appeal, or point of order.

Who yields time?

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

The PRESIDING OFFICER. Without objection, it is so ordered

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. As a point of inquiry, Mr. President, there is a time agreement. Would the Chair repeat what the agreement is?

The PRESIDING OFFICER. The time on this bill is limited to 4 hours, to be equally divided and controlled by the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Pennsylvania (Mr. SCHWEIKER) with 2 hours on any amendment in the first degree, 30 minutes on any amendment in the second degree, and with 20 minutes on any debatable motion, appeal, or point of order.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing on the first committee amendment.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Will the distinguished Senator from Massachusetts yield to me briefly?

Mr. KENNEDY. Yes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the saccharin bill, the Senate proceed to the consideration of the legal services bill, without prejudice to the conference report on the second budget resolution.

Mr. BAKER. Mr. President, reserving the right to object, I apologize to the majority leader, but I have just been reminded of one complication that arose since we had our conversation. I wonder if the majority leader would defer that request until I have had a chance to confer one more moment.

Mr. ROBERT C. BYRD. I withdraw that request.

The PRESIDING OFFICER. The clerk will state the first committee amendment.

The legislative clerk read as follows:

On page 2, line 6, strike "saccharin, calcium, saccharin sodium, and saccharin sodium tablets" and insert "calcium saccharin, sodium saccharin, and ammonium saccharin":

SEC. 3. Unless otherwise indicated, the effective date of the provisions of this Act shall be the date of enactment.

The PRESIDING OFFICER. There are 2 hours on this amendment.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself such time as I may use.

Mr. SCHWEIKER. Will the distinguished Senator yield for a unanimous-consent request?

Mr. KENNEDY. Yes, I yield.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that Bill Kingston of Senator DOMENICI's staff, Ginny Eby, and John Backer of Senator HAYAKAWA's staff; and Mary Ann Simpson of Senator STEVENS' staff be granted the privilege of the floor during debate and votes on this measure.

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

Mr. KENNEDY. Mr. President, in March of this year, the Food and Drug Administration announced its intention to remove saccharin from the market, with the possible exception of over-the-counter drugs. The announcement was poorly handled. The basis for the agency's decision was not made clear to the American people. They reacted with shock and disbelief, ridiculing the decision and the regulatory agency which made it. In the months between then and now, the agency, under the leadership of its new Commissioner, Dr. Donald Kennedy, has made a valiant effort to explain its decision. But the controversy has not gone away. It has broadened to the point where the scientific community is divided, the medical profession is divided, and the public remains skeptical.

Mr. President, the saccharin controversy raises profound public health and public policy dilemmas.

How reliably can we predict whether chemicals have the potential to cause cancer in man? If a substance causes cancer in animals, does it cause cancer in man? Can we extrapolate the degree of human risk from animal studies? Should carcinogens be automatically removed from the market or should there be an analysis of benefits and risks? If a substance has both benefits and risks, who should decide whether the risk should be taken—the Federal Government or the individual? What is the appropriate role of a Federal health regulatory agency? Is it to provide individuals with sufficient information to enable them to make their own judgments, or is it to protect individuals on the basis of its best scientific evaluation? Can consumers be provided with sufficient information to make informed judgments on their own in public health matters? When is it appropriate for a regulatory agency to provide information and allow individual assumption of risk? When is it appropriate for the regulatory agency to act on behalf of the individual? What is meant by the term "safe"? Is there absolute safety? If not, how does the risk-benefit decision get made and by whom?

The saccharin controversy raises all these questions. The Senate Health and Scientific Research Subcommittee has carefully examined these questions. On the basis of that review, I have reached the following understanding of the facts:

First. Saccharin causes cancer in rats.

Second. Most substances which cause cancer in rats cause cancer in humans. The degree of risk is impossible to predict.

Third. One Canadian study concludes that saccharin increases the human risk of bladder cancer from a lifetime risk of 1 in 100 to 1.6 in 100. By contrast, cigarette smoking increases the risk of developing lung cancer by 800 to 1,000 percent, and the risk of bladder cancer by 12 to 20 percent.

Fourth. According to that same Canadian study, approximately 7 percent of bladder cancer cases in Canada may be attributed to saccharin use. If those figures were to hold for the United States, saccharin use would account for 1,500 to 2,000 cases of bladder cancer per year.

Fifth. Two additional studies in progress in the United States by Dr. Ernst Wynder of the American Health Foundation and Dr. Irving Kessler of Johns Hopkins Medical School do not show a correlation between saccharin use and bladder cancer.

Sixth. The Canadian study indicates only males are at risk from bladder cancer. There are 30,000 cases of bladder cancer in the United States each year, 22,000 of which are in males.

Seventh. As many as 40 million Americans may benefit from the use of saccharin. This figure includes diabetics, hypertensives, obese people, and those suffering from heart disease, not to mention the less significant benefits from reduced dental cavities.

Eighth. Although no formal studies of health benefits have been made, eminent scientists and physicians believe the benefit to saccharin use outweighs the risks. These include:

Antonio M. Giotto, professor and chairman of the department of internal medicine at Baylor College of Medicine;

Dr. Harriett Dustin, president of the American Heart Association;

Dr. Kurt J. Isselbacher, professor of medicine and chairman of medicine at Harvard Medical School;

Dr. Albert J. Stunkard, professor, department of psychiatry, Philadelphia General Hospital; and

Donnell Etzwiler, M.D., president of the American Diabetes Association.

Ninth. Reservations about the saccharin ban were also expressed by two prestigious medical journals: The New England Journal of Medicine and the Lancet. I am enclosing copies of those editorials to be printed at the end of my remarks.

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

(See exhibit 1.)

Mr. KENNEDY. Tenth. There is no unanimity of opinion among scientists. This division was also reflected in the opinions of the expert panel assembled by the Office of Technology Assessment to review the saccharin controversy. Approximately half the members of the OTA panel expressed the opinion that saccharin should not be banned because of its potential health benefits, while the other half supported the decision of the Food and Drug Administration.

Eleventh. The decision of the Food and Drug Administration to remove saccharin from the market was dictated by the provisions of the Food, Drug and Cosmetic Act. That act provided no discretion for the Commissioner. It does not allow for the weighing of benefits versus risks.

Mr. President, I have tried to show how complicated the saccharin controversy really is. I yield to no man in the U.S. Senate in my determination to reduce the risk of cancer. I know first hand of the ravaging impact that that disease can have on its victim and on the victim's family. But those who try to portray the saccharin controversy as a litmus test of whether one is for or against cancer do a grave disservice to the American people. Cancer kills—but so does heart disease—so does hypertension—so does obesity—and the victim is just as dead no matter what the cause. The real question is whether there are health benefits to saccharin to outweigh the potential health risks of saccharin.

When the chairman of the department of medicine at Harvard University School of Medicine and the chairman of the department of medicine at the Baylor School of Medicine believe that more harm would be done by removing saccharin from the market than by leaving it on the market, I believe it should be clear to everyone that some of the best medical minds in this country do not subscribe to the theory that saccharin represents an unacceptable health risk. Mr. President, even the former director of the National Cancer Institute has questioned the wisdom of FDA's banning of saccharin.

Given the division of scientific opinion, given the incomplete nature of the scientific evidence, it is wrong to allow the FDA to make a definitive decision on saccharin now. More needs to be known. The risks need to be more precisely defined, the benefits need to be scientifically demonstrated.

Mr. President, when the scientific community is evenly divided about what course of action to follow; when the medical profession is evenly divided about what course to follow; when the American Diabetes Association, the American Medical Association, the American Heart Association, the Juvenile Diabetes Foundation all argue to leave saccharin on the market; when other consumer groups such as the Health Research Group take a contrary opinion, then I believe the individual is in the best position to decide for himself or herself whether they want to expose themselves or their children to saccharin use.

S. 1750, as amended by the Human Resources Committee, would help to solve the controversy by doing the following things:

First. It asks the National Academy of Sciences, acting through the Institute of Medicine, to study all aspects of policy toward food additive regulation in this country. The study will look at: Our

technical capabilities for predicting both the carcinogenicity or other toxicity of food additives; both the risks and benefits of such substances; existing regulatory authorities governing such substances; and regulatory policies in different areas of the Federal Government toward similar substances. This study is to be completed within 1 year.

Second. A study by the Department of Health, Education, and Welfare of the impurities in saccharin and the health benefits of saccharin. The saccharin used in the Canadian study was contaminated by impurities. These impurities are Ames test positive. The Ames test is a test to predict whether a substance is a potential carcinogen. Saccharin itself was Ames test negative. The impurity alone was positive. This may indicate that it is the impurity and not the saccharin which is responsible for the results obtained in the Canadian rat and human epidemiological studies. HEW is charged with identifying the impurity and determining whether or not it is responsible for the carcinogenic effect. In addition, HEW is charged with scientifically demonstrating whether or not there are health benefits from saccharin use.

Third. The legislation provides for an 18-month delay in the ban on saccharin. If saccharin does present a significant public health risk, the nature of that risk is a cumulative one according to the Commissioner of the Food and Drug Administration. The added increment of risk by leaving saccharin on the market for this 18-month period is minimal. During that time, each individual citizen will be provided the information necessary for an informed individual choice as to whether or not to use saccharin. Each food product containing saccharin will be labeled as follows: "Warning: this product contains saccharin, which causes cancer in animals. Use of this product may increase your risk of developing cancer." In addition, each place where saccharin is sold—with the exception of restaurants—will be required to post a more detailed statement of the potential risks and benefits of saccharin use. The Secretary of Health, Education, and Welfare will prepare this package.

In addition, all advertising of saccharin-containing products will be required to contain a health warning message as prescribed and developed by the Secretary of Health, Education, and Welfare. The committee's intent is to treat all media equally, and so the Secretary is charged with developing health warning messages that have equal impact on the reader, listener or viewer of the advertisement.

These advertising provisions are essential if the interests of the consumer are to be protected in this bill. The success of this legislation will depend on the ability of individual citizens to make informed decisions for themselves and for their families as to whether or not they wish to use saccharin. These decisions require access to information about the risks and benefits of the product. If there are no health warning messages in the advertisements, then one of the major sources of information for consumers might be used to counteract the impact of the warning label.

I believe that saccharin is a product which has benefits for a segment of the American population. I believe there is risk associated with the use of saccharin. I believe the American people can make the appropriate individual decisions as to whether or not to use saccharin. But the advertising process can work to undermine the individual's ability to make an informed choice. A media blitz on the advantages of a product without any reference to potentail health problems can distort an individual's perception of the facts. There can be no informed choice if there is not sufficient access to adequate information.

Mr. President, in conclusion I urge the Senate to enact S. 1750 as reported by the Human Resources Committee. This bill gives the benefit of the doubt to those 40 to 50 million Americans who suffer from the diseases that require the availability of a sugar substitute. It provides the necessary information to those Americans who do not need saccharin, to decide for themselves whether they want to run the small additional risk of contracting bladder cancer that may result from the use of saccharin. Most importantly of all, it guarantees that appropriate information will be available to all consumers to enable them to make that decision.

Mr. President, I yield to the Senator from Pennsylvania.

EXHIBIT 1

[From the New England Journal of Medicine, June 9, 1977]

SACCHARIN—THE BITTER SWEET

(By Kurt J. Isselbacher, M.D., and Philip Cole, M.D.)

A recently completed Canadian study shows that saccharin can act as a bladder carcinogen in rats.[1] As a result, the United States Food and Drug Administration proposes to prohibit the use of saccharin as a food additive. This action is required by a 1958 law, which includes the "Delaney clause" stating that ". . . no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. . . ." It has been claimed that the value of the Delaney clause lies in the maximum degree of protection that its unqualified language provides. However, as phrased, the clause precludes the use of judgment in drafting regulations for specific substances. Yet judgment is needed to guard against inappropriate generalization to man from other species and to permit a balancing of the benefits of a food additive against its dangers. The case of saccharin well illustrates these two needs. There is good reason to be skeptical about the relevance to man of the existing data on rats, and the medical, social and economic values of saccharin may be considerable. The opposition to the saccharin regulation is based on these considerations and is thus, more fundamentally, a challenge to the Delaney clause itself.

No study, including the Canadian one, has shown convincingly that there is an excess of bladder cancer in rats exposed to saccharin only after birth, the "F_0" generation. The Canadian study is persuasive only for male rats born of mothers fed a diet containing 5 per cent saccharin and weaned to the same diet, the "F_1" generation. The study is only weakly positive for F_1 females.

Footnotes at end of article.

Unfortunately, the study evaluated saccharin only at the one dosage level since its major objective was to assess the carcinogenic activity of orthotoluenesulfonamide (OTS), a manufacturing contaminant in commercial saccharin. OTS was evaluated at several dosage levels and exonerated. Thus, the earlier positive studies of saccharin by the FDA [2] and by Tisdel et al [3] can no longer be dismissed with the suggestion that OTS was the carcinogenic agent. These two studies are similar to the Canadian study in being clearly positive only among F_1 male rats (the F_0 animals were not examined). In fact, in the FDA study, F_1 males given a 5 per cent saccharin diet were similar to controls; only animals given a 7.5 per cent saccharin diet had an excess of bladder cancer.

It is not known why all three studies are essentially negative among female rats. Nor is it clear why only in utero exposure produced an excess of bladder cancer. Saccharin is concentrated in fetal tissues,[4] and, if this is the reason for the in utero requirement, the results of the animal studies pertain primarily, perhaps exclusively, to saccharin use by pregnant women. Finally, since positive results were restricted to rats receiving massive doses of saccharin, it is difficult to make inferences about low-dose effects either in rats or in human beings.

The issue of dose response is crucial. A diet containing 5 per cent saccharin has 500 to 2,000 times more saccharin than is consumed by an adult human being. What would be the bladder-cancer risk of rats fed a diet containing, say, 0.1 per cent saccharin? The necessary extrapolation can be made only if we invoke a hypothetical model of a dose-response relation. Three models seem reasonable. The simplest is a linear relation. If a 5 per cent saccharin diet causes bladder cancer to develop in 18 per cent of F_1 male rats (the Canadian result), a 0.1 per cent diet would cause about 0.4 per cent of animals to be affected. Another model might incorporate a threshold value. If the threshold is above 0.1 per cent, rats fed such a diet would show no excess of bladder cancer. A third model is that the risk of bladder cancer is a more complex function of the saccharin dose—for example, risk may be proportional to the square of the dose. If this were the case, the 0.1 per cent saccharin diet would cause bladder cancer in only 0.007 per cent of rats, or about one in 14,000. Existing data do not permit us to choose from among these models, although they least favor the simple linear relation. However, even if we could extrapolate along the dosage scale to predict low-dose effects among rats, we could not confidently generalize over the species barrier to human beings. Such generalization requires knowledge of the relative sensitivity of the two species to saccharin-induced bladder cancer. We have no such knowledge, but it seems unlikely that adult human beings would be more sensitive than fetal rats. On the other hand, the long life of human beings suggests that saccharin-induced bladder cancer could develop in them. During a normal life-span a person could ingest a moderately high dose of saccharin and survive a latent period of several decades.

In view of these uncertainties, the information on man should be examined closely. Saccharin came into use in the United States about 1900, and per capita consumption has increased more or less steadily since then. Yet, during this century, bladder-cancer mortality rates have declined, especially for women. Incidence rates have been stable for women but have risen for men.[5] However, the rising incidence for men can be explained by their cigarette-smoking habits.[6]

At least seven pertinent epidemiologic studies show that bladder-cancer mortality patterns in England and Wales are not correlated with saccharin consumption [7] and

that diabetic patients have no excess mortality from bladder cancer despite their relatively high consumption of saccharin.[8-10] The studies also show that patients with bladder cancer and controls do not differ in their use of saccharin.[11-13] All these studies may be criticized on several counts, the most serious being that they were too small. That is, each study might readily have failed to detect a small increased risk of bladder cancer—say, 30 per cent—among saccharin users. However, neither this nor other criticisms explain why all the studies are negative. A credible explanation of the negative findings is that, as used by human beings, saccharin does not cause bladder cancer or causes so few cases that its effect could be detected only by an enormous study. A small study is likely to be useful only if it focuses on a group of special interest, such as persons occupationally exposed to saccharin. Studies might also focus on women, who have low bladder-cancer incidence rates because they are less exposed than men to industrial and other causes of the disease.[14] Thus, any effect of saccharin may be more apparent among them.

Regarding possible benefits, it is widely acknowledged that saccharin is not a critical substance, and its benefits are difficult to quantify. Saccharin has economic value as a sugar substitute in some foods, and many physicians believe that it has a place in the management of diabetes and obesity. Moreover, many healthy persons, must value saccharin, for they elect to use it as an aid to weight control.

Despite the apparent benefits of saccharin, the difficulties of generalizing to man from the existing information on rats and the negative epidemiologic studies, it is likely that the EDA will restrict the sale and use of saccharin. Nearly everyone will agree that pregnant women and children should not be exposed knowingly. There also seems little reason for a normal, healthy person to use saccharin, and many choose not to. These goals of avoiding unintended saccharin ingestion can be attained by the requirement that all saccharin-containing products be so labeled. This requirement is already the law for foods and cosmetics. It seems unwise to change this law to one that would limit the availability or increase the costs of saccharin-containing products used for medical indications. Yet these would be the effects of a general ban on the use of saccharin as a food additive. The ban would have the further disadvantage of being difficult to enforce, especially if saccharin remains available as a nonprescription "drug." For exmple, how would the law treat a person who added saccharin to his can of unsweetened soda?

Whatever regulatory action is taken by the FDA on saccharin, attention should be paid to changing the Delaney clause. In addition to excluding judgment, the clause is deficient in its restriction to "man or animal." In vitro tests will probably become a valuable part of the process by which the carcinogenic potential of a drug or chemical is evaluated. The revised or new law should take into account the difficulties of generalizing to human beings from animal and other kinds of studies. It should also permit the benefits of a food additive to influence decisions regarding its use.

FOOTNOTES

[1] Health Protection Branch, National Health and Welfare Department, Canada: Toxicity and carcinogenicity study of orthotoluenesulfonamide and saccharin, 1977.

[2] Division of Toxicology, United States Food and Drug Administration: Sodium saccharin: combined chronic feeding and three-generation reproduction study in rats. May 15, 1973.

[3] Tisdel MO, Nees PO, Harris DL., et al: Long term feeding of saccharin in rats, Symposium: Sweeteners. Edited by G Inglett. Westport, Connecticut, AVI Publishing, 1974, pp 145–158.

[4] Pitkin RM, Reynolds WA, Filer LJ Jr, et al: Placental transmission and fetal distribution of saccharin. Am J Obstet Gynecol 111:280–286, 1971.

[5] Burbank F, Fraumeni JF Jr: Synthetic sweetener consumption and bladder cancer trends in the United States. Nature 227:296–297, 1970.

[6] Hoover R, Cole P: Population trends in cigarette smoking and bladder cancer. Am J Epidemiol 94:409–418, 1971.

[7] Armstrong B, Doll R: Bladder cancer mortality in England and Wales in relation to cigarette smoking and saccharin consumption. Br J Prev Soc Med 28:233–240, 1974.

[8] Kessler H: Cancer mortality among diabetics. J Natl Cancer Inst 44:673–686, 1970.

[9] Armstrong B, Doll R: Bladder cancer mortality in diabetics in relation to saccharin consumption and smoking habits. Br J Prev Soc Med 29:73–81, 1975.

[10] Armstrong B, Lea AJ, Adelstein AM, et al: Cancer mortality and saccharin consumption in diabetics, Br J Prev Soc Med 30:151–157, 1976.

[11] Simon D, Yen S, Cole P: Coffee drinking and cancer of the lower urinary tract. J Natl Cancer Inst 54:587–591, 1975.

[12] Morgan RW, Jain MG: Bladder cancer: smoking, beverages and artificial sweeteners. Can Med Assoc J 111:1067–1070, 1974.

[13] Kessler H: Non-nutritive sweeteners and human bladder cancer: preliminary findings. J Urol 115:143–146, 1976.

[14] Morrison AS, Cole P: Epidemiology of bladder cancer. Urol Clin North Am 3:13–29, 1976.

[From the Lancet, Mar. 19, 1977]

SWEET REASON

The Canadian regulatory authorities have hitherto enjoyed a cachet for sweet reasonableness denied to their counterparts in the United States, where the exercise of human judgment based on a careful consideration of all the facts relevant to the assessment of carcinogenic hazard is, in effect, against the law. By initiating a ban on the use of saccharin, have the Canadians sacrified their good reputation for no good reason, or are they aware of new data which contradict the epidemiological indications that saccharin does not increase the risk of bladder cancer, or of any other form of cancer, in man? The new information which lead to last weeks' precipitate ban on the use of saccharin in food in the U.S.A. and Canada is not yet available in Britain, but we understand that it has to do with the results of a two-generation study in which rats which were continuously exposed to 5% saccharin in the food acquired bladder tumours. But it was already well-known that, at this level of feeding of saccharin, bladder stones and tumours occur. Many toxicologists, in North America as well as in Britain, doubt the relevance of feeding studies involving such unrealistically high levels of incorporation of test substances in the diet, especially when the only type of tumour seen in excess is of the urinary bladder under conditions where stones occur. Clearly, tumours may arise non-specifically as a consequence of the prolonged presence of solid bodies in the bladder. It is noteworthy that in none of the many animal tests so far reported has there been evidence of increased risk of tumours at any site other than the bladder. If saccharin has been banned for a compelling reason yet to be revealed, we will mourn its loss. Otherwise our mourning will be for the reputation of those responsible for its banishment.

Mr. SCHWEIKER. Mr. President, how much time am I assigned under the order?

The PRESIDING OFFICER. The Senator has 1 hour.

Mr. SCHWEIKER. I yield myself 10 minutes.

Mr. NELSON. Mr. President, if the Senator will yield, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. NELSON. Who controls time on the bill?

The PRESIDING OFFICER. Time on the bill is controlled equally by the Senator from Massachusetts and the Senator from Pennsylvania.

Mr. KENNEDY. Mr. President, if the Senator will yield, if it is agreeable on the substitute, I would ask unanimous consent that the time be divided between the Senator from Wisconsin (Mr. NELSON), the Senator from Pennsylvania (Mr. SCHWEIKER), and myself.

Mr. SCHWEIKER. Does he not automatically get time on the substitute?

The PRESIDING OFFICER. if the Senator offers an amendment, he has control of half the time.

Mr. SCHWEIKER. How much time, Mr. President, is that; how much time does he have under the order?

The PRESIDING OFFICER. Two hours on the amendment.

Mr. KENNEDY. Mr. President, I just want to assure the Senator we will give him additional time beyond that.

Mr. NELSON. I was not here at the time. I agreed to the unanimous consent on limitation, but I did not realize the time would be equally divided between the two proponents of the bill and no time alloted on the bill to the opponents. I did not realize that.

Mr. SCHWEIKER. Mr. President, I will make every effort to make sure he has adequate time, so I think we are all right.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that a member of my staff, David Winston, be granted privilege of the floor during the debate and rollcalls on this bill.

The PRESIDING OFFICER (Mr. ANDERSON). Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, I rise in support of S. 1750—of which I am a principal cosponsor—a bill to delay the imposition of the Food and Drug Administration's proposed ban on saccharin for 18 months while further studies are conducted and evaluated.

I know that all my colleagues are aware of the great public outcry provoked by the FDA's proposal to ban saccharin on the basis of laboratory evidence indicating that it causes cancer. Saccharin is the only nonnutritive artificial sweetener now available in the United States. Many diabetics, people trying to lose weight, and parents concerned that their children will suffer from an increase in dental cavities, oppose the ban. To some people, it seems that Government interference in our daily lives has simply gone too far.

The scientific community itself is deeply divided on the saccharin issue. Questions have been raised about the extent to which scientists can extrapolate from animal data showing that sac-

charin may cause bladder cancer and about the potential health benefits of saccharin use. In June, six members of an expert scientific panel assembled by the Office of Technology Assessment testified before the Senate Subcommittee on Health and Scientific Research, on which I serve as ranking minority member. Despite their general agreement that laboratory evidence showed commercial saccharin causes cancer in animals and was likely to be carcinogenic in man, the six-panel members split evenly on the question of whether or not the FDA's proposed ban on saccharin should be implemented. These were people who had carefully reviewed the existing data—and three of the six favored continued marketing of saccharin as a food additive, with warning labels to alert prospective saccharin users to the questions which have been raised about its possible carcinogenicity.

Many scientists, health professions and others believe it would be wrong to impose a ban on the last available nonnutritive sweetener available in the United States, because they believe that the health benefits of saccharin use may outweigh the risk of developing bladder cancer for a large number of Americans. A prohibition against artificial sweeteners may actually lead to health problems, increasing the risk that more Americans will develop heart disease or some other serious medical condition. Saccharin may be necessary for as many as 40 million Americans, including those who suffer from diabetes, hypertension and obesity. Therefore, as the Human Resources Committee concluded in its report on this legislation, taking saccharin off the market may "do more harm than good to the public health and safety." There is a need for more study of the potential health benefits of saccharin use before it is banned, in order to fully assess the adverse health consequences which may result from implementation of a ban. S. 1750 provides for such study.

More recently, the first epidemiology study indicating that saccharin may cause cancer in humans has come to light. At the same time, however—and I cannot emphasize this too much—other human epidemiology studies do not indicate an association between human use of saccharin and the development of bladder cancer. So the scientific community is not unanimous by any means, and the scientific evidence is not overwhelming nor conclusive. These epidemiological studies are still in the process of being reviewed by the Food and Drug Administration and evaluated by the scientific community.

Perhaps one of the most significant points which has been raised in the scientific controversy surrounding saccharin concerns the small amounts of impurities which are found in commercially available saccharin. When subjected to the Ames test, a short-term test used to determine likely carcinogens which so far has proved to be about 90 percent accurate, these impurities have been shown to be mutagenic—that is, the impurities are likely to cause cancer. At the same time, pure saccharin, isolated from these impurities, has not been shown to be mutagenic in the Ames test. This means that it may be the impurities in saccharin which cause cancer, not saccharin itself. If it is the impurities and not saccharin itself which poses a risk to health, then it may well be possible, to improve the commercial saccharin manufacturing process to produce saccharin which is free of these impurities. This pure saccharin could then be safely marketed. It would be saved for the diabetics, the obese, and the hypertensive people who need the only artificial sweetener left on the market. I think that is one of the most compelling reasons of all to pass this bill, because saccharin could be saved if we can get a better understanding of what the trace materials are in the saccharin which actually might be the culprit.

Research to further study the impurities is vital not only to the issue of whether or not saccharin can be saved, but also—and I think this is important—to our continuing search for knowledge about what causes cancer. If these impurities, which are present only in very tiny amounts in commercial saccharin—there only are a few parts per million of these impurities—can cause cancer, then they are surely very strong carcinogens. If we can learn more about them and how they work, we may get some valuable clues on the causation and development of cancer. S. 1750 wisely provides for more research into this question.

In addition, the saccharin controversy has focused attention on the broader issues of Federal regulation of the carcinogens that Americans are exposed to in their daily lives. The high rate of environmentally induced cancers in the United States alarms all of us. Our food additive laws were designed with the purpose of insuring that Americans will not be unnecessarily exposed to a substantial risk of cancer through the food supply, and we must remain faithful to that goal. Yet, many people have asked why saccharin should be banned when cigarettes, known to endanger human health in many ways, are sold freely. The American people have the right to choose so far as cigarettes are concerned. Yet, cigarette smoking puts people at the greatest risk for cancer, and cigarettes are the most likely causes of cancer for the average American. Anyone may choose to smoke or not to smoke; all that is required is that he be warned of the hazards. Known noxious substances continue to be spewed out into the air of our cities and in workplaces all across America.

Current statutory authorities for regulating the cancer-causing agents we are exposed to are not consistent and seem to have developed in a rather haphazard fashion. In fact, the laws we have now sometimes preclude consistency by refusing to permit a weighing of risks and benefits in some cases, while explicitly requiring a balancing of risks and benefits in other cases.

For example, sodium nitrite is known, when reacting to certain metabolic processes, to form nitrosamines which can cause cancer. Yet, we permit it to be added to bacon, because the Agriculture Department, which has exercised the primary authority in the case of nitrites, has apparently decided that the risk of cancer from this additive is outweighed by the benefit, the benefit being that nitrites afford protection from botulism poisoning.

The PRESIDING OFFICER (Mr. ANDERSON). The Senator's 10 minutes have expired.

Mr. SCHWEIKER. I yield myself an additional 5 minutes.

So we have a completely different standard for regulating other substances which can cause cancer. There is a big controversy now about drinking water and whether a form of chlorine that changes into chloroform in drinking water causes cancer. But EPA has apparently decided that we should continue to put chlorine in our drinking water, even though there might be some risks, because the benefits of purifying drinking water with chlorine outweigh the risks.

Both the Agriculture Department and the EPA are allowed to weigh risks and benefits in these cases, but FDA cannot weigh them at all in the case of saccharin, and that is a part of what the whole saccharin controversy is all about.

There may be good grounds for differences between the regulations which apply say, to pesticides or chemicals in the workplace and carcinogens in foods. These issues deserve thorough examination. S. 1750 provides for such a broad study of Federal regulatory policy toward carcinogens and other toxic substances.

We owe it to the American people to be responsive to the deeply felt public concern which has arisen in connection with the FDA's decision to ban saccharin. We should explain to them why we apply different tests for carcinogens, why some are thrown out without consideration of health benefits versus health risks.

The bill before the Senate today represents a thoughtful, responsible approach to the saccharin question and the related issues I have outlined. It delays any ban on saccharin for 18 months. During that period, the bill provides for label warnings and consumer information regarding the potential health risks posed by saccharin consumption, to help consumers make informed choices as to whether or not they wish to use saccharin-containing food products. S. 1750 mandates further study and assessment of the health benefits which may result from the use of artificial sweeteners, particularly saccharin, and further research into the saccharin's impurities and their potential toxicity or carcinogenicity in humans. It provides for an assessment of our scientific expertise in the area of toxic and carcinogenic substances, our ability to weigh risks and benefits, and the adequacy of current Federal regulatory policy in this important area.

I commend my colleague, Senator KENNEDY, the chairman of the Health and Scientific Research Subcommittee, for his work on this legislation. I appreciate his cooperation, and the coopera-

tion of Senator WILLIAMS, chairman of the full Human Resources Committee; Senator JAVITS, the ranking minority member of the full committee, Senator HAYAKAWA, who has shown a special interest in this issue, and the other members of the Human Resources Committee in bringing this bill before the Senate for its consideration.

I also commend the interest and work of Senator NELSON. I know that his motivation is strong. He has been a leader in the fight to get carcinogens off the market. While I differ with him in this case, I respect his belief and his dedication to this effort.

I urge my colleagues to support S. 1750

The PRESIDING OFFICER. Who yields time?

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

UP AMENDMENT NO. 834

Mr. KENNEDY. May I propound a unanimous-consent request?

Mr. President, I ask unanimous consent to consider a nongermane amendment and to take it up before the committee amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will report.

Mr. KENNEDY. Mr. President, this is an amendment offered by myself, the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from New York (Mr. JAVITS).

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, Mr. SCHWEIKER, and Mr. JAVITS, proposes unprinted amendment No. 834.

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

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

The amendment is as follows:

On page 11, after line 16, add a new section as follows:

SEC. 8. (a) Section 204(d) of Public Law 93–348, as amended by section 18(a) of Public Law 94–573, is further amended by striking out "36-month period" each place it appears and inserting in lieu thereof "42-month period".

(b) Section 211(b) of Public Law 93–348, as amended by section 18(b) of Public Law 94–573, is further amended by striking out "January 1, 1978" each place it appears and inserting in lieu thereof "November 1, 1978".

Mr. KENNEDY. Mr. President, this simply provides a 6-month extension for the Commission for the Protection of Human Subjects. A bill, which was very similar to this, passed unanimously last year. The administration has requested a 6-month extension to review this Commission and its work.

This will simply permit a very useful important and, I think, very successful panel to continue to work while the administration is formulating its position. The extension has the complete and unanimous support of the members of the Health Subcommittee.

Mr. SCHWEIKER. Mr. President, I strongly support the amendment. It has been cleared on our side, and I believe it is a reasonable request.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

Mr. KENNEDY. I thank the Chair.

Mr. NELSON. Mr. President, I ask unanimous consent that Lisa Walker, a member of the staff of Senator WILLIAMS be permitted the privileges of the floor during the consideration of the pending legislation and the rollcalls thereunder.

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

Mr. NELSON. Mr. President, I wonder if the Senator from Pennsylvania will yield for a couple of questions?

The PRESIDING OFFICER. Will the Senator yield?

Mr. NELSON. In the Senator's remarks he made reference to the fact that the public has a choice to use cigarettes which, of course, are a much more potent carcinogen than saccharin and that the same freedom of choice, therefore, should be left to the user of saccharin.

Let me ask the Senator this question: My substitute amendment proposes to do exactly that. In other words, a cigarette is not in the food chain. The user has to go to the machine or the store and prescribe it for himself and use it. He is not unknowingly exposed to it by the introduction of it somehow into the food chain as is the case with saccharin.

The substitute amendment I have offered will do the same thing as the Senator argues is the case respecting cigarettes, that is to say, instead of exposing tens of millions of people to saccharin that is put into the food chain, this amendment would provide that saccharin, as a sweetener, would be available over the counter, with the appropriate labels, to anybody who wanted to go and buy it and add it to his soda pop or to ice cream or to coffee.

Why is that not a perfectly rational way to handle this problem? Then we would not keep this cancer-causing agent in the food chain. However, those who believe they need or want it or it is prescribed for them can get it in this fashion. Why should we not treat it that way?

Mr. SCHWEIKER. Well, I think the response I would have to that question is that we are talking about processed foods, such as soft drinks, which play a very important role in the life of people, particularly young people.

I just attended a meeting of the Juvenile Diabetes Foundation. A few years back their chapters had programs to protest with the Coca-Cola Co., the Pepsi-Cola Co., and the other soft drink bottlers, so that they would make an artifically sweetened drink available where they had drink-dispensing arrangements.

They felt it was a fundamental right of their diabetic young people to have that opportunity, so they would not be discriminated against, so that they could participate in youth activities without having to pull themselves to the side and refrain from participating when refreshments were involved.

The JDF made it a cause for each of their chapters to fight for the right to have saccharin-containing refreshments made available. This was important for the diabetic community, so that their young people would not have to run home and grab a packet of saccharin.

Of course, the way the FDA-proposed order was framed, the manufacturer could not make saccharin part of their processed food. It would have to be added by a teenager who wanted to drink Coke or something at a teenage party.

Mr. NELSON. Did I understand the Commissioner to say, Commissioner Kennedy, that he proposed it would not be available at all?

Mr. SCHWEIKER. Commissioner Kennedy's proposals specifically prevented soft drink processors from in any way processing a drink to contain saccharin. Saccharin would have to be added after the product was bought, and it does not now seem technologically feasible that saccharin could be added that way, as I understand it, to soft drinks at least.

So my answer to the Senator's question is that unless we give the artificial sweetener option in processed foods we really are not giving that option at all. Many of these decisions, many of the peer group pressures which can be problems for young diabetics when they are out socially or in school with their friends, revolve around processed foods. If you eliminate saccharin from processed food you have denied them their freedom of choice. Yet there is a cigarette machine they can run to right around the corner during the break and get a cigarette. That is my point.

Mr. NELSON. Well, so that we have the issue in proper proportion, how much of the saccharin that is used in this country, what percentage, is in the processed food?

Mr. SCHWEIKER. My guess is—and I think this figure is correct, I have to check further—about 75 percent in these soft drinks, alone. So the big bulk of it is——

Mr. NELSON. Oh, no. The processed food is 14 percent, and the best figures we had, soda pop is 74 percent.

Mr. SCHWEIKER. Right.

Mr. NELSON. Sweeteners over the counter, so to speak, in the home are 12 percent, and there is a minuscule amount in toothpaste and mouthwashes, and so forth.

So when we talk about diet foods, eliminating the soda which, I guess, could be classified as a food or not as a food, but anyway in the diet food eliminating soda you are talking about 14 percent.

If we allow it over the counter, as Commissioner Kennedy proposed, why cannot those who desire it, who now buy it and use it in their homes, add it to the canned peaches, the canned pears, and other foods. Then you will avoid such widespread use. That provides the free choice and avoids continuing to expose millions of people to a cancer-causing agent. We are already in a disaster situation respecting cancer. We are spending hundreds of millions of dollars a year to find a cure, and $18 billion to $20 billion in cost and treatment.

What is so irrational about simply saying we are not going to have this in foods in the marketplace or the food chain but we will allow all those who want to use it to buy it and put it into

food themselves? Why is that not the logical answer, considering that it is clearly a cancer-causing agent?

No one disputes that. It causes cancer in animals. Every carcinogenic agent known to man, save one which we are not through testing, arsenic, every single one, that is carcinogenic to man causes cancer in animals. The converse is likely true.

What is being argued here on the floor is that to satisfy a sweet tooth we are going to expose 200 million people in this country to a cancer agent, millions of them involuntarily because they will not know it or do not believe the tests showing that it is cancerous.

We have the best food and drug law in the world. And the mandate in that law is to protect the safety of the food chain. What is the public question at stake here? Do you know what the public question is? The public question is, should we continue to corrupt the food chain of this country with a proven carcinogenic agent in order to sell soda pop? That is what it is all about. Soda pop.

Oh, you say that is not what it is all about. No, not quite all, but almost all. Three-quarters of the question is soda pop. What does that say about our value standards in this society? We will medicate every one so that someone can have the convenience of a diet soda while exposing millions of people to this cancer causing agent. We are going to have thousands of people, who are going to die from cancer for the convenience of being able to get a bottle of soda pop. And we are making a fundamental attack on the best food and drug law in any country in the world. It shocks me.

As I said soda pop is three-quarters of the problem we are talking about. People are using it in their homes. That is their choice. Among some of the most distinguished diabetologists in this country there is the opinion that there is no necessity for saccharin at all. It is true scientists are divided. The medical society is divided all the time. When FDA removed fixed combination antibiotics from the market on the grounds that they are irrational and counterproductive, the scientific community was divided because doctors had been using fixed combination antibiotics for years and were satisfied they were good. This will always be the case.

Let me just read to you what was said.

Mr. SCHWEIKER. Mr. President, if the Senator will let me respond to his question I will do this on my time to give him plenty of time.

The Senator poses the question of why do we not segregate saccharin, so that each person can put it into processed foods as a known entity, and I think that is the essence of his amendment. Is that right?

Mr. NELSON. The proposal is that there would be no saccharin introduced in any food, that the sweetener itself would be available over the counter to those who want to buy the sweetener as they now do, for home use, and then they may put it in the food themselves. But we would not allow it to go into the food except by each individual's introduction himself of that agent.

Mr. SCHWEIKER. Is it the Senator's contention that this would significantly alter the usage patterns? If, in fact it is possible for consumers to put saccharin in all these processed foods after they are bought?

Mr. NELSON. No question about it. I have no doubt that you would cut the usage of it 90 percent. But at least you are not giving cancer to a little kid on the street. When you talk about informed consent, are you talking of informed consent to 5- and 10-year-olds on the street who are buying diet sodas and drinking them? What is your answer to them when they get cancer from that agent? "Oh, little fellow, you had a chance to read the label, you had the right to make your choice, you made your bad choice, now you go ahead and suffer with your cancer."

That is what we are saying, and that does not only apply to children either. There are endless numbers of people, and my mail is stacked as high as that of the Senator from Pennsylvania, who wrote thousands of letters saying: "I have to have saccharin"; or they say "the test is no good; the test is phony."

The test is not phony and everyone here knows it and every scientist in this country and every qualified scientist in the world knows that the testing procedure and methodology is sound.

Mr. SCHWEIKER. I wish to respond to the first question, that is the real issue that we are debating. The essence of his proposal is that by segregating saccharin and taking it out of processed foods we are somehow solving this problem. I do not follow that logic. I do not follow that reasoning, especially in light of the situation with cigarettes. Cigarettes exist as a single, entity; they have a separate identity themselves. They are not mixed with anything else. If there is anything we learned after labelling them as carcinogens, after all the studies of the numbers of cancers they cause, we know that selling them this way, as separate entities has had no impact on consumption. Cigarette sales have increased. So I fail to see that the Senator's proposal would really solve the consumption problem. We see from the cigarette example that when you have an isolated substance, label it cancerous and still have it available as he proposes with saccharin, with that kind of free choice, the results are clear. People are using it in greater numbers than ever. So I fail to see that this is any answer to the problem. And it does impose a hardship, an inconvenience, and a great problem on thousands and hundreds of thousands of diabetics.

Mr. NELSON. If I understand, the logic of the Senator's argument about cigarettes is correct. They are a carcinogenic that we do not require people to take. If you are going to treat cigarettes the same as the Senator from Pennsylvania wants to treat saccharin then we are going to grab every little kid and everyone else and puff smoke at them every single day and make them inhale it because that is what you are doing when you put saccharin in the food chain. There is absolutely no argument at all for the proposition that we should breach this law and involuntarily expose people to a carcinogenic agent. What is the sense of it? Soda pop is the sense of it. That is just about all there is to it.

The Senator from Pennsylvania says diabetics need it.

Let us see what some of the most distinguished diabetologists in this country say about that.

First, let me read to the Senator an exchange of questions and answers, and then I will get to the diabetologists.

When the OTA science panel appeared before our Health Subcommittee I asked the question of Dr. Frederickson. Dr. Frederickson is the Director of the National Institutes of Health. He appeared before the Health Subcommittee of which the distinguished Senator from Pennsylvania is a member as am I. I wanted to know whether there was any proven scientific need for saccharin. So, I asked Dr. Frederickson:

Are there any conclusive tests that have been done that demonstrate an important need for saccharin for diebetics, overweight, or heart patients? None have come to my attention.

Dr. Frederickson responds:

The answer is no, Senator Nelson. There is no test that is available that demonstrates a specific need for saccharin by such patients.

Yet the argument is made that it has to be used by some people, therefore let us give it to everybody in America.

My response is, to those who believe it is needed, "All right, give them the free choice to go buy it."

Now let us see what some of the distinguished diabetologists have to say about saccharin. Let us take Dr. Max Miller, who was the director of the 10-year university group diabetes program involving 13 clinical centers treating diabetics. He certainly ranks as a distinguished authority on diabetes. He headed the 10-year diabetes study, which was a vitally important study—which, incidentally, knocked out of the marketplace a couple of drugs that had been given to diabetics for years on the grounds that they helped them, when in fact the studies showed they did more harm than good, and that diets did more good than the drugs.

Dr. Miller told us:

There is no role for saccharin in the regimes (diets) of obese patients we are treating. We have never included saccharin in instructions to diabetics. From the practical point of view, diabetics don't use much sugar anyway. Their diets can be arranged to allow some sugar intake in food, restricting calories and balancing carbohydrates. Sweeteners mask taste. I am amazed at how little sugar my diabetic patients take.

Now let us hear what Dr. P. J. Palumbo of the Mayo Clinic Medical School, assistant professor of medicine and diabetologist in one of the most distinguished medical clinics in the world whose program treats about 6,000 diabetic patients a year, told us. Let us hear what he said:

Saccharin is not—

I repeat:

Saccharin is not essential in diet management of diabetics. We can manage their diet satisfactorily without it.

Well, here we have two of the most distinguished diabetologists in this country, one of them heading up the program for 6,000 diabetics in the Mayo Clinic saying saccharin is not necessary; and, on the other hand, we have politicians all over this country saying, "Oh, we have to have it." Where is the basis of scientific expertise on which Congress is making this decision?

We all know what the decision is about. What it is about is that Congress is in one of its periodic stampedes, and like all stampedes it is caused by ignorance and fright. That is what it is all about.

Mr. President I know my argument is not going to persuade the Senate, but my conscience would bother me if I did not make the argument. I would hope that those who support this proposition would test their conscience a little bit too.

Yes, it is a tough political decision. Everybody's mail is 100 to 1 against the ban.

So, because of the political pressure, we are going to fold up and pass a bad bill. But as an old politician friend used to say, "There comes a time in the life of every politician when he is going to have to vote to save the Republic, no matter how unpopular it might be."

Well, this is one of those times.

The substitute I shall offer will make saccharin available for those who wish to buy it as a sweetener, but it will not be permitted in the food chain. That ought to remain our fundamental principle: Do not permit carcinogenic agents to be put in the food chain.

The argument that saccharin is a low-level carcinogen, and therefore not many people will get cancer, is not a very good argument, particularly when the benefits from its use are small when weighed against the risk. My substitute, which I shall call up later, will permit those who want to buy saccharin can do so but we will not exposre the general public to it.

Mr. President, I ask unanimous consent to resubmit for the RECORD my full statement so that the arguments that I have made will be printed in this day's RECORD.

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

SACCHARIN

Mr. NELSON. Mr. President, since the March 9, 1977 announcement by the Food and Drug Administration that it intended to ban saccharin as a food additive, a debate has gone on over very important basic issues:

Public policy to protect human health and safety—how much protection people want versus the right to choose;

Whether the testing criteria on which public health policy decisions are made are valid;

The extent to which small amounts of cancer causing agents in the food supply is considered a human risk;

Whether benefits-versus-risks should be considered when making safety decisions for food.

The FDA's action was taken pursuant to the 1958 Food Additives Safety law, which requires that foods be free of harm or any significant risk of harm and free of potential cancer-causing agents (the Delaney clause, section 409(c)(3)(A), Food, Drug and Cosmetic Act). The law prohibits approval of a food additive "if a fair evaluation of the data before the Secretary (a) fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation will be safe. . . ." (Sec. 409 (c)(3)(A)).

Saccharin fails both the Delany anti-cancer and general safety provisions of the statute.

Therefore, the FDA proposed the ban, pursuant to the law based on compelling scientific evidence that saccharin is a carcinogen in both man and animals.

Opponents of the proposed saccharin ban claim that:

1. it violates freedom of choice;

2. it is not warranted by the scientific evidence, which is not conclusive respecting the potential for cancer in humans from saccharin use;

3. the animal test methodology—using high doses—is an unrealistic predictor of harm for humans;

4. there are many benefits to humans, which outweigh the small risk of cancer;

5. the Delaney anti-cancer law is too inflexible in light of modern technology, which allows detection of minute amounts of substances in parts-per-trillion.

Arguments for the ban are:

1. Freedom of choice to allow widespread exposure to cancer-causing substances affects more than one individual, impacting on the entire society in terms of costs and the inability of most people to make adequately informed decisions in scientific and technical matters.

2. The proposed ban is based on a valid law, which is designed to protect the public health from unsafe food additives;

3. The scientific evidence for potential harm to humans is valid, based on retrospective epidemiology (statistical) studies of humans exposed to saccharin over a long period of time.

4. The animal studies are scientifically valid as predictors for humans, and have proven out the theory that virtually every carcinogen known to cause cancer in animals also does so in humans.

5. There are no scientifically-supported benefits to saccharin.

6. The Delaney clause is based on a general consensus among scientists that no safe threshold for a carcinogen has been established.

7. Overturning the FDA's proposal sets a dangerous precedent for legislating on a substance-by-substance basis, with respect to the extent to which Congress intervenes in regulatory decision-making in response to interest-group pressures.

Here are the facts, relevant to each point:

1. FREEDOM OF CHOICE

One in four people in the U.S. is a potential cancer victim; 385,000 people die each year of cancer; more than 600,000 new cases are diagnosed each year. The government estimates there are some 30,000 cases of bladder cancer each year, approximately 22,000 in males. Between 75 percent and 90 percent of human cancers are thought to be caused by chemicals introduced into the environment by man. The government estimates that the cost of cancer in the U.S. is $17,367 billion a year for medical care, loss of productive years and life. (Source: Barbara S. Cooper and Dorothy Rice, "The Economic Cost of Illness Revisited," Social Security Bulletin, February, 1976, page 31.)

Much of the cost is now absorbed by the taxpayer, through Medicare, Medicaid, veteran and military programs. So, the public pays for the decision to allow cancer-causing chemicals in the environment and the food supply. The decision to ingest cancer causing agents does not end with one person; it affects everyone. It is not a freedom of choice question. If a cancer-causing agent is introduced into the food chain, tens of millions of people are unknowingly and involuntarily exposed to it.

It is unlikely that youngsters, one of the main population groups ingesting saccharin in diet soft drinks, would heed warning labels on pop bottles.

Finally, Canadian animal tests show that saccharin is several times more harmful to offspring who were exposed both *in utero* and during their lifetime. Babies in the womb have no freedom of choice over their mothers' consumption of saccharin.

The Congressional Office of Technology Assessment (OTA) report on saccharin and members of the panel testified before the Senate Health Subcommittee June 7, 1977 that dangers of saccharin consumption to pregnant women and their offspring were real. OTA panel chairman, Frederick C. Robbins, M.D., told the committee (and I quote from the hearing record):

"Dr. ROBBINS. This has raised considerable concern, and the problem is that although the numbers are different, they are not significant, statistically. This is information we badly need to confirm and extend.

"However, as I indicated in my earlier remarks, I think there are two possible explanations of why you see more in the second generation than in the first. One is that in fetal and early life, the organism is peculiarly susceptible to the effects; the other is that it is simply a matter of length of time. That is, ingestion of saccharin started much earlier and therefore you have a longer exposure.

"However, I think personally, on the basis of these data, which are not definitive, I would be rather hesitant to see pregnant women use large amounts of saccharin during pregnancy.

"Senator CHAFEE. That is of significance.

"Dr. ROBBINS. I also hate to see them take anything they do not absolutely need."

How saccharin is used

It is estimated that at least 20 million Americans are exposed, voluntarily and involuntarily, to saccharin annually. (Source: NAS, "Sweeteners: Issues & Uncertainties," 1975, page 130.)

According to the FDA, some 6 to 7½ million pounds of saccharin were used in 1976 in foods. (Source: Sherwin Williams, only U.S. manufacturer.) About 74 percent of this amount was used in diet soft drinks (according to "Food Product Development," Feb., 1977, an industry publication); 14 percent in dietetic foods such as canned fruits, gelatin desserts, jams, ice creams, and puddings (according to the industry Calorie Control Council); and 12 percent as table top sweeteners. Saccharin also is used in drugs, cosmetics, mouthwashes, toothpaste, tobacco, and animal drugs and feed. About half of the amount used in the United States is imported.

One diet food company (Diet Delite) says it uses saccharin only in 8 percent of its foods; it sweetens the remainder with juice from Thompson seedless grapes.

Saccharin is used extensively in such drugs as pediatric liquid preparations, chewable tablets, and penicillin. According to the FDA proposed regulations:

"The quantity of saccharin used as a flavoring agent in drug products covers a wide range. For example, of 12 penicillin V potassium products for oral suspension that were examined, the concentration of saccharin ranged from a low of 5.2 milligrams per teaspoonful to a high of 42.8 milligrams per teaspoonful. If a pediatric liquid oral preparation contains 40 milligrams of saccharin per teaspoonful (one dose) and the maximum daily dose is 2 teaspoonfuls four times a day, a child could consume 320 milligrams per day of saccharin from this one drug. Obviously, if other products containing saccharin were also being consumed, the daily intake of saccharin would be much higher. It should also be noted that drug products can be used for both the treatment of acute and chronic conditions. Thus, if a drug product

containing saccharin is administered daily for the treatment or prophylaxis of a chronic condition, such as rheumatic fever, the patient could be exposed to a daily amount of saccharin equivalent to that contained in one or more diet soft drinks." (Pages 47–8.)

Obviously there would be no informed freedom of choice to such exposure of saccharin, even with warning labels.

2. THE LAW AND THE DELANEY CLAUSE

The 1958 law requires that food additives be safe. It does not allow for weighing benefits against risks for the food supply.

As to the Delaney anti-cancer clause in the law, to date, no scientific body has devised an acceptable replacement or modification of this law. No safe threshold has been identified for any cancer-causing chemical and the scientific community recognizes that at the present state of the art no safe threshold can be established. The Delany Clause thus recognizes the limits of science at the present time. There is no food additive with cancer causing properties whose benefit is so great it is worth the risk of corrupting the food chain.

Even if the Delaney Clause were not in law, saccharin would have to be removed from the market under the safety requirements of Section 409 of the Food, Drug and Cosmetic Act.

Three major conferences on food safety and the Delaney Clause have been held in the past 7 years: the 1970 White House Conference on Food, Nutrition and Health; a 1973 symposium on the Delaney Clause, conducted by the New York Academy of Sciences; and a 1974 forum, entitled "How Safe is Safe? The Design of Policy on Drugs & Food Additives," conducted by the National Academy of Sciences.

None of those conferences concludes that there should be a repeal of the Delaney Clause.

The Consumer Task Force of the 1970 White Conference stated:

"The Delaney Clause should not be repealed until a better law can be enacted." (Page 141, Final Report).

(NOTE.—The White House Conference report DID recommend "a revision, not repeal, of the Delaney Clause to provide a more scientific and rational judgment in assuring the safety of food." It also recommended that "an expert committee of the National Academy of Sciences review the Delaney Clause and the current state of relevant, scientific knowledge with a view toward recommending such modification as they may deem advisable to permit the full exercise of informed scientific judgment in determining problems of food safety" (Page 132, Final Report).

At the 1973 Delaney conference in New York, no scientist, including those affiliated with industry, advocated weakening the Delaney Clause.

At the 1974 National Academy of Sciences forum, scientists reached no consensus on modification of Delaney.

In other words, the most imminent scientists studying the issue do not believe that a safe level of a cancer-causing substance can be established for humans, which would support a change in the Delaney anti-cancer clause.

Dr. Philip Handler, President of the National Academy of Sciences, in a summary of the forum proceedings said: "For my part, I begin to view that [Delaney] clause as a great red herring rather than as a problem in our society. Certainly, on its face, all other things being equal, it is a perfectly rational guide to desirable societal behavior. No one in his right mind wants to put carcinogens into anything intended for human consumption. We should be perfectly willing to accept that guideline until the day when we find ourselves in the position of banning as a carcinogen some chemical entity which also offers great benefit. Until that time comes, we will not have to test the validity of the Delaney principle. When it does, we will have no recourse but to test the validity of the principle in a real life situation.

Dr. Handler continues:

". . . It has been said that the great harm of the Delaney clause is its deterrence to those who might otherwise be exploring new and important food additives. No such real case in point is known to me." (Academy proceedings, p. 175–6).

In testimony in May, 1974 before the House Appropriations Subcommittee for Agriculture, former FDA Commissioner Alexander Schmidt, M.D., stated:

"On the basis of the information, expert opinion and conclusions contained in the compilation, we are not prepared to state that the Delaney clause has had a deleterious effect, to date, upon the food supply, nor could we suggest any particular change in the anti-cancer clauses."

He said that "the growth of knowledge in carcinogenesis may eventually permit safe levels of carcinogenic additives to be determined, but that day is not yet here." The Commissioner also testified:

"The evidence at hand does not indicate that the Delaney clause has barred public utilization of food additives of such importance that their prohibition has not been in the public interest. The question remains, however, as to whether the mere existence of the Delaney clause has had such a profound influence upon the FDA that action against carcinogenic substances, that might not have been taken otherwise, has been taken under the more general safety provisions of the FD&C Act. This question has no real answer, but it is clear from the history of the FD&C Act and anti-cancer legislation that the public wishes to have its food supply protected against the addition of 'unsafe' food chemicals."

In light of the scientific unknowns and the risk-versus-benefit considerations posed by adding carcinogenic agents to the food supply—which is ingested involuntarily and unknowingly, in large part, by millions of people—the public, in my view, would be well-served to seriously consider whether it wants to modify the Delaney Clause.

In addition, the synergistic (combination) effects of exposure to many chemicals must be considered. Saccharin is not the only chemical substance in the food, air, or water supply, to which humans are exposed.

3. THE VALIDITY OF ANIMAL AND HUMAN EPIDEMIOLOGICAL TESTS AS PREDICTORS OF RISK TO HUMAN HEALTH

Saccharin testing followed accepted methods to ascertain safety of food additives, drugs, toxic substances, pesticides, and other chemicals. With regard to animal tests, estrapolated to predict human risk:

Dr. Donald S. Fredrickson, Director of the National Institutes of Health, testified to the Senate Health Subcommitee, June 7, 1977:

"One must assume that until proven otherwise, materials shown to cause cancer in animals also cause it in human beings. It will be extremely difficult to prove that saccharin is an exception to this rule. When the animal data are carried over to man in the conventional way, they indicate that two to three percent of the 30,000 new cases of bladder cancer each year could be due to saccharin in the low doses now used by the American population."

Dr. David P. Rall, Director of the National Institute of Environmental Health Sciences of the NIH, said at the American Cancer Society's seminar for science writers, April 5, 1977, that, based on his review of the Canadian animal tests, he concluded: "It's absolutely a superb scientific study—it was very well done. I think the data are pretty convincing that saccharin is carcinogenic." He added: "Those who question whether animal tests can predict for a positive cancer response in man seem to be quite comfortable accepting evidence in animals that predict a negative response" (New York Times, April 6, 1977). Rall's report to the science writers concluded that "laboratory animal carcinogenicity tests predict well for man and that such tests do offer a mechanism by which the prediction of human carcinogenesis is possible before human exposure and with reasonable accuracy."

William Lijinsky, Ph. D., Director of the Chemical Carcinogenesis Program, Frederick Cancer Research Center, stated, in a letter to the Editor of the Washington Post, March 24, 1977:

The comments about the amount of saccharin-containing drinks, etc., that one would have to consume in order to develop cancer show an ignorance of the principles of toxicity testing:

1. To represent the entire U.S. population that might be exposed we are forced by economics to use small groups of animals, usually 50 or at most, 100.

2. If the result of the test is cancer in 1 animal, which is 1 per cent, that is equivalent to 2 million Americans; 1 million Americans would be represented by one half of a rat. To compensate for the small number of animals, the dose of chemical must be increased beyond that to which a human would be exposed. We usually regard even a 1 per cent incidence of cancer in a test as insignificant, and only a larger number of animals with cancer as indicating a cancer hazard.

3. Our laboratory rodents live only 2 years, while people can be exposed to an artificial chemical for up to 70 years, starting in infancy, the time of greatest sensitivity to carcinogens.

4. The effects of carcinogens are cumulative so that continuous small doses can add up to a large effect, and one carcinogen can add its effect to that of others to which we are exposed. So our animal tests of a single substance underrate the dangers.

5. That carcinogens in the environment play a role in disease is surely shown by the dreadful statistic that 1 in 6 Americans dies of cancer (including many of bladder cancer), almost all of which is of unknown cause.

For all of these reasons we give our small groups of animals large doses of the test compound, so that we can detect a carcinogenic effect, if present. If more than 5 animals out of 100 develop cancer, we say the test is positive and the substance is a carcinogen.

Most industry spokesmen would not quarrel with the conclusion from the latter result that the substance is "safe," even though in such a small group of animals, safety has not been demonstrated. If this is claimed for the negative side of the test, then a positive result must be accorded equal recognition and, because of the wide range of susceptibility among the human population, exposure to the substance at any level must be prevented.

On the other hand, if the protagonists of the largely unrestricted use of chemicals want to claim that such tests are of no value, since they do not represent human experience, so be it. But, in that case, there will be no satisfactory way of demonstrating that any artificial substance is safe from inducing cancer and so, under such laws as the Toxic Substances Act, none could be sold.

WILLIAM LIJINSKY,
Director, Chemical Carcinogenesis Program, Frederick Cancer Research Center.

It should be noted that the Canadian study indicates unequivocally that saccharin causes bladder tumors in the test animals. 100 rats were used in the study (50 male, 50 female). Seven male and no female rats in the first generation developed bladder tumors. Twelve

male and two female rats in the second generation developed bladder tumors. Thus, of a total of 200 rats fed saccharin, 21 developed bladder tumors (HEW proposed regulations, April 14, 1977, p. 36).

Howard M. Temin, 1975 Nobel Prize winner who shared the prize for Physiology of Medicine, Professor of Oncology at the University of Wisconsin McCardle Laboratory for Cancer Research, and an American Cancer Society Research Professor, stated in a letter to our office, July 22, 1977: "In cases where there is exposure to many compounds or where widespread cancer is concerned, we might not be able to specify from epidemiological studies which compound is the carcinogen.

"Therefore, we must use tests that do not involve humans. The most reliable of these tests is the induction of cancer in laboratory animals.

"Biochemical study has shown that there is a basic similarity in the metabolism of humans and laboratory animals. Carcinogenesis testing has shown that all known human carcinogens (with the exception of arsenic) are carcinogenic in laboratory animals. Therefore, it is accepted by essentially all oncologists that if a compound is carcinogenic in animals, it is potentially carcinogenic in humans."

History of Studies Showing Lack of Safety:

It is important to note that safety concerns over saccharin are now new.

Saccharin has been the subject of controversy since its discovery in 1879. Its safety was first challenged in 1908. Between 1911 and 1938, saccharin was available as a drug but was barred from the general food supply. Between 1938 and 1959, when the diet soda revolution began, saccharin was regulated both as a drug and special dietary food, to be available only for those with special medical needs, as a tabletop sweetener and in diet foods, labeled: "Warning: to be used only by those who must restrict intake of ordinary sweets." Clearly, the FDA intended that saccharin not be generally available in the food supply.

Saccharin has been suspected of being a carcinogen since 1948. One of the first long-term chronic toxicity studies of saccharin was reported to the FDA in 1951 (Fitzhugh, Nelson, and Frawley, Journal of the American Pharmaceutical Association, Vol. 40, No. 11).

More than 85 studies, a conservative estimate, have been reported to the FDA on saccharin. A GAO report that we requested, "Need to Resolve Safety Questions on Saccharin" (HRD-76-156), issued August 16, 1976, identified 23 studies since 1970, which indicated potential carcinogenic or mutagenic hazards for saccharin. The FDA lists some 59 studies prior to 1970, including about 20 toxicity studies of various kinds.

Furthermore, new scientific evidence has come to our attention showing that saccharin is mutagenic in laboratory tests using a variation of the Ames method (in which tests are done on substances "in vitro", or in laboratory cultures). Scientists from Johns Hopkins Medical School, Departments of Patho-Biology and of Pharmacology and Experimental Therapeutics, under Dr. Ernest Bueding, will report their findings Friday, September 16, at a scientific seminar on "Saccharin: Scientific and Public Policy Issues," conducted by the Society for Occupational and Environmental Health, in Washington, D.C. The findings also will be published shortly in Science magazine. They show that four samples of saccharin—including the purest to be obtained—were found to be mutagenic (i.e. changing genes). Mutagenic activity is scientifically associated with, and a predictor of, carcinogenic activity.

Reliance on Test Data:

Now, we have new scientific information showing that saccharin clearly causes bladder cancer in animals and apparently in humans, particularly males.

Canadian tests on rats were especially designed to test whether pure saccharin or an impurity commonly found in it, orthotoluenesulfonamide (OTA) were the potential hazard. As pure saccharin as possible was tested and found to cause bladder cancer in not only rats that were fed high doses of the substance, but, at a higher rate, in their offspring.

More tests are being done on what little impurity was found in the tested saccharin.

The FDA, on learning of new human data on saccharin, noted that:

"Since the publication of the Commissioner's (April 15, 1977) proposal, a panel of expert scientists assembled by the (Congressional) Office of Technology Assessment (OTA) has examined all of the pertinent data on the safety of saccharin, including the Canadian study. The panel concluded, unanimously, that the Canadian study has been well conducted and its results properly assessed, that it demonstrates unequivocally that saccharin is a carcinogen, albeit perhaps weaker than some other cancer-causing compounds, and that it confirms the results of earlier animal studies." (Federal Register, July 1, 1977, Vol 42, No. 127, page 33768).

The FDA's proposed regulations of April 15, 1977, state: "Now as to the science:

"Many of the 16,000 consumers who have written FDA since March 9 have worried that the Canadian rat study involved such high doses of saccharin that the results were unrealistic. There is an impression that almost any substance fed in such high doses would cause cancer.

"Neither of these views is correct.

"The exposure of test animals to high doses is the most valid way we know to predict whether a chemical may cause cancer in people. Such tests are both realistic and reliable."

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"Neither of these views is correct.

"The exposure of test animals to high doses is the most valid way we know to predict whether a chemical may cause cancer in people. Such tests are both realistic and reliable.

"In fact, in 1969, the National Cancer Institute reported that of 120 pesticides and industrial compounds given to mice, only 11 were found definitely to induce tumors. And these chemicals were not randomly selected. Most were picked because there already was reason to suspect that they might cause cancer. Even so, the great majority of more than 100 suspicious chemicals did not cause cancer in animals when tested at high dose levels.

"Recent experiments on saccharin conform to the requirements of good animal testing and good science. They tell us beyond reasonable doubt that saccharin is among the comparatively small number of substances that do cause cancer in test animals and, therefore, may be hazardous to humans.

"We clearly cannot determine from animals exposed to high doses of a cancer-causing chemical precisely how many humans might get cancer from a lower dose. But there are methods for estimating the maximum number of people who might be so affected.

"Using these methods, our scientists now calculate that a moderate use of saccharin, the amount present in one large diet soft drink, if ingested over a lifetime by every American, might lead to 1,200 additional cases of bladder cancer per year." (Pages 3-5).

The regulations go on to say:

"Since these early days of toxicology, the use of tests in laboratory animals to predict the long-term chronic effect of chemicals in man has been accepted by virtually all scientists and is today used by every technologically advanced country in the world. In the United States, many Federal agencies in addition to FDA, such as the Environmental Protection Agency and the National Cancer Institute, rely on these animal tests to assess the safety of a variety of compounds. In 1954, the National Academy of Sciences/National Research Council (the Academy) published a report entitled "Principles and Procedures for Evaluating the Safety of Intentional Chemical Additives in Foods." This report updated pamphlets published in 1951 and 1952 on the safe use of chemicals in foods. The 1954 report and subsequent publications by the Academy describe the widely accepted approach of animal tests for evaluating the safety of chemicals added to foods. The World Health Organization has also espoused the use of animal tests to assess the safety of food ingredients." (Page 18).

In addition, we know that of 17 known human carcinogens, all except arsenic and benzine—on which further tests are being done—cause cancer in animals. And, there is no carcinogen ever shown to cause cancer at one level that did not cause cancer at a lower dose level.

Human evidence

New epidemiological studies on humans in Canada now indicate a positive dose- and duration-related correlation between saccharin use and cancer of the bladder in human males, with an estimated 60 percent increase in such risk associated with saccharin use.

While other studies of human consumption are not so positive, they involve a sample size only about a quarter of the Canadian study, with most users exposed to the artificial sweetener products for less than five years, which scientists report is inconclusive.

Thus, the nation's most distinguished scientists all agree that the Canadian animal tests are valid. While scientists say the Canadian epidemiological human data does not prove that saccharin is carcinogenic in humans, they agree that the evidence is overwhelmingly indicative of such a possibility.

The FDA proposal to postpone the effective date of its ban so that the new human evidence could be evaluated states:

"The recent study performed under the

auspices of the Canadian National Cancer Institute significantly alters and enlarges the basis for decisionmaking, for it appears to confirm—from human experience—the real risk of cancer previously projected solely on the basis of animal studies. While animal studies will continue to supply the primary evidence for regulatory decisionmaking by agencies such as FDA, positive human data deserve even greater attention." (Federal Register, July 1, 1977, page 33770).

With all of this data, accumulated over 80 years, it is clear that we are dealing with a hazardous substance.

Are there benefits; is saccharin necessary?

FDA Commissioner Kennedy and NIH Director, Dr. Donald Frederickson, both testified before the Senate Health Subcommittee June 7, 1977 that there are no known scientific studies demonstrating benefits from saccharin in treating obesity, heart disease or diabetes.

At that hearing, I asked Dr. Fredrickson the following question:

Are there any conclusive tests that have been done, that demonstrate an important need for saccharin for diabetics, overweight, or heart patients? None have come to my attention.

Dr. FREDRICKSON. The answer is no, Senator Nelson. There is no test that is available that demonstrates a specific need for saccharin by such patients.

Senator NELSON. So, what we are dealing with here is a risk with no known benefits. Is that correct?

Dr. FREDRICKSON. I would not go so far as to say "no known benefits" because that goes off into regions of even aesthetics.

Senator NELSON. All right, with no test demonstrating benefits, conclusively, to diabetics, overweight, or heart patients.

Dr. FREDRICKSON. That is correct."

The same query was made to Dr. Kennedy of the FDA:

Senator NELSON. Doctor, you were here when Dr. Fredrickson testified, and the record can speak for itself, but I believe he said that there were no careful scientific studies that prove an important medical necessity for saccharin. I think that is a fair statement.

Would you agree with that?

Dr. KENNEDY. I think there is no study known to me that demonstrates the efficacy of saccharin as opposed to some alternative strategy in a dietary or diabetic medical regimen.

Senator NELSON. So, then, if saccharin were not available, there is not any demonstrated, provable, serious medical adverse effect on the people who now use it, is that what you are saying?

Dr. KENNEDY. I would be more cautious, I think. I know of no study that has been done under rigorously controlled conditions that shows the efficacy of saccharin in attaining compliance to those regimens, but we did at our 2-day hearing, Senator, hear some testimony from doctors who are experts at diabetes management who argued the other side.

Senator NELSON. Were these testimonials, or were they based upon carefully controlled scientific studies?

Dr. KENNEDY. They were not controlled trials, no, Senator.

Senator NELSON. So we are dealing here with a known risk; and we are not able to demonstrate through any scientific study thus far that there is any significant benefit from the use of saccharin.

Would that be a fair statement?

Dr. KENNEDY. I think it would be a fair statement.

In fact, some animals studies indicate that, because of its effects on blood sugar, saccharin consumption may actually stimulate appetite; some animals consuming artificial sweeteners have actually gained rather than lost weight.

In 1969, the FDA reported, based on scientific data including several National Academy of Sciences (NAS) reviews, that "none of the few controlled studies reported to date have established a useful role for non-nutritive sweeteners as weight-reducing aids except under the most carefully controlled conditions." In one controlled study in the early 1950s, by Harvard School of Public Health and Peter Brent Brigham Hospital, Boston, involving 247 obese individuals and 100 diabetic persons, no significant difference was apparent when the weight loss of users and non-users of low-calorie diet foods was compared.

The argument for allowing saccharin as beneficial to diabetic and obese persons seems to boil down to a complaint that making it unavailable infringes on the rights of people. No scientific argument supporting health claims have been noted.

In fact, leading diabetologists tell us that saccharin is neither necessary nor recommended for their patients.

Dr. Max Miller, Director of the 10-year University Group Diabetes Program (U.G.D.P.) involving 13 clinical centers treating diabetics, told us:

"There is no role for saccharin in the regimes (diets) of obese patients we are treating. We have never included saccharin in instructions to diabetics. From the practical point of view, diabetics don't use much sugar anyway. Their diets can be arranged to allow some sugar intake in food, restricting calories and balancing carbohydrates. Sweeteners mask taste. I am amazed at how little sugar my diabetic patients take."

Dr. P. J. Palumbo, Mayo Clinic Medical School, Assistant Professor for Medicine, and diabetologist, whose program sees about 6,000 diabetic patients a year told us:

"Saccharin is not essential in diet management of diabetics. We can manage their diet satisfactorily without it. The problem with their diets involves a lot of factors and the management of calories. Most diabetics can have some sugar; we put it in cakes, ice cream, other foods in their programs.

"There is no diabetic that has to take saccharin. It is a convenience, with no basis in necessity. Anyone who argues that it is, is on very shaky grounds."

George V. Mann, Sc.D., M.D, Associate Professor of Biochemistry, Vanderbilt University, Nashville, Tennessee, writing in Post Graduate Medicine, July, 1977, states:

"After World War II the 'low-calorie food' industry took off and became a boomer . . . the growth was based on two promotional claims both wrong.

"The first is the allegation that diabetic patients must avoid sugar in their food and that artificial sweeteners help them to do this . . . the last bit of evidence that diabetics should avoid dietary sugar disappeared in 1922 when insulin replaced starvation as a treatment for diabetic acidosis.

"The second promotional claim is that artificial sweeteners are effective in the regulation of body weight and treatment of obesity. After 30 years' experience with sweeteners, there is no evidence to support that contention. It is pure Madison Avenue promotion. Indeed, this use of saccharin is counterproductive because it leads fat persons to suppose that they are attending to their weight problem with artificial sweeteners and to avoid effective measures.

". . . The issue (physicians) should confront is not convenience or comfort or habit but the efficacy of this additive.

". . . Indeed, a nutritionist is bound to ask whether any sweetener is ever useful or necessary in food. . . . Artificial sweeteners may be the nutritional disaster of our time."

Dr. Kenneth Melmon, Chief, Division of Pharmacology, University of California Medical Center, San Francisco, reporting for a National Institute of Medicine Committee on the medical uses of saccharin, stated in 1974:

"The data on the efficacy of saccharin or its salts for the treatment of patients with obesity, dental caries, coronary artery disease, or even diabetes has not so far produced a clear picture to us of the usefulness of the drug." (National Academy of Sciences, "Sweeteners: Issues and Uncertainties, 1975, page 165.)

Dr. Jesse Roth, Chief of Diabetes at the National Institutes of Health, has stated: "Artificial sweetener has no special place in the diabetic's regime. The saccharin ban is of no consequence." (Health Research Group, testimony to FDA on saccharin, May 18, 1977.)

Dr. Marvin Siperstein, Professor of Medicine and diabetologist, University of California, San Francisco, stated in a letter to the Health Research Group: ". . . the role of saccharin or for that matter any artificial sweetener in the diabetic diet has been greatly exaggerated. The role of saccharin in the treatment of the diabetic, or for that matter in the obese patient, is a very minor one."

The American Dietetics Association, in testimony before the House of Representatives Subcommittee on Public Health, March 21, 1977, noted that the desire for saccharin is not because of medical necessity but because Americans have a sweet tooth, and that low calorie food can be appealing without artificial sweeteners, using natural condiments such as ginger, coconut, and honey. The Association supports the FDA proposed ban, and pointed out that it imposed a greater need for people to become more knowledgeable in their preparation of food to cut down on calorie intake while satisfying the sweet tooth (New York Times, March 27, 1977).

It is interesting to note that, when Yankee Stadium was renovated in 1976—between 1920, when Yankee Stadium was built, and 1976, when it was renovated, 9,000 fewer seats were installed to accommodate the increased width of the American rump, which grew about 4 inches. During those years, particularly the last 20, saccharin and diet soda use boomed (Chemical and Engineering News, April 11, 1977, page 17).

5. LEGISLATION INTERFERING WITH REGULATORY ACTION IS A BAD PRECEDENT

The saccharin legislation is an unwise, unnecessary and unhealthy precedent, which has enormous ramifications for the future of public health and public policy. Congress is reacting emotionally to public pressure instead of relying on rational scientific information. By delaying a regulatory restriction on the use of saccharin in the food supply, Congress is risking the public's health for the benefit of large economic interests.

Saccharin is one of 2,100 food additives approved for use directly in food. Approximately 10,000 are approved for indirect uses, such as in packaging. Does Congress expect to react to every request for special consideration of food additives?

Congress should not be in the business of regulating selected entities. It should make policy, as it did with the Food, Drug and Cosmetic Act, which provides that foods be free of harm or any significant risk of harm and of potential cancer-causing substances (Delaney Clause).

To legislate special treatment on a product-by-product basis provides an incentive for special interests to seek special regulatory favors and interventions from Congress in the future. Congress is not capable of making the kinds of scientific judgments on which regulation to protect the public health must be based.

Although I recognize that the saccharin bill is temporary—an 18-month moratorium on regulatory action—and that it allows the agency to act if it finds that "saccharin presents an unreasonable and substantial risk to the public health and safety," in my view, there are no benefits to Congress' overruling

and usurping the regulatory agency's decision to ban saccharin from the food supply. What possible benefit can there be to allowing such a substance continued wide exposure in the general food supply, particularly to children, who are probably the largest consumers of soft drinks? Children do not read warning labels.

The public will be ill-served by such an action, and the stage set for future such decision-making, spurred by special economic interests or ill-informed, non-scientific, emotional arguments.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I could not remain silent after listening to my good friend and colleague from Wisconsin moralize on the motivation of some of us who would support this legislation.

Mr. NELSON. Mr. President, no personal reference was intended. I serve on the Health Committee with Senator KENNEDY and can testify that in his work in the committee and otherwise, the record of the Senator from Massachusetts, in his devotion to the health problem, is unequaled by that of anyone else in Congress. My remarks at that point were not directed at the Senator from Massachusetts. There are some I might invite attention to, but due to the comity of the two Houses I am unable to name them, though I would like to.

Mr. KENNEDY. I thank the Senator for that comment, and I appreciate the spirit in which it is given, because I yield to no one in my concern about the disease of cancer, and I yield to no one in the efforts that I have made and will continue to make in attempting to insure that, to the extent that govenmental policy can have an influence, that that scourge is removed from the citizens of our country and the peoples of the world.

Mr. President, I take issue with the central thrust of the approach of the Senator from Wisconsin, though I accede to him, obviously, the same motivation that he grants to me in our commitment to the health of the American people.

The fact is that the medical community is divided on this issue. It is not that all of the experts the Senator from Wisconsin quotes are right and all the experts, deans, distinguished award recipients, and other authorities that we have listened to are wrong.

This is about as closely a divided question for the medical profession as we have seen. We have seen, over a period of time that on many different public policy questions, there are differing views. Nonetheless, whereas I know the Senator from Wisconsin believes the Mayo Clinic and the treatment there is the best in the world, there are those of us who believe that the dean of the medical school at Harvard is not without some training and without some knowledge; or the American Diabetic Foundation without some concern for diabetics, or the Juvenile Diabetic Society without some concern, or the American Heart Association without some concern and knowledge about the dangers and the benefits in terms of the issue we are facing and addressing in this particular legislation.

Sure, there is a great deal of mail. Sure, there is a great deal of political pressure and influence being exerted on this particular issue. But I do believe, Mr. President, there is a strong case being made by the majority of the members of the Health Subcommittee, that there are benefits and that there are risks in this particular public policy question.

The Senator from Wisconsin, and those who support his position, would hope, if we ban saccharin from soft drinks, we could say to young people, "All right, you will not have Tab. You will not have Fresca. As a matter of fact, we are not going to let you drink any kind of soda pop." If the Senator from Wisconsin could give the assurance that young people, the juvenile diabetics, those with hypertension, those with heart disease, were not going to go out and buy those drinks, I think he would have a case.

To suggest that, with some magic wand or some piece of legislation voted on here this afternoon, we are going to change the purchasing habits of every young person and child in these United States fails in logic, in understanding, and sensibility.

We are debating the realities of the time, not some wishful hope about what we would hope juveniles would do in their purchasing of soft drinks. They are going to buy those drinks, Mr. President.

We are hopeful, with this legislation that we are providing some useful information. It is not going to completely resolve the problem.

We recognize that some bladder cancer will occur. The fact that it is a small amount does not breach the argument. There will be some. We hope to find out exactly how much with the additional studies being asked for.

There are 40 million people suffering from hypertension, heart diseases, obesity, and juvenile diabetics. How many of those are going to have additional kinds of health risks if we ban saccharin all together? We do not know and the Senator from Wisconsin does not know. He cannot tell us. He can say that there are no scientific studies. There are none. We accede to that. But we are trying to get them. We say that delaying for 18 months definitive action on a product which has been on the market for 40 years is not an unreasonable request when we have to balance risks and benefits.

There is labeling now on Tab and Fresca. I doubt if there is sanyone in this room who drinks Tab or Fresca who could even find it. They have to read the label 15 times before they find it. We are insisting that the label be made in such a way, that it will communicate the necessary warning statement.

We are placing restrictions on advertisements in radio and television to try and provide information to consumers. We are trying to provide the opportunity for the American people to make some kind of informed judgment.

There are a lot of things we can do in the Senate to try to extend life for the American people. We could start off by insisting that no one drive more than 30 miles an hour, and we could save 20,000 lives. Why are we not doing that? There are those who support 50 miles an hour who will not support an amendment for 30 miles an hour. Will they say we are killing all of these American people? They will not. We could ban airplanes and save several hundred lives a year.

For every professor referred to by the Senator from Wisconsin, with many degrees, I can quote as many who have the same degrees. We have listened to both and we have tried to get the best information. It is not that all his professors have or do not have the truth, or that he or anyone else opposing our position is acting for purity and morality and we are not.

So, Mr. President, the issue which is raised has profound implications. That is, over any period of the future, what is going to be the public policy positions on risk-benefit weighings?

The Food and Drug Administration now, under existing legislation, is committed to removing these products.

The Health Subcommittee is concerned about the limitation which exists in being able to raise these risk-benefit ratios. We permit the Food and Drug Administration in areas of drug policy to do risk and benefit ratios. We encourage them to do it. Obviously, there are drugs that are given to a terminal cancer patient that are never given to a healthy person. It is a risk-benefit ratio.

We have tried to extend that concept into this limited area for a limited period of time. That is really the benefit of the proposition we have before us.

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

The PRESIDING OFFICER. Who yields time?

Mr. SCHWEIKER. Mr. President, I yield myself 5 minutes.

Mr. President, how much time have Senator NELSON and I consumed of my time on this amendment?

The PRESIDING OFFICER. The Senator has 19 minutes remaining.

Mr. SCHWEIKER. I want to respond very briefly to a statement Senator NELSON made, then I shall yield to the Senator from California (Mr. HAYAKAWA) whatever time he needs on the bill.

Mr. President, Senator NELSON has made a case on the basis that everything is open and shut, that it is clear out, and we should easily be able to see that. As the Senator from Massachusetts has indicated, this is far from the case. If it were the case, we would not be here proposing 18-month moratorium on the imposition of the FDA's saccharin ban.

Mr. NELSON. Will the Senator yield for a question?

Mr. SCHWEIKER. Let me make a point. Then I shall be glad to yield.

My point is that the significance of the human epidemiology study which Senator NELSON seems to hang so much on as clear-cut scientific evidence of saccharin's carinogenicity in man is far from agreed to by the scientific experts. Let me give a couple of examples of the divisions within the scientific community about this study. Here is a comment from a professor of medicine from the University of Oxford, Dr. Richard Doll, in describing the very Canadian study that the Senator from Wisconsin cites as clear proof of what we should be doing here:

A great weakness of the study is the failure to provide detailed data for the many other factors which the authors found were also associated with bladder cancer.

I say as an aside that the biggest cause of bladder cancer today is not saccharin, it is smoking. Even if we accept the concept that saccharin is a risk factor in bladder cancer, smoking represents a risk that is many times greater. Forty-eighty percent of all bladder cancers are caused by smoking.

Here is the point Dr. Doll makes about the methods used by the authors of the Canadian human epidemiology study:

They state simply that controlling separately or jointly for the variables listed above where there were some case-control differences . . . did not appreciably change the risk ratio estimate for the males. This is unacceptable. In response to a request from the editor of the journal to which the authors sent the article for publication, they produced their detailed analyses. All they have done—

And this is the human study that triggered this fight—

is to dichotomise the patients into groups such as "never used" and "ever used" instant coffee. This is grossly inadequate and contributes practically nothing to the argument.

Let me take it one step further. I have here one of the leading experts on bladder cancer, Dr. Ernst Wynder, and his colleague, Mr. Robert Goldsmith. Here is what they say in their study of the epidemiology of bladder cancer:

Relative risk increases fairly consistently with increased consumption.

They are speaking of smoking, not saccharin.

Little difference in risk is evident between smokers of a half pack or less/day and nonsmokers. However, those now smoking between one-half and two packs a day have a doubled risk of bladder cancer. At more than two packs a day, the risk is triple the nonsmokers'.

What they are saying here is that it's not enough to ask whether people have ever smoked or not. If you want to really have an expert look at the problem of whether or not saccharin causes bladder cancer, you have to analyze your cases and controls according to how many cigarettes they consume if you want to eliminate smoking as a risk factor in the study. The authors of this Canadian study on saccharin as a possible risk factor apparently did not do that for other bladder cancer risk factors, such as drinking instant coffee and smoking. That is one reason why it is coming under scientific challenge. That is why there may be an honest difference of scientific opinion here. To contend that we have a clearcut signal, a green light go and ban saccharin, that we know everything we need to know about it, that it is, beyond any shadow of a doubt, a human carcinogen, on the basis of this study, is just not true. There are legitimate doubts, and that is why it is wise and prudent to proceed in the way we have in S. 1750, to order more studies and to delay the ban until we can find out more.

One of the main points I made earlier is that saccharin, according to the Ames test, may not be the culprit at all. The trace impurities present in commercial saccharin at levels of about 20 parts per million may be the culprits. We do not know what the real culprit is. There may be a way, in 18 months, to eliminate the 20 parts per million that appear to be the culprits in the Ames test, and keep pure saccharin on the market as an artificial sweetener.

Why would we not proceed in this prudent way recommended by the Human Resources Committee, try to learn more about the cancer, learn more about what may be causing it, and work in a meaningful way?

Mr. President, at this point, I yield to Senator HAYAKAWA, who has been a very interested student and worker in this area.

How much time on the committee amendment do I have remaining?

The PRESIDING OFFICER. Thirteen minutes.

Mr. SCHWEIKER. I yield that time to the Senator from California. If he needs additional time, I shall yield him additional time from the bill.

Mr. HAYAKAWA. I thank the distinguished Senator from Pennsylvania.

Mr. CANNON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HAYAKAWA. By all means.

Mr. CANNON. I ask unanimous consent that Aubrey Sarvis and Bruce Eggers of my staff, Dr. Floyd Riddick of the Senate Rules Committee, and John Smith and Mary Jo Manning of the Committee on Commerce may have the privilege of the floor during consideration of this matter.

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

Mr. KENNEDY. I ask unanimous consent for the privilege of the floor, also, for Charles Jacobs of the staff of Senator MUSKIE.

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

Mr. HAYAKAWA. Mr. President, in all discussions of saccharin, not much attention has been paid to the nonmedical but psychological aspects of saccharin. In order to explain what this is all about, let me tell about a distinguished psychiatrist at the University of Chicago by the name of Dr. Bruno Bettelheim, whom I have known for 20 or 30 years. He is famous for his Orthogenetic School, in which he treats emotionally disturbed children, who are so disturbed that other psychiatrists have given them up. They cannot do anything with them, but they do turn them over to the Orthogenetic School.

One of the peculiarities of this school, for, as I say, highly disturbed, emotionally upset children, is that as soon as you go into the school, you find that, on coffee tables and scattered around the room everywhere, where they are accessible to children, are dishes of candy, chocolate bars, all sorts of sweets. The reaction of emotionally disturbed children to this candy is extraordinary. Some children grab all they can get, stuff their pockets with them, eat them, and take a bunch of them to bed with them last night and put them under their pillow. Other children look at them in real fright and will not touch them. The reaction to sweets on the part of these emotionally disturbed children is, in a way, an index of the degree of their emotional upset.

Why is this so? The most important fact about this is that, in our culture, candy and sweets are used to reward good behavior, to express approval of our children, and the withholding of sweets is used to express disapproval of our children.

Obviously, these emotionally disturbed children do not know whether they are approved of or disapproved of, so some of them grab these symbols of approval, and stuff themselves with them until they are sick. Others are afraid to touch them for fear of punishment. It is only when children become sufficiently accustomed to the fact that there is candy around, that they can take it when they want it, leave it alone when they do not want it—it is only when they get to that level of relaxation and at-homeness with sweets that you know you are beginning to make progress in their psychotherapy.

This emotional meaning of sweets, or the taste of sweetness, is a part of the whole use of saccharin and of cyclamates in the absence of sugar, which, itself, presents enormous health problems of its own. But what is the child who is diagnosed as a diabetic to do? He is ill. The doctor says he must not have sugar or anything containing sugar. All these symbols of approval, then—candy, cakes, pies, ice cream—are removed from his diet. The psychological meaning that the child gets from that is, "Nobody loves me any more; nobody approves of me." That, in addition to illness, is a hard burden for a child to bear. That is why we have sweetened, artificially sweetened, canned fruit and artifically sweetened chewing gum. That is why we have diet colas and diet drinks. These are ways of saying to a child, despite the fact that he cannot consume sugar, "We still love you." That sense of love and concern and caring cannot be communicated by words alone. Somehow or other, the flavor of sweetness is deeply associated with social approval. That is the most important fact we have to confront.

If, then, for children, because of a medical condition, whether it is overweight or diabetes or high blood pressure and so on, the consumption of sweets is unhealthy; if the consumption of sweets simply aggravates their disorder; if, as in extreme cases, the continued eating of sweets can lead to death; and if, nevertheless, people have to have, for psychological reasons, the taste of sweetness, what alternative is there, at the present state of our technology, cyclamates being forbidden, to the use of saccharin?

Let me quote from a letter from one of my constituents in San Diego, and this holds true of children and of adults. It is especially touching when it comes from children, but here is something from an adult constituent of mine in San Diego:

With the help of many products containing saccharin I have lost 64 pounds. I am still to lose 100 pounds or I will surely die. I am 34 years old and I am doing everything

in my power to avoid early death. One thing I have done is to quit smoking. Smoking can cause cancer. . . . There is no evidence that saccharin has ever caused a single case of cancer in a human being. Please help me by changing the law which forced the FDA to ban saccharin.

Here is a woman who obviously needs to avoid sugar if she is to remain alive. What are we going to do with her? Just take her off sugar and let her continue in her deep psychological craving for this taste of sweetness which is necessary to her? Or are we going to strain her will power to the point where she has got to have the sugar anyway, so she will take that sugar and die?

These are the alternatives we are offering some people.

Another constituent writes:

I have a disease which requires a very strict diet and sugar is totally banned, because my doctor says that use of sugar would cause an early death.

Saccharin is one of the things that helps to make my sparse diet tolerable. I know sugar will kill me. Saccharin is a medical necessity for me.

No one ever claimed saccharin has any medical value. It is nutritionally inert. It does not do any good. It does not do any harm. It is just nothing. But the taste of sweetness is that which is psychologically necessary.

I want to stress the fact of the psychology.

A constituent from Berkeley writes:

My wife has hypoglycemia, a blood sugar disorder. Artificial sweeteners are necessary for her to control her weight due to this imbalance.

Another letter from a Mr. Gosnell, of North Long Beach, I would like to quote from:

I am of a family that traces diabetic origins maternally to the 19th century. I am age 46 and have myself been diabetic over 25 years. As a child I was partially raised by a diabetic uncle and I feel well qualified to express the concern from the diabetic's point of view.

My wife is a naturalized American from Korea and I have assumed responsibility for support for her family and their candidacy for American citizenship, including mother, brother, sister and their families, and we have a son half-Aryan, half-Korean.

So I must earn a living and assume a reasonably normal productive lifestyle to do this.

Although it may seem a small matter, I depend on artificial sweetener to bridge the gap between living as a diabetic and living a normal lifestyle with diabetic adjustments.

As I say, these psychological problems I speak of apply with special force to children. Children need love. They need the symbols of love. They need touching. They need holding. They need our smiles. But they also need the taste of sweetness.

A Mrs. Carter of Eureka, Calif., writes:

I would like to strongly protest the ban of saccharin. My seven-year-old boy is a diabetic and is highly dependent upon the use of saccharin-sweetened foods because of his intolerance to sugar.

A 12-year-old boy by the name of Kenny in Marysville, Calif., writes:

My best friend's little sister has diabetes and if a law is passed to get rid of saccharin she will have no diet drinks for her or anybody else.

And so on, and so on.

Now, here is a family scene I would like to recite from Mr. John Suing of Weed, Calif. He says:

We have two diabetic boys and they have few luxuries with regard to the food they can eat. . . . Meals are the high point in a diabetic's day, and we try to make it as pleasant and enjoyable as we can for our boys. When we top a meal off with a sugar-free drink as a real treat to them, they feel just like those of us who are not diabetic and they forget for a few minutes that they have a disease for which there is no cure.

Mr. President, these are only a few of the hundreds of pleas for help I have received since FDA announced its decision late last spring to ban saccharin.

Millions of Americans are frankly scared for their health. Most pitiably, many are scared for the lives of their children, and their own lives. We cannot in conscience ignore them.

I am very grateful to the distinguished Senator from Massachusetts for calling attention to the risk-benefit ratio. We must take into consideration the risk-benefit ratio. What are the risks of using saccharin? What are the benefits?

As Senator KENNEDY has pointed out, the very young and the very old have little to lose from running the small risks of using saccharin.

In the case of the elderly, the risks attendant upon consumption of sugar are far greater in the remaining years of their lives than the risks attendant upon getting cancer through continued consumption of saccharin over many decades—and one would have to consume for many decades to get cancer at all, which, in itself, is unlikely.

Let me call attention to another important fact. As I watch my own office staff here and as I watch my office staff in San Francisco in my State send to the restaurant or cafeteria for takeout lunches, takeout meals, I am astounded at the number of times they order diet drinks instead of regular sugar-sweetened Coca-Cola or other soft drinks.

This would include both the thin men and women and the fat men and women.

It is as if their choice of drinks reflects the fact which everyone knows, that in the United States we tend to be an extremely overfed population at all levels of society. The poor are overfed as well as the middle class are overfed and the rich are overfed. We eat too darn much. In order to compensate for that fact, people, in general, order diet drinks, sugar-free drinks, almost by habit.

I notice that even very young people do this. I do not know if it is for the same reason, or not, but they do.

But is it not a good thing that they do order the sugar-free drinks? Because if they did otherwise, they would simply aggravate the fact of overconsumption of sugar which physicians and others, and dietitians, have warned us over and over again, the excessive use of sugar in our culture is not only the cause of caries, but many other health problems.

The distinguished Senator from Wisconsin would require with the use of saccharin a warning label stating, as follows: "Warning."

First of all, his amendment would require that the saccharin be only available as a noncaloric table-top sweetener for use only by persons medically required to restrict dietary consumption of carbohydrates and every container from which we could help ourselves to saccharin would contain, according to this amendment, a warning label saying:

Warning. This product contains saccharin, which causes cancer in animals. Use of this product may increase your risk of developing cancer.

I respect the concern for public health expressed by the distinguished Senator from Wisconsin. I respect the fact that he is deeply concerned. Nevertheless, it seems to me that this warning does not correctly state the facts. The warning should read something like this:

Warning. This product contains saccharin which is said by some to cause cancer in some animals, in 18 cases out of 10,000, over a period of x number of years. Use of this product may infinitesimally increase your risk of developing cancer.

If this warning were stated correctly, in full harmony and accord with scientific facts, I would have no difficulty supporting it. But I think this wildly exaggerates the real dangers. The dangers are very, very tiny, indeed.

I have been warned by my physician to keep away from sugar, and for 2 or 3 years I have avoided desserts, ice cream, sugared soft drinks, and so forth. I even have avoided diet drinks, as a matter of fact, in order to lose the taste for sweetness altogether. I am no longer a child, and I think some people love me nevertheless, in spite of the fact that I go for weeks at a time without sweeteners.

I think I have made an adjustment to life free of the taste for sweeteners, but I think this is too much to demand of everyone. Until much, much greater dangers are shown to lie in the consumption of saccharin, I believe we are ill-advised to attempt to legislate against it in any way. I think we are interfering with the freedom of people to make their own choices.

As the distinguished Senator from Massachusetts has said, why do we not legislate against people driving at any rate over 30 miles an hour, when driving very much faster is a known cause of innumerable deaths? The incidence of deaths from automobiles being driven at high rates of speed is well-known. The incidence of death from cancer because of consuming saccharin is not quite proved in the case of Canadian rats. It has not even been established for American rats. But it has not been established for human beings at all.

Therefore, I should like these facts taken into consideration as we approach the vote, both on the amendment and upon the bill itself.

I yield back the remainder of my time.

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

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

Mr. KENNEDY. I yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 5 minutes.

Mr. NELSON. Mr. President, first, I say to the distinguished Senator from

California that the example given of the children cared for by Dr. Bettelheim, who certainly is a great and distinguished scientist, is an important argument. Under the provision that I propose, all those kinds of cases he recites can be adequately managed. The sweetener would be available over the counter.

So it is not an argument against my substitute amendment to argue that these emotionally disturbed children need candy, because they could have all the candy they wanted, by having it made from an artificial sweetener.

As to the obesity question, what is interesting about all this is that the only tests that have been done do not indicate that the use of saccharin helps control obesity, except in the most seriously controlled cases. In fact, I will read a comment of the FDA, dated 1970. This is from the book entitled "The Chemical Feast":

> of cyclamates. In fact, the FDA told the National Academy of Sciences and the general public that "none of the few controlled studies reported to date have established a useful role for nonnutritive sweeteners as weight-reducing aids except under the most carefully controlled conditions." In one controlled study carried out by the Harvard School of Public Health and the Peter Bent Brigham Hospital, involving 247 obese individuals and 100 diabetic persons, no significant difference was apparent when the weight loss of users and nonusers of low-calorie diet foods was compared.

In fact, some animal studies indicate that because of its effects on the blood sugar, saccharin consumption actually may stimulate appetite. Some animals consuming artificial sweeteners actually have gained rather than lost weight.

I go back to the testimony of Dr. Frederickson, Director of NIH, and Dr. Kennedy, Commissioner of the Food and Drug Administration, before the Health Subcommittee that there were no scientifically controlled studies that demonstrate a necessary medical use of saccharin for obesity, heart trouble, or the control of diabetes.

Of course, many people will say it is absolutely necessary, because they happen to believe it is necessary.

We are dealing here with one of the most important laws ever passed by any Congress. It is the statute that requires the Food and Drug Commission to protect the safety of the food chain, and that includes the 1959 Delaney amendment, which provides that in the food chain there may be no food additive that causes cancer in man or animals.

The safety of the food chain is vital because there are untold numbers of sources of food from overseas, within the country, from all parts of the Nation, from thousands of producers.

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

Mr. NELSON. Mr. President, will the Senator yield me 5 additional minutes?

Mr. KENNEDY. I yield.

Mr. NELSON. In order to protect the integrity of that food chain, to protect the health of the people of this country, we passed that statute.

Under that provision alone, the Commissioner is compelled to remove saccharin from the marketplace. He also is compelled to remove it from the marketplace under the provisions of the Delaney clause.

There are all kinds of people who would like to repeal the Delaney clause, and industry would like it repealed. There are distinguished scientists who think it should be modified. I have read what some of the distinguished scientists say, except that not one of them has made a specific proposal that I have read to modify it, except one, and that modification was the proposal that we add in vitro tests to current procedures.

Yes, it is true that we do not know what the threshold level is for a cancer-causing agent. Nobody knows. That is the problem. When and if the time comes—and I doubt it soon will—that we become so scientifically sophisticated in our testing that we can in fact predict that a cancer-causing agent, at a certain threshold level in the food chain, for the 70-year life of the human species, will not cause cancer, fine; that is the time to modify the Delaney amendment. Or, if and when the time comes that there is some food additive in which the benefit is so compelling and so much greater than the risk that we need to use that additive and there is a substantial benefit-to-risk ratio, fine. That time has not arrived, and no scientist I know of says that that time has arrived.

Dr. Frederickson said when that time comes that we have a carcinogenic additive with great health benefits then will be the test of the Delaney amendment.

This is not that time. People can have all the saccharin they want under the substitute amendment that I propose.

This is only one of dozens of agents and additives that will come into dispute over the years. We should leave the settling of these scientific questions under the law as it is.

None of the proponents of this legislation argue that saccharin does not cause cancer. The OTA report clearly states that it does, even though the members were split as to whether it should go off the market or not. They agreed that it is a carcinogenic agent.

Are we really prepared to set the precedent that each time there is some big emotional explosion around the country because some popular additive is found to be carcinogenic we will vote to suspend the law.

There is more to this question than saccharin alone. It is the principle of that statute that needs to be protected.

Under my amendment people can buy all the saccharin they please, but once we permit this carcinogen in the food chain we are going to unnecessarily expose millions of people. We will for the first time have breached the principle of that statute. It is a very, very dangerous thing to do.

Mr. HAYAKAWA. Mr. President, I call attention to the following statement: The dangers found in saccharin to health are speculative. The dangers of sugar to health are not speculative. Those things are proved, they are indisputable.

At the time of the banning of cyclamates, there was an increase in annual domestic consumption of sugar in America of no less than 500 tons. That is an immediately compensatory increase in sugar which is known to be dangerous.

Cancer death rates are also tied to the chlorine in our water, which is said by some to cause bladder cancer, which is about the same ailment that saccharin is supposed to be.

May I read from a story on May 3 in the Washington Post:

> One study showed that women in seven New York State counties served by chlorinated water ran a 44 percent greater risk of dying from cancer or gastrointestinal or urinary tract organisms than comparable water that was not chlorinated.

We have done nothing about that yet, and for a very good reason. All these small studies are speculative. But the most important thing I would like to say is if we adopt the amendment submitted by the distinguished Senator from Wisconsin how are we going to handle the problems of the users of saccharin? When we have, let us say, a dish of canned fruit are we to have a shaker of saccharin to put on each serving? How are we going to know whether we have too little or too much?

Or more importantly when we take soft drinks to a picnic, which we now take without thought and extra preparation, do we have to have along extra saccharin in envelopes or tablets, something to take along to add to each soft drink as we consume it, sweating after a softball game?

What about the use of saccharin in toothpaste? One of the most important things about toothpaste is that most children do not like to brush their teeth. They discovered many years ago that if you make toothpaste more palatable by the addition of saccharin they are willing to brush their teeth. Otherwise you have to stand over them with a club and make them brush their teeth.

What are we going to do, have saccharin in every bathroom to sprinkle on the toothpaste? Who is going to blend it?

From the dental point of view especially I will tell you in all seriousness the dentists are very, very much opposed to this kind of banning of saccharin because one great benefit from the use of saccharin has been the fact that it has made it easier to make children brush their teeth, which they would very rarely do without it.

So with the innumerable inconveniences and the amount of trouble we are going to be put to as a result of this alarmist legislation in the face of speculative dangers, I think it is really putting the American people to an incredible amount of trouble for very, very little reason at all.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that all the amendments by the Committee on Human Resources through page 9, line 2, be considered and agreed to en bloc.

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

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that Mal Sterrett, Ward White, and Stephen Halloway of the Commerce Committee minority staff be accorded the privilege of the floor during debate and consideration and votes on this bill.

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

Mr. NELSON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. KENNEDY. I yield for a unanimous-consent request.

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. John Doyle of the staff of Senator HATHAWAY and Mr. Clair Ingers, a member of the staff of Senator DURKIN, be permitted the privilege of the floor during the course of consideration of the pending legislation and rollcall votes.

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

Mr. KENNEDY. Mr. President, the budget resolution is here. It has precedence over this matter.

We will try to accommodate the privilege matter and then bring up the amendment of the Senator from Nevada.

The floor manager of the budget resolution does not think there will be a lengthy discussion. But it is a privilege matter, and at the request of the leadership we will proceed to that matter and then I believe return to the amendments of the Senator from Nevada and, I think under the process, the Senator from California, and then we will have the substitute resolution. We will proceed in that way. I think we have set the stage here during the debate and discussion of the particular issues and I think we can get to the business of voting very quickly when we resume.

Mr. NELSON. Mr. President, will the Senator yield at that point?

Mr. KENNEDY. I yield.

Mr. NELSON. This is some advance notice to Members.

Mr. KENNEDY. Yes.

Mr. NELSON. A good deal, perhaps all that needs to be said, almost all that needs to be said on the substitute I have proposed has already been said so that certainly for my part I doubt whether I will use the hour. So we may very well be voting earlier than some anticipated.

Mr. KENNEDY. Will the Senator from Florida give us an idea about how long he expects consideration of the conference report to take?

Mr. CHILES. I would hope that this will take less than 15 minutes. There probably will be a rollcall vote.

Mr. KENNEDY. I thank the Senator.

CONGRESSIONAL BUDGET, 1978—CONFERENCE REPORT

Mr. CHILES. Mr. President, I submit a report of the committee of conference on House Concurrent Resolution 341, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 341) revising the congressional budget for the United States Government for the fiscal year 1978, having met, after full and free conference, have been unable to agree, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

Mr. CHILES. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on the Budget be accorded the privilege of on the floor during consideration of and votes on House Concurrent Resolution 341:

John McEvoy, Karen Williams, Sid Brown, Van Ooms, Jim Storey, Dan Twomey, Tom Dine, Rick Brandon, George Merrill, Ira Tannenbaum, Ann Kelley, and Barbara Levering.

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

Mr. BAKER. Mr. President, will the Senator from Florida yield to me a moment?

Mr. CHILES. I yield.

Mr. BAKER. Mr. President, I thank the Senator for yielding.

I am informed that a ranking Republican on the committee is on his way to the floor now.

Mr. CHILES. I think if I can begin with my opening we certainly would not take up any matter that the Senator from Oklahoma is interested in.

Mr. BAKER. I am sure there will be no problem with that.

I have one other alternate situation. The majority leader and I have another matter we might take if it will not unduly impose on the Senator's time to arrange the schedule a little beyond this. Will the Senator yield to us a minute or so for that purpose?

Mr. CHILES. I yield.

ORDER TO PROCEED TO CONSIDERATION OF S. 1303

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator for yielding.

I ask unanimous consent that upon the disposition of the saccharin bill the Senate proceed to the consideration of the legal services legislation, S. 1303.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, I am glad that this has been arranged. This measure also has been on the calendar for some time, and we have tried for some time to arrange this step. I am happy to be able to agree to it and, as I indicated earlier, I shall not object.

There is one thing I wish to note, however. The distinguished junior Senator from California (Mr. HAYAKAWA) has a deep and great interest in this matter, and I have indicated to him that I felt the managers of the bill on both sides would see that he was recognized early to make a general statement in this respect.

I do not ask the majority leader to include that in the order but I wish the record to show that it was in contemplation of that possibility that we were able to reach this accord at this time.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader, and I certainly will do everything I possibly can to see that the Senator from California is protected in that regard.

The PRESIDING OFFICER. Is there objection to the request?

The Chair hearing none, it is so ordered.

Mr. ROBERT C. BYRD. I thank the Senator from Florida.

CONGRESSIONAL BUDGET, 1978—CONFERENCE REPORT

The Senate continued the consideration of the Congressional Budget, 1978—Conference Report, on (H. Con. Res. 341).

Mr. CHILES. Mr. President, the Senate today turns to consideration of the conference report on House Concurrent Resolution 341, the second concurrent resolution on the Federal budget for fiscal year 1978.

The agreement reached in conference strongly supports the position of the Senate conferees and yields a budget deficit lower than either the House or Senate-passed resolution. I urge my colleagues to support the conference agreement.

PARLIAMENTARY SITUATION

Mr. President, let me say a word with respect to the parliamentary situation. This conference report is submitted by the managers on the part of the two Houses in technical disagreement. The disagreement is not over substance. It is a parliamentary technicality. This result has occurred because the parliamentarians of the two Houses have ruled that, even on technical matters, a conference report on a budget resolution must in all its particulars remain within the range established by the action of the two Houses. Thus, where numbers are even slightly below or above the range, the conference must report in disagreement. This is what has occurred here.

The conference substitute contains revised amounts for certain budget aggregates, functional totals, the deficit and the public debt, that are lower than the corresponding figures in either the House or Senate.

So, when the Senate votes today we will first be voting to confirm the conference report in disagreement. A second vote, which will conclude congressional action on this resolution, will then occur on whether to accept the amendment agreed to by the conferees which is spelled out in the statement of managers

accompanying the conference report. Other than this two-step procedure, this consideration of the conference report can proceed as if it had been reported in agreement.

MAJOR FEATURES OF THE CONFERENCE SUBSTITUTE

Mr. President, the conference substitute not only provides binding limits for the overall budget in fiscal year 1978 but sets ceilings for the 17 functions such as National Defense, Agriculture, and the like.

I believe that the conference proposal represents a sound and effective budget for fiscal year 1978. Although it is a tight budget, it will nonetheless provide significant help in reducing our country's continuing unemployment problem while at the same time avoiding a rekindling of double-digit inflation.

Mr. President, let me describe briefly the major features of the conference substitute.

The recommended conference substitute contains aggregate budget totals for fiscal year 1978 as follows:

For revenues, the conferees agreed on a level of $397 billion. This is $900 million below the House resolution and $2.2 billion above the Senate resolution. These adjustments are due to reestimates of tax collections and do not reflect new taxes of any kind.

For budget authority, the conferees agreed on a level of $500.1 billion. This is $7.9 billion below the House and $300 million below the Senate.

For outlays, the conferees agreed on a level of $458.25 billion. This is $1.3 billion below the House and $1.6 billion below the Senate.

For the deficit, the conferees agreed on a level of $61.25 billion. This is $400 million below the House and $3.8 billion below the Senate.

For the Public Debt, the conferees agreed on a level of $775.45 billion. This is $6.5 billion below the House and $3.8 billion below the Senate.

Mr. President, I ask unanimous consent that a table illustrating the differences between the House and Senate resolutions for fiscal 1978 and the conference substitute be printed at this point.

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

BUDGET AGGREGATES AND FUNCTIONAL CATEGORIES, FISCAL YEAR 1978

[In billions of dollars]

	Senate passed	House passed	Conference agreement
Revenues	394.825	397.933	397.0
Budget authority	501.4	508.043	500.1
Outlays	459.9	459.576	458.25
Deficit	65.075	61.643	61.25
Debt subject to limit	779.275	781.94	775.45
050—National defense:			
Budget authority	116.6	116.324	116.4
Outlays	110.1	110.338	110.1
150—International affairs:			
Budget authority	8.3	7.933	8.0
Outlays	6.6	6.579	6.6
250—General science, space and technology:			
Budget authority	4.9	4.861	4.9
Outlays	4.7	4.708	4.7
300—Natural resources, environment and energy:			
Budget authority	24.9	21.625	24.6
Outlays	20.8	19.673	20.0
350—Agriculture:			
Budget authority	2.1	2.114	2.1
Outlays	6.3	6.302	6.3
400—Commerce and transportation:			
Budget authority	20.5	22.445	20.4
Outlays	19.6	19.66	19.6
450—Community and regional development:			
Budget authority	8.2	8.067	8.2
Outlays	10.6	10.448	10.6
500—Education, training, employment, and social services:			
Budget authority	26.1	26.679	26.3
Outlays	26.4	26.916	26.4
550—Health:			
Budget authority	47.7	47.709	47.7
Outlays	44.2	44.183	44.2
600—Income security:			
Budget authority	178.8	186.849	178.6
Outlays	146.6	146.939	146.1
700—Veterans benefits and services:			
Budget authority	19.9	20.355	19.9
Outlays	20.2	20.367	20.2
750—Law enforcement and			
Budget authority	3.8	3.8	3.8
Outlays	4.0	3.95	4.0
800—General government:			
Budget authority	3.8	3.8	3.8
Outlays	3.8	3.85	3.85
850—Revenue sharing and general purpose fiscal assistance:			
Budget authority	9.6	9.569	9.6
Outlays	9.7	9.68	9.7
900—Interest:			
Budget authority	41.7	41.713	41.7
Outlays	41.7	41.713	41.7
920—Allowances:			
Budget authority	.9	1.0	.9
Outlays	1.0	1.08	1.0
950—Undistributed offsetting receipts:			
Budget authority	−16.4	−16.8	−16.8
Outlays	−16.4	−16.8	−16.8

Mr. CHILES. Mr. President, a major decision by the conferees was to urge prompt action to solve the short- and long-term financial problems of the social security system, but not to increase payroll taxes in fiscal 1978 in view of the importance of sustaining the economic recovery. While the reserves have been declining, it is clear that the system will remain solvent through fiscal year 1979, allowing corrective action to take effect when the economy has recovered more fully. The conference thus supported the Senate position on this major issue.

Mr. President, the Senate should be aware that this conference agreement leaves little room for enactment of new programs. This is a narrowly tailored budget which can accommodate appropriations action to date and supplementals for possible later requirements known at this time. Practically no margin exists, however, for new programs on which Congress has not already made significant progress. This is the final congressional budget and the legislative season for fiscal 1978 is virtually over. In comparison with the first budget resolution, the conference agreement represents a reduction of $3.4 billion in budget authority and $2.7 billion in outlays. These reductions are consistent with appropriations action to date and reflect technical reestimates of Federal expenditures.

If Congress is to exercise a responsible fiscal policy, restraint with respect to any future spending is essential. Restraint exercised by the Budget Committee or the committee of conference loses all effectiveness without the support of at least 51 Senators and 218 Members of the House. Cooperation in this effort is essential if the budget process is to succeed.

Mr. President, I think we can be proud that for the second full year, Congress has shown the discipline to work within all the limits of the budget process. Congress has responded to changing conditions and has voted for changes in spending priorities. But it has not made any spending decisions without keeping to the limits of the budget resolution or voting to change those limits.

ECONOMIC GOALS AND FISCAL POLICY

Mr. President, the spending and revenue levels in the conference agreement reflect a fiscal policy aimed at a continuation of the economic recovery, a further reduction of unemployment and moderation of inflation in 1978. We expect this policy to lead to a reduction in the unemployment rate. By the end of 1978, we hope the present level of 7.1 percent will drop to 6.3 percent. Over 3 million additional jobs will be created during 1978 through the expansion of the economy and the employment programs in this and previous budgets.

Steady long-term growth is essential to achieve a balanced budget, a reduction in unemployment and lower inflation. The fiscal policy contained in this budget prudently provides for a moderate rate of growth which is consistent with lower inflation. The rate of inflation is forecast to decline to 5.6 percent in 1978 from 6.5 percent in 1977.

BUDGET DEFICIT

Mr. President, the conference agreement is consistent with movement toward a balanced budget at the earliest possible date.

The deficit in this conference substitute, $61.25 billion, is about $3.4 billion lower than the first budget resolution. As in the past 3 years, the Federal deficit projected in these recommendations is largely a result of unacceptably low levels of economic activity and high levels of unemployment. A weak economy shrinks Government revenues at the same time that it raises costs of unemployment compensation and other income support programs. Because large budget deficits result from a weak economy, steady economic growth must be maintained. Unacceptable budget deficits can be eliminated only by a strong economy.

REVENUES

The conference agreement establishes a revenue floor of $397 billion, which is $2.2 billion higher than the revenue floor contained in the Senate resolution. This change is attributable entirely to an upward adjustment in estimated revenues under current law, and not to any assumed tax increases affecting fiscal year 1978. The conferees expressly recommend no increase in social security taxes in fiscal year 1978 revenue collections which could hamper the continuing economic recovery.

The conferees assume enactment of energy tax legislation which will reduce fiscal year 1978 revenues by $1 billion.

The revenue floor of $397 billion reflects an agreement by the conferees to accept the Senate position supported by

the administration that the entire cost of the existing earned income credit program should be treated as a reduction of revenues. The House had taken the position that earned income credit payments in excess of a recipient's tax liability should be treated as an increase in spending.

SPENDING

Mr. President, let me now indicate the major provisions of the conference agreement in the functional categories of the budget:

NATIONAL DEFENSE AND INTERNATIONAL AFFAIRS

Mr. President, for the national defense function, the House resolution provided budget authority of $116.3 billion and outlays of $110.3 billion; the Senate resolution provides budget authority of $116.6 billion and outlays of $110.1 billion. The conference substitute provides budget authority of $116.4 billion and outlays of $110.1 billion.

These totals fully provide for the current status of congressional action on major defense bills and assumptions on possible later requirements in the Defense function for items such as the October 1977 pay raise for civilian and military employees of the Department of Defense and favorable action on the President's cruise missile and B–1 requests.

The ceilings established in the conference agreement provide for a growth of $7.6 billion in budget authority over the fiscal year 1977 third concurrent resolution total and a growth of $12.9 billion in outlays over our current outlay estimate for fiscal year 1977.

This very generous increase should provide the Department of Defense the impetus needed to modernize and expand our strategic and general purpose forces, improve the countrys' combat readiness, and contribute to our international alliances.

In the international affairs function, the House resolution provided budget authority of $7.9 billion and outlays of $6.6 billion. The Senate resolution provided budget authority of $8.3 billion and outlays of $6.6 billion.

The conference agreement provides budget authority of $8 billion and outlays of $6.6 billion.

The conference agreement takes into account congressional reductions from the administration's overall request for foreign assistance. It also reflects congressional approval of a significant increase over prior year amounts in U.S. contributions to multilateral economic development programs while holding bilateral economic development assistance to last year's level.

HUMAN RESOURCES

Mr. President, the conference agreement for the Human Resources functional categories retains the basic policies adopted by the Senate last week for substantial funding increases in education programs; the veterans' medical care system and other veterans benefits; programs aimed at improving health care services, planning, and research; and social service grants.

In the income security function, the House resolution provided $186.8 billion in budget authority and $146.9 billion in outlays. The Senate resolution provided budget authority of $178.8 billion and outlays of $146.6 billion.

A major conference issue—action on social security financing—was resolved in the Senate's favor. This, plus other adjustments of a technical nature, result in a conference substitute for income security of $178.6 billion in budget authority and $146.1 billion in outlays.

Resources for the social security trust funds, either from payroll taxes or general revenues, count as budget authority in function 600, income security. The House provided $6.4 billion in budget authority for social security financing which could have accommodated either the Carter proposal for transfer from the general revenues or increased taxes. The Senate urged prompt action on this matter, but recognizing that the systems will remain solvent through fiscal year 1977, made no provision for tax increases in fiscal year 1978.

The conferees believe prompt action is needed to correct both the long-term and short-term deficits now projected for the social security trust funds. It is unclear at this time, however, whether any of the several possible reforms will be adopted. The conferees urge that the responsible committees report legislation putting social security on a sound financial footing.

After considerable debate, however, the conferees agreed that any payroll tax increases Congress may consider in this regard should not take effect during fiscal year 1978 because major increases in such taxes could not be justified at this time given the present state of the economy. Such increases could seriously hamper continued recovery from the recent recession. Thus, the conferees adopted the Senate position not to increase budget authority for this purpose in fiscal year 1978.

The Senate totals for the Health function of $47.7 billion in budget authority and $44.2 billion in outlays were retained. These totals assume that the net effect of savings from pending cost control legislation and other health legislation such as improvements to medicaid for low income children will reduce outlays by $200 million compared to spending under current law.

The conference agreement for education, training, employment, and social services increased the Senate total for budget authority by $200 million to $26.3 billion. This increase will facilitate the provision of supplemental funding for congressional initiatives now pending. The Senate outlay total of $26.4 billion was retained.

Mr. President, the second budget resolution for fiscal year 1978 will continue the strong congressional commitment to public service jobs for unemployed adults and strong initiatives to combat youth unemployment. The economic stimulus supplemental for fiscal 1977 will fund 725,000 CETA jobs by the end of fiscal 1978, to be targeted mainly on the long-term unemployed and persons with low income, and a major expansion of youth jobs and training programs. The conferees agreed to allow for a substantial forward funding of CETA jobs into fiscal 1979—3.8 billion in budget authority—to assure local prime sponsors that this sizable program will not encounter the funding uncertainty that plagued it last year.

The conferees retained the Senate totals for veterans benefits and services for $19.9 billion in budget authority and $20.2 billion in outlays. These levels will accommodate veterans legislation passed or pending in the Senate including improved pension and medical benefits.

The House resolution counted as fiscal 1978 budget authority $1.1 billion of fiscal 1977 budget authority that was extended for one year in the 1978 Labor-HEW appropriation bill. The House receded to the Senate on this issue, but the conferees agreed to recommend a uniform method to account for such extensions next year, and to apply the new method to similar instances in all appropriations bills in fiscal 1979.

PHYSICAL RESOURCES

In most of the physical resource areas, the conferees agreed to functional ceilings identical to those in the budget resolution as passed by the Senate.

In function 450, community and regional development, the conference agreement allows for an interim response to the heavy demand for Small Business Administration disaster loans caused by the recent drought, as agreed to in the Senate. The conferees recommend an immediate review of this program in order to eliminate overlap and duplication with other forms of disaster assistance and to rationalize eligibility standards and requirements. As was agreed in the Senate debate on this function, investigation of the program may determine that additional funds will be needed. If so, the budget process is sufficiently flexible to respond to the emergency needs of the farmers.

In function 300, natural resources, environment, and energy, the conferees agreed upon budget authority of $24.6 billion and outlays of $20.0 billion. While these amounts reflect a compromise between the House-passed and Senate-passed levels, they are adequate to accommodate the national energy plan and environmental programs. The $3.9 billion of extra budget authority in this function is the single major increase above the first budget resolution targets.

The conferees agreed to reflect all energy-related legislation in the national resources, environment, and energy function, consistent with the Senate resolution. This is an example of the "mission-budget" approach, which lets the Congress focus on the purposes for which funds are being allocated, not just on which agency is doing the spending.

ALLOCATION TO SENATE COMMITTEES UNDER SECTION 302 OF THE CONGRESSIONAL BODGET ACT

Mr. President, section 302(a) of the Congressional Budget Act provides that the statement of managers accompanying a conference report on each budget resolution shall include an allocation of the budget totals among the committees of the House and Senate. This is the so-called "crosswalk" provision.

The allocations to the Senate commit-

tees pursuant to section 302(a) are contained on page 12 of the conference report on House Concurrent Resolution 341.

COORDINATION OF FISCAL AND MONETARY POLICIES

In the next 2 years, coordination of fiscal and monetary policies will become increasingly important. As the Congress maintains fiscal discipline and restrains fiscal policy, it will be necessary that monetary policy be expansionary enough to encourage the private investment required for increases in productivity and growth.

The last several years have taught us that fiscal and monetary restraint cannot prevent food and energy price increases even at unacceptably high levels of unemployment. The social costs of fighting unemployment with inflation, or inflation with unemployment, are simply too high.

Mr. President, we can reconcile this dilemma only through careful coordination of fiscal and monetary policies. However, in pursuing these policies, we must not mistake inflation caused by restricted supplies with that caused by excess demand. Price increases caused by increases in energy prices or other vital areas should not cause us to adopt restrictive fiscal and monetary policies.

CONCLUSION

Mr. President, in closing let me say a word about enforcement of the mandatory limits in the second budget resolution.

Once this resolution is adopted the spending and revenue limits are binding on the Congress. Any legislation which is outside the bounds of aggregate totals will be subject to a point of order. The Budget Committee seeks the cooperation of all committees in refraining from reporting legislation which would breach the spending ceilings or pierce the revenue floor. Members should also refrain from proposing costly amendments to pending legislation which might have a similar impact.

The budget process will succeed and its principles will prosper only with the cooperation and diligence of the Senate and the Congress as a whole.

Mr. President, I urge the Senate to support this conference agreement so we can continue to proceed in an orderly and responsible manner to live within the constraints of the congressional budget. In my view, this is the best prescription for strengthening the public's confidence in the ability of the Government to cope with and to resolve the Nation's financial problems.

Mr. President, I yield to the distinguished ranking minority member of the committee, the Senator from Oklahoma (Mr. BELLMON), and extend to him my thanks for the work he has done in the Budget Committee, and certainly his work in connection with this conference.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. BELLMON. I thank my friend from Florida for yielding to me.

Mr. President, I rise to support the conference result on House Concurrent Resolution 341, the second budget resolution for fiscal year 1978.

I would like to begin my comments by speaking first of the work of the distinguished senior Senator from Florida (Mr. CHILES), who acted as chairman of the Senate conferees.

It is not uncommon for one Senator to say nice things about another Senator on the floor of the Senate. In fact, such comments frequently appear merely to be routine and polite. I want my words now to be anything but routine. The facts are that Senator CHILES, with less than a 1-hour notice, was thrown into the breach to act as chairman of the Senate conferees due to the illness of Senator MUSKIE. Through Senator CHILES' skillful management and great negotiating ability, we return now to the Senate floor with a conference result wherein the Senate prevailed on virtually every single conference issue. I believe that Senator CHILES did a remarkable job and deserves the heartfelt thanks of the entire Senate.

In his opening remarks, Senator CHILES has gone into some detail regarding the conference decisions in each function. Without repeating that detail, let me remind the Senate of the major decisions. The conference actually cut spending below the levels in both the Senate and House versions of the budget.

I think that is rather remarkable, Mr. President. The conference cut budget authority by $1.3 billion below the Senate level, to a conference level of $500.1 billion. In outlays, the conference cut $1.65 billion off the Senate level to the conference result of $458.25 billion. Most dramatically, the deficit was cut by over $3.8 billion from the Senate level to the conference result of $61.25 billion.

I might say parenthetically that I believe it is likely the deficit will be considerably less than that, because of underspending. In my estimation, the cuts were responsible and realistic. The outlay cuts occurred primarily in the energy function and in the income security function. Budget authority cuts were more widespread and were based primarily on later information regarding congressional action.

Having expressed praise for the conference result, let me now express some concern about the immediate future. Recent economic statistics are giving mixed signals, but it appears likely that a somewhat static economy lies ahead, at least an economy which grows at a slower rate than has been the case in the last two quarters. The Budget Committee, like every Member of the Senate, is concerned about this, but it should be noted that the budget allows for many programs to correct this sluggishness. These programs include accelerated public works, CETA jobs, and countercyclical revenue sharing, among many other programs. In general, this budget does contain fiscal stimulus and many of these programs in the budget are only now coming into the spending stream. Given this situation, it seems to me that the wisest course of action is to maintain prudence and caution when contemplating any changes to the budget. Too often in the past Congress and the administration have reacted quickly to spurts and declines in economic statistics only to have to rescind their policy initiative when underlying economic trends became more evident. This pattern of ragged policymaking is disruptive to the U.S. economy. The budget which the conferees have agreed to is, I believe, a prudent and responsible one—reacting to long-term economic trends rather than to short-term economic indicators.

I am particularly concerned to note recent newspaper articles indicating that some sort of budget gimmick might be contemplated by the administration, and here I refer to the possibility of anticipating a fiscal year 1977 and 1978 shortfall in spending and thereby prespending that anticipated shortfall even before the numbers are known. This budget does not contemplate that the shortfall be anticipated or that the priority ranking in the budget be disrupted by taking money from one function and spending it in another.

Finally, Mr. President, let me speak for a moment about the social security financing problem. I know some of the members of the Finance Committee—and perhaps other Senators—are concerned that the conference agreement does not assume increased financing for social security, beyond that provided under current law, in fiscal year 1978. I remind my colleagues that this is the position we took when we passed our version of the second budget resolution last Friday. I call attention to the discussion of this question by Senators LONG, MUSKIE and myself on pages 28477–28479 of the September 9 CONGRESSIONAL RECORD.

The House conferees wanted to leave room in the budget authority provided for in this resolution for several billion dollars of added social security financing in fiscal year 1978. I believe the conferees' decision to accept the Senate position—and thus assume no added fiscal year 1978 financing for social security—is a sound one for the following reasons:

First, by shifting money from the retirement trust fund to the disability trust fund, Congress can assure that all benefits can be paid until at least 1982 without any increase in payroll taxes or other new financing.

The point here is that there is no reason for anyone to be concerned that the social security trust fund is about to go broke. There is money in the different trust funds that can be moved around to where it is needed, so that all those who are entitled to social security checks will be receiving those checks, regardless of the fact that we do not provide for any social security tax increase. This is obviously not a solution to the problem, but it does point out that we will not jeopardize anyone's benefits if we delay the effective date of any new financing arrangements until fiscal year 1979 or fiscal year 1980. We have time for careful consideration, rather than quick-fix solutions to this problem.

Second, a social security tax increase in fiscal year 1978 could seriously inhibit the economic recovery by in-

creasing both unemployment and the inflation rate.

Third, it is not yet clear what kind of social security financing plan the Senate Finance and House Ways and Means Committees are going to produce. It seems doubtful that major changes can be reported by the committees, debated and passed in both Houses, and differences reconciled in time for both Houses and the President to give final approval so that a tax increase could take effect January 1, 1978. Looking toward an effective date of 1979 or 1980 seems much more realistic.

Frankly, I cannot in any way anticipate that the Congress is going to pass and put into effect a social security tax increase prior to the election of 1978. This has not happened in the past, and I am of the opinion it is not going to happen next year.

Fourth, we should avoid hasty "fixes" for social security financing problems, so that we can consider adequately both the economic and employment effects of tax increases and the possibility of benefit changes which could reduce future outlays under social security. In this regard, I am very pleased that both the House Ways and Means Committee and the Senate Finance Committee seem ready to act on the critical "decoupling" issue. A legislative change to reduce the unjustifiable escalation in benefits for those who retire in the future would cut in half the long-term actuarial deficit in the social security trust funds.

Also, some other features of social security benefits—such as the extreme "tilt" in favor of retirees with low earnings histories, need to be reexamined in light of improvements that have been made in recent years in public assistance programs.

The Senate Budget Committee has asked the Congressional Budget Office to complete a major study on possible benefit changes in social security. That report will be available by early next year. In the meantime, I am very pleased that the House Ways and Means Committee has begun serious examination of some of these benefit questions.

In short, Mr. President, I believe we must straighten out social security financing problems as soon as possible so as to reassure those receiving social security that their benefits will continue. But we need not rush in with tax increases or other action to dump money into social security without careful studies of all reasonable options for both cutting costs and increasing revenues. This budget resolution in no way inhibits an orderly solution of the social security financing problem.

In my mind, it contributes to the likelihood of such a solution.

In conclusion, Mr. President, I urge support of this conference report which is a respectable and responsible effort. I also urge prudence and caution as we monitor the economy in the months ahead.

Again, I would like to pay special tribute to Senator CHILES for the excellent assistance he gave this conference.

Mr. CHILES. I thank the Senator from Oklahoma, Mr. President, for the excellent work he did, and I would like to thank the staff for the work they did, with regard to the conference. There were many negotiations and much late work which the staff put in so that we could arrive at an agreement in an orderly fashion.

To secure approval of the conference report, two votes are required. One is, Mr. President, that I move that the conference report be agreed to.

The PRESIDING OFFICER. Is all time yielded back? All time is yielded back. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. CHILES. To secure the final passage on the entire matter, Mr. President, I move that the Senate concur in the House amendment to the Senate amendment to House Concurrent Resolution 341. I ask for the yeas and nays on that question, Mr. President.

The PRESIDING OFFICER. The clerk will state the House amendment.

The legislative clerk read as follows:

AMENDMENT TO SENATE AMENDMENT

In lieu of the matter proposed to be inserted by the Senate engrossed amendment, insert:

That the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1977—

(1) the recommended level of Federal revenues is $397,000,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is $1,100,000,000;

(2) the appropriate level of total new budget authority is $500,100,000,000;

(3) the appropriate level of total budget outlays is $458,250,000,000;

(4) the amount of the deficit in the budget which is appropriate in the light of economic conditions and all other relevant factors is $61,250,000,000; and

(5) the appropriate level of the public debt is $775,450,000,000, and the amount by which the temporary statutory limit on such debt should accordingly be increased is $75,450,000,000.

SEC. 2. Based on allocations of the appropriate level of total new budget authority and of total budget outlays as set forth in paragraphs (2) and (3) of the first section of this resolution, the Congress hereby determines and declares pursuant to section 310(a) of the Congressional Budget Act of 1974 that, for the fiscal year beginning on October 1, 1977, the appropriate level of new budget authority and the estimated budget outlays for each major functional category are as follows:

(1) National Defense (050):
(A) New budget authority, $116,400,000,000.
(B) Outlays, $110,100,000,000.
(2) International Affairs (150):
(A) New budget authority, $8,000,000,000.
(B) Outlays, $6,600,000,000.
(3) General Science, Space, and Technology (250):
(A) New budget authority, $4,900,000,000.
(B) Outlays, $4,700,000,000.
(4) Natural Resources, Environment, and Energy (300):
(A) New budget authority, $24,600,000,000.
(B) Outlays, $20,000,000,000.
(5) Agriculture (350):
(A) New budget authority, $2,100,000,000.
(B) Outlays, $6,300,000,000.
(6) Commerce and Transportation (400):
(A) New budget authority, $20,400,000,000.
(B) Outlays, $19,600,000,000.
(7) Community and Regional Development (450):
(A) New budget authority, $8,200,000,000.
(B) Outlays, $10,600,000,000.
(8) Education, Training, Employment, and Social Services (500):
(A) New budget authority, $26,300,000,000.
(B) Outlays, $26,400,000,000.
(9) Health (550):
(A) New budget authority, $47,700,000,000.
(B) Outlays, $44,200,000,000.
(10) Income Security (600):
(A) New budget authority, $178,600,000,000.
(B) Outlays, $146,100,000,000.
(11) Veterans Benefits and Services (700):
(A) New budget authority, $19,900,000,000.
(B) Outlays, $20,200,000,000.
(12 Law Enforcement and Justice (750):
(A) New budget authority, $3,800,000,000.
(B) Outlays, $4,000,000,000.
(13) General Government (800):
(A) New budget authority, $3,800,000,000.
(B) Outlays, $3,850,000,000.
(14) Revenue Sharing and General Purpose Fiscal Assistance (850):
(A) New budget authority, $9,600,000,000.
(B) Outlays, $9,700,000,000.
(15) Interest (900):
(A) New budget authority, $41,700,000,000.
(B) Outlays, $41,700,000,000.
(16) Allowances (920):
(A) New budget authority, $900,000,000.
(B) Outlays, $1,000,000,000.
(17) Undistributed Offsetting Receipts (950):
(A) New budget authority, —$16,800,000,000.
(B) Outlays, —$16,800,000,000.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

Mr. CHILES. I believe some Senators are on their way to the floor, Mr. President.

The PRESIDING OFFICER. There is not a sufficient second.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. CHILES. Mr. President, I renew my request 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. Is all time yielded back? All time is yielded back. The question is on agreeing to the motion of the Senator from Florida. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCLURE (after having voted in the negative). Mr. President, on this vote, I have a live pair with the Senator from Maine (Mr. MUSKIE). If he were present and voting, he would vote "aye." I therefore withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent due to illness.

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

Mr. STEVENS. I announce that the Senator from Missouri (Mr. DANFORTH), the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Kansas (Mr. PEARSON), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 68, nays 21, as follows:

[Rollcall Vote No. 375 Leg.]

YEAS—68

Abourezk	Glenn	Moynihan
Anderson	Griffin	Nelson
Baker	Hart	Nunn
Bayh	Haskell	Packwood
Bellmon	Hatfield	Pell
Bentsen	Hathaway	Percy
Biden	Heinz	Randolph
Brooke	Hollings	Ribicoff
Burdick	Huddleston	Riegle
Byrd, Robert C.	Inouye	Roth
Cannon	Jackson	Sarbanes
Case	Javits	Sasser
Chafee	Kennedy	Sparkman
Chiles	Leahy	Stafford
Church	Long	Stennis
Clark	Magnuson	Stevens
Cranston	Mathias	Stevenson
Culver	Matsunaga	Stone
Dole	McGovern	Talmadge
Domenici	McIntyre	Wallop
Eagleton	Melcher	Weicker
Eastland	Metcalf	Williams
Ford	Metzenbaum	

NAYS—21

Allen	Hansen	Schmitt
Bartlett	Hatch	Schweiker
Bumpers	Hayakawa	Scott
Byrd, Harry F., Jr.	Helms	Thurmond
	Laxalt	Tower
Curtis	Lugar	Zorinsky
DeConcini	Morgan	
Durkin	Proxmire	

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

McClure, against

NOT VOTING—10

Danforth	Humphrey	Pearson
Garn	Johnston	Young
Goldwater	McClellan	
Gravel	Muskie	

So the motion to concur in the House amendment to the Senate amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, this has been cleared with the distinguished minority leader. I ask unanimous consent that the Senate go into executive session to consider a nomination for a circuit judgeship that involves a nominee from the State of Nevada.

I make this request at the urging of Mr. CANNON, and the nomination has been supported in the Judiciary Committee by the other Nevada Senator. So I ask that the Senate waive the 1-day rule and proceed.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER (Mr. CLARK). The nomination will be stated.

THE JUDICIARY

The second assistant legislative clerk read the nomination of Procter R. Hug, Jr., of Nevada, to be U.S. circuit judge for the ninth circuit.

Mr. CANNON. Mr. President, this nominee has been approved and supported by both Senator LAXALT and myself. The nominee is an outstanding citizen of my State. We are proud to have him nominated and supported for the position on the ninth circuit court. Nevada has no representation on the ninth circuit at this time, and I hope my colleagues will support the nomination.

The PRESIDING OFFICER. The nomination is considered and confirmed.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. CANNON. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resumed the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

SACCHARIN STUDY, LABELING, AND ADVERTISING ACT

The Senate continued with the consideration of S. 1750.

The PRESIDING OFFICER. The question is on the amendment of the Commerce Committee to the amendment of the Human Resources Committee, beginning on page 9, line 3, striking all through and including line 6, page 10.

Mr. GLENN. Mr. President, I ask unanimous consent that Thomas Dougherty, of my staff, have the privilege of the floor during the consideration of S. 1750.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that Hargrave McElroy, a member of my staff, have the privilege of the floor during the debate and votes on all matters occuring today and tomorrow.

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

Mr. CANNON. Mr. President, I should like to explain briefly to my colleagues the action taken by the Senate Committee on Commerce, Science, and Transportation, when this legislation was referred to us for consideration.

The Commerce Committee carefully considered that portion of section 6(a) dealing with advertising on electronic media. The language agreed upon by the Human Resources Committee would require broadcasters to carry health warning messages within the advertisements carried by radio and TV stations. Just how those so-called health messages were to be carried was for determination by the HEW Secretary. In some instances, the health message warning might well require more air time than the commercial product message.

The Commerce Committee determined by a vote of 13 to 3 that the inconclusiveness of the scientific and medical data relating to saccharin and its potential health risks, combined with the important ramifications of restricting commercial speech, required deletion of that portion dealing with electronic media advertising, pending receipt by Congress of the more conclusive information as to the health benefits and risks of food products containing saccharin. This medical information is to be provided pursuant to other provisions of the Saccharin Study, Labeling and Advertising Act, which would mandate a study of the health risks and benefits of saccharin, together with an assessment of current testing methodologies and technical capabilities for predicting the carcinogenicity or other toxicity of saccharin in humans.

The majority of members in the Commerce Committee felt that while these studies and evaluation are being conducted, and given the present lack of consensus within the scientific and medical communities, imposition of affirmative health warning obligations on the advertisers of food products containing saccharin, or any additional restrictions of the electronic media, could not be justified. I believe very strongly that the warning labeling requirements on the package, the vending machine and store display requirements of S. 1750, as well as the two studies are quite sufficient to convey to the public the possible risks from saccharin. Accordingly, the Senate Commerce Committee recommends to the full Senate that no restrictions be placed on electronic media advertising of food products containing saccharin at this time.

Mr. President, the Commerce Committee was also concerned that printed advertising be treated equally but we did not act on the print provisions because of the limitation of the committee referral. When the committee amendments are disposed of, I will offer an amendment to delete the provision requiring the print sector to carry health messages within advertisements of food products containing saccharin.

It is important for members to understand that the Commerce Committee's position on the advertising provisions in no way affects the labeling requirements, the vending machine and store display requirements of the bill, or the two studies called for in S. 1750. As a matter of fact, I am a very strong supporter of those provisions, because I believe they provide the kind of education, information, and safeguards for those citizens who use food products containing saccharin.

I do not see why we should go beyond this point when the available data on this subject remain inconclusive.

Advocates of the Human Resources language on advertising requirements will maintain that Commerce Committee members do not fully comprehend or understand the medical information available or appreciate the importance and effectiveness of health warning messages. I assure the distinguished floor manager that Commerce members gave careful attention to the Human Resources Committee Report 95–353. We reviewed the medical data presented as well as the recommendations of the medical experts in this area.

I can agree that serious questions have been raised, but I am not convinced that they have been fully answered. For instance, one of the reasons the Commerce Committee found the medical data and reports to be "inconclusive" was that the Human Resources report on page 6 indicates that two epidemiological studies found:

. . . thus far no association between human use of saccharin and the development of bladder cancer; however, some questions have been raised about the adequacy of sample sizes, particularly in the Wynder study.

I know Dr. Wynder personally, and I have a high regard for his professional qualifications and findings.

As to our not having an appreciation for the importance of the health warning messages, I fail to see how that conclusion was reached. I have already indicated my full support and agreement in mandating the labeling requirements on the food product. To impose an additional requirement that all advertisers of food products containing saccharin carry health message warnings as part of their ads strikes me as imposing unnecessary burdens.

There has been considerable debate and coverage of the saccharin controversy. There are many who are convinced that there are real risks associated with saccharin consumption, and there are others who very strongly feel the benefits of saccharin outweigh the possible risks. The point is that there is an existing controversy and we do not have the final answers. If we did, much of this debate would be unnecessary. I believe most of the provisions of S. 1750 provide for the means for Americans to make an informed and intelligent decision as to whether they want to use saccharin-contained products. The advertising provisions go beyond this objective and mandate instead that there be additional discussions and debate every time you advertise a product containing saccharin. If the medical data were conclusive, I would have no trouble with such a requirement.

The fact is that the medical findings are not conclusive; therefore, I cannot agree to imposing this type of unnecessary burden upon the print or electronic media. It is my hope that the full Senate will support the recommendations of the Commerce Committee.

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

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, will the Senator from Massachusetts yield 16 seconds for a comment?

Mr. KENNEDY. I am glad to yield 60 seconds to the Senator.

Mr. NELSON. Mr. President, for the purpose of the readers of the RECORD, I think nobody contests that saccharin is carcinogenic in animals. I will simply read from the report of the Office of Technology Assessment which did the study. I read from page 9, item 5:

Laboratory evidence demonstrates that saccharin is a carcinogen. Prolonged ingestion of saccharin at high levels caused a significant increase in the incidence of bladder cancer in rates in three independent experiments.

I do not think any scientists challenge the validity of these tests demonstrating that point.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am going to request that we have a live quorum. I do not know how much time remains to the Senator from Nevada, but I think we should have the membership of the Senate here, and then each take 8 or 9 minutes and let the Senate resolve this particular issue.

We are talking here to four members of the Health Committee who have heard me, and I have heard them, on this particular issue. I do not want to delay the Senate. We have a lot of business. But I do think the membership, to the extent we can, should hear it. It is a very important decision that we are going to make.

I do not know how much time remains to the Senator.

The PRESIDING OFFICER. The Senator from Nevada has 10 minutes remaining.

Mr. KENNEDY. I ask for a live quorum, with the time to be charged against the bill. Then, with the clear intention of the Senator from Nevada using his 10 minutes, we will try to use an equal amount of time and permit the vote.

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

Mr. KENNEDY. I yield to the Senator from Virginia.

Mr. SCOTT. Mr. President, I appreciate the distinguished Senator yielding. I just wish to make very brief comments with regard to the bill generally.

As the Senator will recall, I proposed an amendment to the agriculture appropriations bill some weeks ago that would have had the effect of postponing for fiscal year 1978 any prohibition on the sale of saccharin by the Food and Drug Administration. Of course I preferred consideration of my own bill which would have generally permitted the FDA greater flexibility in the regulation of food additives, such as saccharin. However, it did seem reasonable in light of conflicting scientific and medical evidence at the time that a delay of 1 year would preserve freedom of choice for millions of Americans needing a sugar substitute but still allow continued research and study on this important health-related issue.

At the request of the distinguished Senator from Massachusetts, joined by the Senator from Wisconsin (Mr. NELSON), and the Senator from North Dakota (Mr. YOUNG), I withdrew my amendment, with the assurance that our committees would soon report legislation relating to the saccharin ban.

So I thank the able chairman of the health and scientific research subcommittee and other Senators for having provided us with a measure which we can consider more fully at this time. Certainly I can generally support the bill, particularly with regard to the 18-month moratorium on the proposed ban. It seems reasonable that citizens generally should be informed of the benefits and risks of using saccharin and allowed to make their own personal decisions without undue government interference. We may impose some restrictions upon its use, but to have a ban under the conditions which it was proposed is something that I do not believe most people of the country want. Removal of saccharin from the marketplace would impose, if the ban were allowed to take effect, considerable hardships on many individuals who prefer using an artificial sweetener.

Again I want to thank the Senator and those involved in bringing this matter before the Senate at this time so that we could consider it.

Mr. KENNEDY. I thank the Senator from Virginia.

QUORUM CALL

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum, and I ask that the time be charged against my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 23 Leg.]

Allen	Griffin	Nelson
Anderson	Hathaway	Pell
Burdick	Heinz	Randolph
Byrd, Harry F., Jr.	Helms	Schweiker
Cannon	Huddleston	Scott
Clark	Jackson	Wallop
Dole	Javits	Williams
Durkin	Kennedy	
	Mathias	

The PRESIDING OFFICER. A quorum is not present.

Mr. KENNEDY. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

Pending the execution of the order, the following Senators entered the Chamber and answered to their names:

Abourezk	Cranston	Haskell
Baker	Culver	Hatch
Bartlett	Curtis	Hatfield
Bayh	Danforth	Hayakawa
Bellmon	DeConcini	Hollings
Bentsen	Domenici	Inouye
Biden	Eagleton	Johnston
Brooke	Eastland	Laxalt
Bumpers	Ford	Leahy
Byrd, Robert C.	Glenn	Long
Case	Goldwater	Lugar
Chafee	Gravel	Magnuson
Chiles	Hansen	Matsunaga
Church	Hart	McClure

McGovern	Percy	Stennis
McIntyre	Proxmire	Stevens
Melcher	Ribicoff	Stevenson
Metcalf	Riegle	Stone
Metzenbaum	Roth	Talmadge
Morgan	Sarbanes	Thurmond
Moynihan	Sasser	Tower
Nunn	Schmitt	Weicker
Packwood	Sparkman	Zorinsky
Pearson	Stafford	

The PRESIDING OFFICER. A quorum is present.

Mr. KENNEDY. Mr. President, for the information of Senators, I do not think we will be taking much additional time before a vote, but we wanted to get as much attendance as we could.

I yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the Senator.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the course of the session of the Senate beginning at 2 p.m. today on the utility rate reform measure.

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

SACCHARIN STUDY, LABELING, AND ADVERTISING ACT

The Senate continued with the consideration of S. 1750.

Mr. KENNEDY. Mr. President, for the benefit of the Senate, there are 2 minutes remaining on the Cannon amendment, at the conclusion of which I intend, for our side, although we have more time, to take just 10 minutes or less, so that we can get to a vote on this matter within the next 20 minutes.

Mr. President, may we have order?

The PRESIDING OFFICER (Mr. SARBANES). The Senate will be in order. The Senator from Massachusetts may proceed.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

What we have attempted to do with this legislation is to demonstrate that the basis of the studies that have been made is that there are health benefits from the use of saccharin among 40 million Americans: those who are affected by hypertension, heart disease, obesity, or juvenile diabetes. There are health benefits from the use of saccharin, although it is difficult to point to scientific studies that show that. But there are benefits.

We have also reached the conclusion that there are health risks, and the very clear study that was made in Canada about this substance being a carcinogen in terms of animals is very clear and convincing.

Although the evidence is not clear that it has been shown or demonstrated to be a cancer-forming agent in human beings, the epidemiological studies show very clearly that if it is cancer-forming in animals it will be shown a cancer-forming in individuals. Most of the experts agree it is a weak carcinogen. So we have a health risk and a health benefit to those people who have obesity or hypertension and can benefit from it.

What the Senate Health Committee has said is,

> All right, in that situation what we want to do is to permit the public to make a decision and a judgment whether to use it during this limited period of the legislation, which is 18 months.

We say if they want to make that decision, and it will be an intelligent decision and an informed decision, they ought to be able to do it. But included in that, obviously, is the warning element. No one can make an informed decision unless they have some information that it is a potential danger.

What we have decided is that there be a written warning in print advertisement. And in electronic media and advertisement. There will then be a balance in terms of the advertisement.

The Commerce Committee, in the statement made by the distinguished Senator from Nevada, reading from page 6 of the Human Resources Committee's report, indicates there is no convincing evidence that there is a health risk. It was interesting that he was reading from the part of page 6 that referred to two studies which have not been concluded as of this date.

It is the position of the Health Subcommittee that the distinguished Secretary of HEW, more importantly the distinguished head of the National Institues of Health, perhaps even more importantly the head of the war on cancer, all believe that if we follow the recommendations of the Commerce Committee that we are putting in serious risk the health of the American people.

Just before the vote on the amendment of the Commerce Committee, it will be my intention, to offer a strike and substitute which will say, All right, if you are not willing to accept the conclusions and the determinations from the hearings which have been held by the Senate Health Subcommittee and the Office of Technology Assessment, we will authorize the Secretary of HEW to make this kind of a determination if he makes an independent judgment and decision in consultation with the head of NIH, with the head of the war on cancer, and after independent concurrence by the Chairman of the Federal Trade Commission.

So, Mr. President, I believe this reaches the heart of the proposal which has been made by the Committee on Health and Scientific Research.

I reserve the remainder of my time.

Mr. GRIFFIN. Will the Senator yield for an inquiry ?

Mr. KENNEDY. I do.

Mr. GRIFFIN. Is the text of the amendment to be offered by the Senator from Massachusetts available?

Mr. KENNEDY. It is available and has been distributed to each desk.

Mr. GRIFFIN. Once offered, how much time will be available for debate?

Mr. KENNEDY. I believe 30 minutes.

The PRESIDING OFFICER. The Senator is correct. There will be 30 minutes equally divided for debate on the amendment.

Mr. KENNEDY. If we could, I would like to reserve the remainder of my time and permit a response by the distinguished Senator from Nevada. Perhaps the Senator from Pennsylvania would respond.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. CANNON. Mr. President, I do not want to take too much time, but I want to point out that the Commerce Committee goes along with the designation on the package, with the advertisement information which is to be made available, but simply would not require, when there is a product advertised, that they have to have that advertising in the electronic media.

The studies by the committee's own report are certainly not conclusive. First, I want to refer to page 5 and read from it:

> Further questioning made it clear that there was substantial disagreement among the six panelists present at the hearing over the wisdom of the FDA's proposed ban on saccharin. Three of them supported the FDA's decision while three others favored continued marketing of saccharin as a food additive with warning labels to inform prospective saccharin users of the questions which have been related to its possible carcinogenisis. Those who favored the continued availability of saccharin argued that substantial population groups stand to benefit from its continued use, particularly people suffering from diabetes, obesity, heart disease, and hypertension, and those who are particularly susceptible to dental caries, and so on.

Mr. President, in addition, in the committee report, the report says:

> Second, panelists agreed that available laboratory evidence leads to the conclusion that saccharin is a potential cause of cancer in humans, but "There are no reliable quantitative estimates of the risk of saccharin to humans."

So the report of the committee itself, Mr. President, is not conclusive on this matter. We in the Commerce Committee feel, by an overwhelming vote, that this requirement should not be imposed on the electronic media. After this amendment is disposed of, I intend to offer a similar amendment to keep it from being imposed upon the written media, the printed press.

Dr. Falk, Director of NIH's Office of Health Hazard Assessment said:

> Falk told chemical regulation reporter that exposures to low levels of a carcinogen does not automatically mean a person will develop cancer. To say a person can develop a cancer by exposure to minute amounts of a carcinogen is an oversimplification, Falk said.

I want to point out, Mr. President, this is not an area where people are in agreement as to what the results are or what the results might be. I think the only thing they are in agreement on is that it could cause or does cause cancer in rats, according to the study.

Mr. President, I believe the amendment of the Committee on Commerce is a reasonable one. If we are ready—as long as the Senator proposes to offer a substitute—I would be willing to yield back the remainder of my time on this so he could offer his substitute and we

could start debating that. I will be opposed to that amendment as well.

Mr. KENNEDY. Mr. President, perhaps the Senator from Pennsylvania could respond first. I yield such time as the Senator from Pennsylvania might require.

Mr. SCHWEIKER. Mr. President, the evidence in terms of epidemiological studies is inconclusive. I think that is an important point to make. However, there is some evidence which is fairly conclusive. I think that is the reason for warning messages. The Ames test has been proven about 90 percent accurate in detecting likely carinogens. The interesting point here is that on saccharin itself the Ames test shows a negative result, indicating purified saccharin is not likely to cause cancer. But on the impurities in commercial saccharin, the Ames test is positive. Even though there are only about 20 parts per million of these impurities, they may well be the culprit. So I think we do have a clear-cut signal here on these impurities which are present in the commercial saccharin available today.

Forgetting all the inconclusiveness and all the apparent contradictions in the scientific evidence on saccharin, the Ames test is positive on trace impurities in saccharin as we now manufacture it. They are likely carinogens. That is why I feel we have a responsibility to give a warning, while we take the time we need to find out more about these impurities and if we can separate out the impurities from commercial saccharin so that then we may be able to restore saccharin to a list of approved food additives.

So there is a valid reason to not go ahead and ban saccharin at this point, because of the health benefits it may offer to Americans, as Senator KENNEDY pointed out. There is also a reason, in my judgment, to say, "Yes, we know there is a carcinogen in commercial saccharin. We do not know what it is yet, but we would like time to isolate it. We need further study."

I believe we do need this time and I believe, frankly, we do need warning messages.

The report of the experts from the Office of Technology Assessment clearly says that "laboratory evidence demonstrates that saccharin is a carcinogen." The Ames test clearly says that it may be the impurities which are the culprits; but a likely carcinogen has been detected. I think that warning is a responsibility we have. On the other hand, some members of the OTA panel who testified at our hearings also went on to say that as long as people are warned, they felt the people should continue to have the right to choose.

The panel of expert witnesses who had carefully studied the scientific evidence split on that issue and half the scientists recommended people have the right to choose and the other half did not. That is the expert opinion behind what we are voting on here.

If I have time, the Senator from New York would like 3 minutes. I yield to him.

Mr. CRANSTON. Will the Senator yield for a unanimous-consent request?

Mr. SCHWEIKER. Yes, I yield.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Gary Aldridge may have the privilege of the floor throughout the consideration of this measure and any votes thereon.

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

Who yields time?

Mr. JAVITS. I have just been yielded 3 minutes.

The PRESIDING OFFICER. The time is under the control of the Senator from Massachusetts and the Senator from Nevada. Who yields time?

Mr. KENNEDY. I ask the Senator from Nevada to yield to the Senator from New York, the ranking member of the committee. Then afterwards, I wish to yield very briefly to the Senator from Wisconsin, if that is agreeable.

Mr. CANNON. All right.

Mr. JAVITS. Mr. President, our first order of business today is the "Saccharin Study, Labeling and Advertising Act" which was favorably reported from the Senate Human Resources Committee, of which I am the ranking minority member.

The proposed FDA ban on saccharin has been an emotional issue. This action affects the lives and lifestyles of tens of millions of Americans—particularly people suffering from diabetes, heart disease, hypertension, obesity and those susceptible to dental problems.

There are basically two questions at issue. First, is it desirable to permit health benefits to be weighed against health risks in determining whether food additives, which may be animal or human carcinogens, should be removed from the market? This in effect would modify the Delaney clause. And, second, are there health benefits in allowing the use of saccharin to continue, and if so, do these benefits outweigh the potential risks?

Mr. President, these questions have not been resolved, and the scientific and medical communities have not reached a consensus. Notwithstanding our committee's intent to protect the public health, I believe that this bill responds to the need for further study and investigation, not only on the part of the scientific community and the Government, but on the part of the public as well, so that they may have the benefit of "informed choice." This bill provides an 18-month moratorium for that purpose

Specifically, the bill makes provision for two studies. The first 1-year study would assess current technical capabilities for predicting the carcinogenicity or other toxicity in humans of substances found to cause cancer in animals, including an evaluation of potential benefits as well as risks to health from these substances and an evaluation of current Federal food regulatory policy. The second study authorized by the bill is the result of the discovery that the saccharin used in experiments with animals and commercial saccharin contain small amounts of impurities. The study would identify impurities in saccharin, their toxicity or potential toxicity, and the health benefits of nonnutritive sweeteners in general and saccharin in particular.

In regard to informing the public, the bill requires the following: First, warning labels on all food products containing saccharin and all vending machines; second, retail establishments where saccharin is for sale in food products which are not for immediate consumption are required to post more detailed information conveying the current state of knowledge concerning saccharin; and third, the Secretary is required to develop health warning messages for advertisements in any medium of electronic or written communication.

I believe that these warnings, on the products themselves as well as in their advertising, are very important to present to the public the most up-to-date information concerning saccharin. Thus, each consumer can make his or her own assessment of whether to purchase products containing saccharin based on personal needs and informed choice. However, the bill provides that should new evidence arise demonstrating "that saccharin poses unreasonable and substantial risk to the public health and safety" the Secretary may proceed to ban saccharin.

The Commerce Committee, to which this legislation was referred because of jurisdiction over the electronic medium of advertising reported the bill with an amendment to delete the requirement for a warning message in electronic media advertisements. Also, Senator CANNON has announced his intention to offer an amendment to delete the provision concerning print media.

Since informed public participation is a cornerstone of the legislation as reported by the Human Resources Committee, I must oppose these two amendments, as I believe they dilute the intent of the legislation.

At this time we know of no alternative nonnutritive sweetner to saccharin, and its removal from the market would create a great hardship for those who must restrict their sugar intake.

I believe that this measure is an equitable one which preserves the use of saccharin for those who use it for medical and dietary purposes and at the same time makes the public aware of the potential dangers of its use.

Mr. President, I wish to record myself with my colleagues on the Human Resources Committee in favor of the proposed warning.

The point is this: The only reason to continue the use of saccharin, in light of the evidence, is that people need it for various health related reasons certainly, they do not need it to drink Tab or other artificially sweetened soft drinks. But, people have the right to use it for these health reasons until the proof is clear. Consequently, Mr. President, I think ours is the proper position.

These people who need it for health, are going to take it anyway. But the presence of a warning will impress itself upon others who do not have to take it for health reasons—those who take it for taste or to control their weight, or whatever.

That, I think, Mr. President, is the essence. It is borne out by the fact that the Department of HEW is unanimous on the need for a label. The Under Sec-

retary of Health, Education, and Welfare, Hale Champion, urges that any legislation imposing a moratorium on regulatory action by the FDA against saccharin require that a warning statement regarding potential health risks be included in all advertising and labeling of saccharin-containing production. There is a comparable statement by Michael Pertschuk, Chairman of the Federal Trade Commission, Donald Kennedy, Commissioner of Food and Drugs, and Donald Frederickson, Director of the National Institutes of Health.

I ask unanimous consent that these statements be printed in the RECORD.

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

STATEMENT ON SACCHARIN ADVERTISING

(By Hale Champion, Under Secretary of Health, Education, and Welfare)

The Department of Health, Education, and Welfare has serious reservations about legislation which might impose a moratorium on regulatory action of the Food and Drug Administration with regard to saccharin.

I believe actions by the Congress on a product-by-product basis are usually inappropriate and that this one may provide a precedent for future interventions in other product areas. If the Congress, however, determines that such intervention is appropriate in this case, we believe it is essential that the legislation contain explicit features necessary to protect the public health.

Because the risk of cancer from saccharin use is related to both dosage and cumulative exposure, potential means of altering public saccharin consumption patterns could decrease the bladder cancer burden on Americans.

I, therefore, strongly endorse the joint statement signed by Mr. Michael Pertschuk, Chairman, Federal Trade Commission; Dr. Donald Kennedy, Commissioner of the Food and Drug Administration; and Dr. Donald Fredrickson, Director, National Institutes of Health, urging that any legislation imposing a moratorium on regulatory action by the Food and Drug Administration against saccharin require that a warning statement regarding potential health risks be included in all advertising and labeling of saccharin-containing products.

STATEMENT ON SACCHARIN ADVERTISING

(By Mr. Michael Pertschuk, Chairman, Federal Trade Commission, and, Dr. Donald Kennedy, Commissioner of Food and Drugs, and Dr. Donald Fredrickson, Director, National Institutes of Health)

We are concerned at the recent action of the Senate Commerce Committee in deleting the requirement in S. 1750, "The Saccharin Study, Labeling and Advertising Act of 1977," that electronic advertising for saccharin and saccharin containing products carry a warning.

The Office of Technology Assessment Panel and others have concluded that saccharin causes bladder cancer in laboratory animals, and that it therefore probably also does so in humans. Given these findings, any legislation interposed by Congress that stays regulatory action against saccharin should, we believe, at least contain provisions designed to provide fair warning of the potential hazard of continued consumption of this compound.

We therefore support the provisions in such legislation that would require warnings in radio and television advertising, in print advertising, and on the labels of all products containing saccharin.

Mr. JAVITS. To summarize, the issue is this: Those who need saccharin for health reasons are going to take it. They, evidently, are willing to take the risk. But the warning is imperative for other people who do not have such needs. I hope very much, therefore, that the Senate will be persuaded that the position of the committee which has jurisdiction over health matters—to wit, the Committee on Human Resources—ought to be the position that prevails.

I thank my colleagues for yielding.

Mr. KENNEDY. I yield to the Senator from Wisconsin 5 minutes.

The PRESIDING OFFICER. The Chair must inform the Senator from Massachusetts that he has only 1 minute remaining on the amendment.

Mr. KENNEDY. I am glad to yield on the bill. I indicate to my colleague from Nevada, if he wants more time on the bill, we obviously would be glad to grant it, since we are taking more time on the Senator's amendment. But I hope we shall be able to come to an early decision.

Mr. NELSON. Mr. President, many people believe, from reading newspapers and some of the comments by scientists, that it has not been adequately demonstrated that saccharin is a cancer-causing agent. The scientists who have looked at the literature and the tests and are qualified in the field are, so far as I know, unanimous in the conclusion that saccharin is a cancer-causing agent and that it has been demonstrated to cause cancer in animals. I think it is important to understand that point.

Now, Dr. Howard Temin, who is an American Cancer Society research professor for the Wisconsin Alumni Research Foundation, professor of cancer research, who is a very distinguished scientist, a Nobel laureate in physiology for his work with cancer viruses, on the question of saccharin, states:

In my opinion, there is no question that saccharin is a carcinogen and could cause cancer in humans. Therefore, it should be banned from the general food supply.

On the Canadian tests which have been attacked, mostly by laymen, let me quote from Dr. David Rall, Director of the National Institute of Environmental Health Sciences of the National Institutes of Health, in a speech at an American Cancer Society seminar for science writers on April 5 this year, commenting on the Canadian animal tests. He concluded:

It is absolutely a superb scientific study. It was very well done. I think the data are pretty convincing that saccharin is a carcinogenic.

So I think it ought to be understood that we are talking about a cancer agent in the food supply. I happen to disagree with the pending legislation, which would prohibit the Commissioner of the Food and Drug Administration from acting as he would otherwise be required to act, under the law, to remove saccharin from the general food supply. I think it is bad legislation. However, if we are going to pass a piece of bad legislation, we ought to make it less bad than it is. Therefore, since we know it is a carcinogen, and that is not challenged by any qualified scientist that I know of, at least we have a moral obligation to tell people what the tests show and that, if they use the product, they run the risk of getting cancer.

I think that is inadequate, and I know, and we all know that little kids, at least, are not going to read it before they buy the soda pop, and all kinds of others are not going to pay attention to the warnings because they do not believe it. But, at least, we ought to have a moral obligation to tell them what the facts are.

Now, laymen will argue, as well as some scientists, that the fact that an agent is carcinogenic in animals does not prove that it will cause cancer in man.

Well, that is so. But the statistics are frightening when we consider the converse of that, in that every single agent known to man except arsenic—and the tests are not over on that one—every single agent known to man that causes cancer in human beings, in the tests on animals, causes cancer in animals, too. Every oncologist that I know of believes that there is the likelihood that, if it causes cancer in animals it will cause it in human beings. So, if we are going to expose people to cancer-causing agents, I think we have a moral obligation to give him a good, tough, straightforward warning, for whatever good it will do. So I support the position of the Health Subcommittee, even though, once these provisions are adopted, if they are, I shall vote against the bill, because I think it is setting a disastrous and dangerous precedent.

Several Senators addressed the Chair.

Mr. SCHWEIKER. Mr. President, I yield from my general debate time 1 minute to the Senator from California.

Mr. HAYAKAWA. Mr. President, I believe I am persuaded by the arguments of many of my distinguished colleagues on this subject, a warning ought to be printed in connection with cancer. I would like to suggest a wording for that warning.

This is based strictly on the Canadian scientific study:

Warning: If an individual consumes one can of diet soda and two servings of saccharin-sweetened canned fruit a day for the next 200 years, his or her children will run a 17 out of 200 chance of developing bladder tumors, if human beings have the same vulnerability to saccharin as Canadian rats.

I thank the Senator.

Mr. KENNEDY. Mr. President, I believe we have used all of the time on the amendment, and I send to the desk——

Mr. CANNON. Will the Senator withhold that?

Mr. KENNEDY. Yes.

The PRESIDING OFFICER. The Senator from Nevada has 6 minutes remaining.

Mr. CANNON. I would like to use 1 minute further.

Mr. President, I say it is important for Members to understand that the Commerce Committee's position on the advertising provisions in no way affects the labeling requirements, the vending machine and store display requirements of the bill, or the two studies called for in S. 1750.

Mr. President, I can agree that serious questions have been raised, but I am not convinced they have been fully answered.

For instance, one of the reasons the Commerce Committee found the medical study and reports to be inconclusive was that the report on page 6 indicates that two epidemiological studies found thus far no association between human use of saccharin and the development of bladder cancer. However, some questions have been raised about the adequacy of sample sizes, particularly in the winter study.

Mr. KENNEDY. Will the Senator yield?

Mr. CANNON. Mr. President, we are relating to the advertising in the electronic media. We are not depicting the other.

Mr. HATHAWAY. Will the Senator yield?

Mr. KENNEDY. On this point, if the Senator will yield on it, the Senator is referring to two studies which are only one-third completed. We made reference to them because they were concerned with the subject matter, and to give a progress report.

What we did refer to and what is irrefutable, as the Senator from Wisconsin, the Senator from Pennsylvania, and I have pointed out, is that based on the Canadian animal study, not the study on human beings, although I think that is very important, and on the basis of the report of the Office of Technology Assessment, of all the studies that have ever been done on saccharin the unanimous conclusion is that saccharin is a carcinogen.

But what they do not agree on is how to deal with it, because most of the medical experts believe it is a weak carcinogen and that there are health benefits from it.

All we say is that when we have the risk and benefits, the best people to make the decision are the public. For them to make the decision, they have to understand that there is some risk. They will hear the benefits from the advertising.

I think it is important that when the position of the Senate Health Subcommittee is portrayed, that it be complete.

There is agreement among the members of the Senate Health Subcommittee that this is a carcinogen in animals.

I do not think the Senator can find a medical researcher in the field of cancer who believes there is not a direct correlationship between the agents that cause cancer in animals and those that cause them in human beings.

We cannot prove it to a scientific certainty, but, as the Senator from Wisconsin pointed out, we can prove that the matters which definitely cause cancer in human beings to a mathematical certainty cause cancer in animals.

The question here is the risk.

We feel that the action taken by the Commerce Committee is basically saying to the millions of Americans who are going to see these products advertised that we are going to deny to them what is the general recommendation both of our committee, the head of the Food and Drug Administration, the Cancer Institute, HEW, and that is that there is an important potential danger.

We hope that as a result of the study we will be able, in a more informed way and a more responsible way, to report back to the Senate within 18 months as to the exact nature of that danger so that the Senate can work its will.

Mr. CANNON. Mr. President, I shall be very brief.

The Senator says the studies are quite conclusive in this field. I simply ask, why are there two studies provided for in the bill if they are conclusive; why are we having studies provided for in this bill?

On the other point, I would like to read again, as I did earlier, from the committee report that reads as follows:

> Panelists agree that available laboratory evidence "leads to the conclusion that saccharin is a potential cause of cancer in humans" but "there are no reliable quantitative estimates of the risks of saccharin to humans."

That is the committee report, Mr. President.

I am prepared to yield back my time.

Mr. KENNEDY. Mr. President, just in responding to this particular question, there are two studies because there are two areas to be pursued. As the Senator from Pennsylvania pointed out, in the Canadian test that was done on human beings, it suggests that there ought to be a study done by HEW on the impurities added to saccharin. That is one study.

Just about everybody, the Director of the Cancer Institute and all other health officials, believe it should be done.

The second issue recognizes that in the area of drug policy, we make a health risk-benefit ratio in drugs and the prescription of drugs.

We do not give a well person the kind of dangerous drugs we give someone with terminal cancer. It is a health risk-benefit ratio.

We have in terms of saccharin some real conclusive evidence that it is a carcinogen in animals. We do not have conclusive evidence it is necessarily a carcinogen in human beings. But everyone person that was on this panel agreed that it was a carcinogen in terms of animals. What they could not agree on, nor can medical professionals agree on, is what should be the final and ultimate conclusion, whether we are to ban it or whether we are to permit it on the market.

The Senate Health Committee concluded we will let the public make the decision. To make an informed judgment we have to understand that there are some risks as well as benefits.

I just mention what was said by Don Kennedy, that he would urge there be a complete ban on advertising in the electronic media during this period of time.

We did not accept that conclusion. We say that there ought to be at least a health message that communicates the health risks in the electronic media because we felt there was at least some health benefit. But the action of the Commerce Committee is virtually precluding that kind of decision to be made by the American people, with its recommendation.

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

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

Mr. KENNEDY. I yield 3 minutes on the bill to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Massachusetts yields 3 minutes on the bill to the Senator from Maine.

Mr. HATHAWAY. Mr. President, the Senator from Nevada has stated over and over again that both he and the other members of the Commerce Committee do not object at all to the provision contained in section 6, the warning label, which states:

> Warning: This product contains saccharin, which causes cancer in animals. Use of this product may increase your risk of developing cancer.

So, presumably, the Senator from Nevada and the Commerce Committee agree that the American public should be warned.

If the American public should be warned, why not warn them in every way we possibly can? That is all the Human Resources Committee was attempting to do by having both the written press and the electronic media carry a similar warning, leaving it up to the Secretary to determine exactly what form that warning should take in each form of media, realizing the shortcomings that might occur with the electronic media, given the time bind they might have on 30-second advertisements, and so forth.

So, if there is going to be a warning that has any meaning whatsoever, it should not be restricted to those who might happen to look at the particular container.

As the Senator from Wisconsin just pointed out, these products are often used by young people who may not be able to read at all, and certainly are more casual than adults with respect to reading labels. And we cannot count on parental guidance in this area, since I am sure most adults are not going to read the labels on products containing saccharin, because they are common products on the market. It is not like having a bottle of medicine, where the contents are on the label. These are products such as toothpaste and soft drinks. Not one person in a thousand would bother to look at the label on these sorts of items.

It seems to me inconsistent for the proponents of this amendment to say that there should be a warning but we do not have that warning given to the general public.

Mr. STEVENSON. Mr. President, I intend to vote for the Cannon amendments because of the unnecessary difficulties and inequities the requirement for warnings in advertisements would cause the media. The public is well aware of the risks posed by the consumption of saccharin and will be warned by labels in products containing saccharin. Before voting for these amendments I want to disclose again a personal financial interest in radio and newspaper properties which could benefit, however indirectly, from approval of the Cannon amendments. These properties all derive from a long standing family interest in the

Bloomington, Ill., Daily Pantagraph. I intend to vote because I believe it the better general rule not to let personal interest deprive constituents of representation. In general, it is best to disclose the interest and vote a conscientious opinion.

Mr. GRIFFIN. Mr. President, will the Senator from Pennsylvania yield to me?

Mr. SCHWEIKER. Yes. I also promised to yield to the Senator from Rhode Island.

UP AMENDMENT NO. 835

Mr. KENNEDY. Mr. President, since all the time has expired on the Cannon amendment, I send to the desk an amendment on behalf of myself, the Senator from New York, and the Senator from Rhode Island (Mr. CHAFEE).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, Mr. JAVITS, and Mr. CHAFEE, proposes an unprinted amendment numbered 835, in the nature of a substitute for the amendment on page 9, starting on line 3.

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

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

The amendment is as follows:

Beginning on page 9, line 3, stroke all through page 10, line 6, and insert the following in lieu thereof:

"(r) (1) If it contains saccharin and is advertised on any medium of electronic communication subject the jurisdiction of the Federal Communications Commission or on any medium of written communication unless the advertiser of such food includes in each advertisement a health warning message concerning saccharin, as prescribed by the Secretary, if the Secretary, after consultation with the Director of the National Institutes of Health, and the Director of the National Cancer Institute and after concurrence by the Chairman of the Federal Trade Commission, determines that such a message is necessary to alert the public to the potential health risks associated with the consumption of food containing saccharin. The Secretary shall prescribe the form and content of each such message in a manner appropriate to the medium of communication and length or size of the advertisement so as to insure insofar as possible that each such message will have an equal impact on the readers, viewers, and/or listeners of such advertisement as any other such message.

"(2) In making the determination pursuant to paragraph (1) and in prescribing the form and content of any message that is determined to be necessary, the Secretary shall afford an opportunity for the submission of views from all segments of the public, including a public hearing for oral presentation of views, but shall not be obligated to comply with the requirements of the Administrative Procedure Act, Chapter 5 of title 5, United States Code, or with any provision of the National Environmental Policy Act or with regulations implementing either statute. In any suit for judicial review, any decisions of the Secretary pursuant to this section shall be sustained unless found to be clearly unreasonable or in excess of statutory authority."

Mr. KENNEDY. Mr. President, I will make a 1-minute comment on the amendment.

What we are saying in this amendment is that the Senate does not necessarily have to accept the conclusions of the Senate Health Subcommittee, even though I think the report is very clear and convincing and overwhelming and compelling. We are saying that if the Secretary of HEW believes that it is necessary to protect the public interest by propounding restrictions in advertising on the basis of consultation with the head of the National Institutes of Health and the Director of the War on Cancer, and the Federal Trade Commission reaches a similar action independently, they will be authorized and empowered, in a limited period of time, for the endurance of the bill, which is 18 months, to propound a similar health message for the electronic media as well as the written media.

I reserve the remainder of my time.

Mr. SCHWEIKER. Mr. President, I yield to the Senator from Rhode Island 2 minutes from my time on general debate.

Mr. CHAFEE. Mr. President, I add my strong support for requiring warning messages on radio and television advertising. While I believe the scientific evidence indicates some risk from human consumption of saccharin and products containing saccharin, I believe the public should be allowed to weigh the risks and benefits and make their own decision. But it is essential that information regarding the risks be made absolutely clear to all consumers. It is our responsibility to make sure this information is available, so that people can make a truly informed choice.

I emphasize my concern that advertising in all the media be treated equally. It seems obvious to me that given the diversity in types and impact of advertising, the Congress cannot prescribe a single warning message which would be fair when applied to each advertisement. The assignment of this responsibility to the Secretary of Health, Education, and Welfare to examine and prescribe warning messages which would have an equal impact in all advertisements seems to me to be a reasonable solution.

My decision to support the delay of the ban on saccharin has not been an easy one. I have long been concerned about additives and chemicals in our food supply. Even more distressing to me, and I am sure to all of you, is the rising incidence of cancer among our citizens, and the realization that cancer is expected to strike one out of every four Americans alive today.

Scientists now believe that most cancers in man are due to chemicals. Thus, it appears that the majority of cancers are potentially preventable. The U.S. Government has made a massive commitment to finding cures for this disease. We must be no less diligent in finding the causes and prevention.

The Human Resources Committee has heard testimony and received volumes of material concerning the evidence of the relationship between saccharin and cancer in man. I have studied the material carefully, and believe that the evidence strongly suggests that saccharin is a carcinogen for humans, although a weak one.

I am convinced that there is some risk to humans, and that the potential risk is greater for certain groups, such as those who were exposed in utero during their mother's pregnacy. But I am also convinced that saccharin provides considerable benefits to other people, such as diabetics and those who must restrict their sugar intake. I feel strongly that our responsibility to protect our citizens must be balanced by our concern for individual rights and freedom of choice.

When a panel of scientists appeared before the Subcommittee on Health and Scientific Affairs to testify on the scientific studies on the carcinogenicity of saccharin, I asked each of them for their personal recommendation as to whether or not products containing saccharin should be banned. They were split evenly on this question.

I suggest to the Members of this body that when a consensus cannot even be reached by the experts, we should give the public all the available information and let them make their own choice.

Mr. President, I do not think anybody could have sat through those hearings and listened to those very distinguished scientists, doctors, and research personnel without coming to the conclusion that there is a potential danger in saccharin.

The point that the Senator from Maine is a good one—that if we are going to warn people, let us do the best job we can. Frankly, I think we are going the minimum distance. The Senator from Wisconsin desires that we completely abandon it or at least just have it over the counter; but there is so much strong sentiment from those who are diabetics and are on weight diets who ask that this be readily available that I think this is the minimum we can do to protect the health of our people, to give this warning through our media.

I support the measure as it came from the Subcommittee on Health in the Committee on Human Resources.

Mr. SCHWEIKER. Mr. President, I yield 5 minutes to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, I support the position taken by the Commerce Committee.

I believe the Kennedy amendment should be defeated. It is essentially—there are some modifications, to be sure, but not in substance—what was in the bill reported by the Committee on Human Resources in the first instance and which the Commerce Committee struck out.

The basic question here is how much regulation is enough, on the state of the record that we have. I think all Senators support the idea and concept included in the bill of an 18-month study. However, as the Senator from Nevada has pointed out, the very fact that we are authorizing the study indicates that we still are not sure what to do. We do not know how much saccharin must be taken into the human body before it is dangerous.

We set a precedent here which, it seems to me, calls for a warning with

respect to table salt, that table salt is poisonous if you take enough of it. Perhaps we should put that on the label of the product itself, and perhaps we should include that in any advertisement on radio and television if table salt is to be sold, because essentially the same principle is involved here.

How much warning is enough in this particular situation? The bill requires that the product, itself, must have a warning on the label. Incidentally, the committee has concluded that the warning must be bigger and more prominent than the label that is now required on packages of cigarettes. There is no question that we know a great deal more about the cancer-causing effects of cigarettes than we do about saccharin. The labeling required to be on a product including saccharin is going to be greater and larger and more prominent than it will be with respect to cigarettes. That is all right. I do not object to that. It will also require a warning in the retail establishment where the product including saccharin will be purchased.

Do we have to go beyond that and impose upon broadcasters and advertisers and all the people who will be involved the additional burden of including a warning in all advertisements on radio and television, in view of the record we have now? I do not think so.

Perhaps 18 months from now we will want to take another look at it. Eighteen months from now, we might want to ban saccharin altogether or remove the restrictions we are putting in here now. I think it is going too far. It is unnecessary and ridiculous to go to that extent on the basis of the information and the record we have.

Furthermore, we are delegating the broadcast responsibilities not to the Federal Communications Commission, which ordinarily controls broadcasting, but to the Secretary of HEW. He would determine what the message would be and how long it would be, how much time it would take up. That is an unprecedented move, one that should not be taken, it seems to me, unless we have the information that this 18-month study is supposed to produce.

I believe it is reasonable and appropriate that we approve the bill with the amendment that the Commerce Committee adopted, and to do that, we should vote down the substitute language offered by the Senator from Massachusetts.

I yield back to the Senator from Pennsylvania any remaining time.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, it seems that the argument made by the Senator from Michigan is that since there is some disagreement in terms of how to proceed either within the committee or within the scientific community that, therefore, we should not promulgate regulations because of the uncertainty.

I want to give the assurance to the Senator from Michigan that of the 30-odd or more medical personnel from whom we heard during the time of our hearings and before OTA, there was not one—and I challenge the Senator from Michigan to find one—who suggested that we leave saccharin on the market without a label. The only dispute was whether we ban it completely or leave it on the market with a label.

Now the Senator from Michigan comes out and says that because you have a difference of opinion and disagreement in whether you are going to ban it or put it on with a label, let us put it out there without a label. That is the most convoluted reasoning I have heard, Mr. President, on a matter that is going to affect in the most dramatic and important way, can affect, millions of Americans with hypertension, obesity and cancer, as well.

We have come to the conclusion that the American people ought to make a free choice on the best information we have available. We do not have all the answers, and because we do not we say let the people make the choice, and we are going to come back within 18 months and give the people the benefit of the best information we have.

But if you follow the recommendation of the Senator from Michigan and the Commerce Committee, we are denying effectively the American people from making an informed choice, and it makes no sense from a health point of view, and it makes no sense from the point of view of this particular legislative proposal.

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

Mr. CANNON. Mr. President, I yield myself 2 minutes.

Mr. President, I am unalterably opposed to the amendment of the Senator which he has offered as a substitute. What he has actually done is just tried to substitute exactly the same principle that was in the bill that we knocked out in the Commerce Committee. All they did was describe it in a little different wording to get by a point of order that could have been made. But, in substance, it is precisely the same as the provision they have in the bill, the amendment they added in the bill which the Commerce Committee struck out.

Furthermore, they say if the Secretary makes a determination, after discussing it with these people—well, those people have already made that determination. That is the basis that the subcommittee used in making this report in its initial decision.

We have a news release statement on saccharin advertising by Mr. Michael Pertschuk, Chairman of the Federal Trade Commission; Dr. Donald Kennedy, Commissioner of Food and Drugs; and Dr. Donald Fredrickson, Director, National Institutes of Health. So why try to dress it up and make it appear it is something it is not? It is exactly the same thing that is in the bill now just dressed in a little different language, simply to get around the provision that the Commerce Committee came out with to strike that out of the bill.

Mr. President, if there is no one else who desires time on it, I would be willing to yield my time back and proceed to a vote on this issue.

Mr. KENNEDY. I yield myself 2 minutes, Mr. President.

The Senator from Nevada and the Commerce Committee say the case has not been made by the Health Subcommittee. Then he goes and reads particular parts of the report to try to indicate that the case has not been made with regard to this health hazard.

We believe the case has been made. In this particular amendment we say the case is going to have to be made again by the Secretary of HEW in concert with the Director of NIH, and the Director of the war on cancer; and independently by the Federal Trade Commission, and there has to be the submission of public views—I mean, we try to say, "OK, if you are not going to be prepared to take ours, why not take the opinions to whom we entrust billions of dollars to try to protect the American public."

The Commerce Committee says, "We won't take your views and now we won't take the views of those who are charged with protecting the American public."

It seems to me, Mr. President, I do not know what it takes to try to convince people about the real danger to the American public.

So, Mr. President, I am prepared to yield back my time, 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.

Mr. KENNEDY. I am prepared to yield back the remainder of my time.

Mr. CANNON. Mr. President, just 15 seconds. I want to read into the RECORD what these distinguished people said, Michael Pertschuk, Dr. Donald Kennedy, and Dr. Donald Frederickson:

> The Office of Technology Assessment Panel and others have concluded that saccharin causes bladder cancer in laboratory animals, and that it therefore probably also does so in humans.

Probably also does so in humans.

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

The PRESIDING OFFICER. All time on the amendment has been yielded back, and the yeas and nays have been ordered, and the clerk will call the roll.

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

Mr. GRIFFIN. 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 Nevada to lay on the table the amendment of the Senator from Massachusetts. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ABOUREZK (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Maine (Mr. MUSKIE), who is not able to be here because of illness. If he were present and voting, he would vote "yea." Having already voted "nay," I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent due to illness.

I further announce that if present and voting, the Senator from Minnesota would vote "nay."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 52, nays 42, as follows:

[Rollcall Vote No. 376 Leg.]

YEAS—52

Allen	Glenn	Nunn
Baker	Goldwater	Packwood
Bartlett	Gravel	Pearson
Burdick	Griffin	Roth
Byrd, Harry F., Jr.	Hansen	Schmitt
	Hatch	Scott
Cannon	Hatfield	Sparkman
Chiles	Hayakawa	Stafford
Clark	Helms	Stennis
Cranston	Inouye	Stevens
Curtis	Laxalt	Stevenson
Danforth	Long	Stone
DeConcini	Lugar	Talmadge
Domenici	Magnuson	Thurmond
Durkin	Matsunaga	Tower
Eagleton	McClure	Wallop
Eastland	Melcher	Zorinsky
Ford	Morgan	

NAYS—42

Anderson	Haskell	Metzenbaum
Bayh	Hathaway	Moynihan
Bellmon	Heinz	Nelson
Bentsen	Hollings	Pell
Biden	Huddleston	Percy
Brooke	Jackson	Proxmire
Bumpers	Javits	Randolph
Byrd, Robert C.	Johnston	Ribicoff
Case	Kennedy	Riegle
Chafee	Leahy	Sarbanes
Church	Mathias	Sasser
Culver	McGovern	Schweiker
Dole	McIntyre	Weicker
Hart	Metcalf	Williams

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

Abourezk, against.

NOT VOTING—5

Garn	McClellan	Young
Humphrey	Muskie	

So the motion to lay Mr. KENNEDY'S amendment on the table was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 836

Mr. KENNEDY. Mr. President, I send to the desk an amendment. There is 30 minutes on this amendment. If I could have the attention——

The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats.

Mr. MAGNUSON. Mr. President, will the Senator yield me 3 seconds?

The PRESIDING OFFICER. The clerk will state the amendment offered by the Senator from Massachusetts.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself and Mr. JAVITS, proposes an unprinted amendment numbered 836: beginning on page 9, beginning on line 3, strike all through page 10, line 6, and insert the following in lieu thereof:

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

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

The amendment is as follows:

Beginning on page 9, line 3, strike all through page 10, line 6 and insert the following in lieu thereof:

"(r) If it contains saccharin and is advertised on any medium of electronic communication subject to the jurisdiction of the Federal Communications commission, unless the advertiser of such food includes in each such advertisement in a conspicuous and readily understandable manner the warning statement as set forth in subsection (o) if the Secretary, after consultation with the Director of the National Institutes of Health and the Director of the National Cancer Institute and after concurrence by the Chairman of the Federal Trade Commission, determines that such statement is necessary to alert the public to the potential health risks associated with the consumption of food containing saccharin.

"(s) If it contains saccharin and is advertised by any medium of written communication, unless the advertiser includes in each advertisement the warning statement as set forth in subsection (o) if the Secretary, after consultation with the Director of the National Institutes of Health and the Director of the National Cancer Institute and after concurrence by the Chairman of the Federal Trade Commission, determines that such statement is necessary to alert the public to the potential health risks associated with the consumption of food containing saccharin. Such statement shall be located in a conspicuous place in such advertisement and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter in such advertisement."

"(t) In making the determination pursuant to subsections (r) and (s), the Secretary shall afford an opportunity for the submission of views from all segments of the public, including a public hearing for oral presentation of views, but shall not be obligated to comply with the requirements of the Administrative Procedure Act, Chapter 5 of title 5, United States Code, or with any provision of the National Environmental Policy Act or with regulations implementing either statute. In any suit for judicial review, any decisions of the Secretary pursuant to this section shall be sustained unless found to be clearly unreasonable or in excess of statutory authority.

Mr. MAGNUSON. Mr. President, will the Senator yield me 10 seconds?

Mr. KENNEDY. Mr. President, I am reluctant to yield, because we now have a few Members of the Senate here.

Mr. MAGNUSON. I want to make a 10-second announcement.

Mr. KENNEDY. I yield.

Mr. MAGNUSON. Mr. President, I hope the members of the Appropriations Committee will come down to room 126 so we can get a quorum, right now, so we can report the last appropriation bill.

Mr. KENNEDY. Mr. President, I hope the members of the Appropriations Committee will remain right here, but I have no question as to whose lead they are going to follow.

Mr. MAGNUSON. If they want the appropriations, they had better come.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I yield myself 3 minutes.

Mr. President, just to repeat very briefly where we are, the Senate Health Subcommittee has made a finding, as well as the National Institutes of Health and the War on Cancer, that there are risks in the use of saccharin, and there are also benefits. We cannot measure to a scientific certainty what the risks are, and we cannot tell to a scientific certainty what the benefits are, but we know there are both.

So our conclusion in the committee was to let the American people make their own determination as to whether they wanted to assume the risks or did not.

To do that, we felt it was essential that we should have a label on all saccharin-containing products which says, "This product contains saccharin, which causes cancer in animals. Use of this product may increase your risk of developing cancer."

That is the sole warning on it. That will be on the label of the products that use saccharin.

The last amendment that we considered said that if the Secretary of HEW, working with the Director of the National Institutes of Health, the War on Cancer, and independently the Federal Trade Commission, after the results of public hearings, made the decision that it was necessary to protect the health of the American people by including a message on the electronic media which would provide that warning, they would be empowered to require it in all the electronic media. That amendment was rejected by agreeing to the motion to table.

All this substitute amendment says is that if we are going to provide this limited labeling on all of the products that are going to be sold with this particular label, we will also include those particular words in any electronic media or printed advertising.

Mr. President, the head of the Food and Drug Administration, independently of that particular decision that he made, which was required by law, has said, "In order to protect the American public, I would urge that there be a complete ban on advertising of diet soft drinks in the electronic media to protect the public," and the committee has said, "Let us let the Secretary, in this limited precedent, develop it." That was the impact.

We are now saying that if we are going to have those lines in the printed media, we ought to also include those lines in the electronic media.

I want to make clear to Senators that if we do not accept the electronic media label, the next proposal will be to ban it on all kinds of written media; and when that vote occurs, we are effectively saying to the American consumer that there is uncontroverted evidence that saccharin causes cancer in animals, and we are going to see, as sure as we are sitting here, with the various medical professionals that we heard——

The PRESIDING OFFICER (Mr. RIEGLE). The Senator's 3 minutes have expired.

Mr. KENNEDY. That it causes cancer in animals, so it will eventually also cause the potential danger of causing cancer in individuals, and we will be denying the American public an opportunity to make an informed choice.

Mr. CANNON. Mr. President, I yield myself 3 minutes.

First, may I say I agree with the Senator from Massachusetts on one point. That is when this issue is disposed of, I will offer an amendment to ban the requirement that is in the bill now that the warning be placed in the written media. We would have done that in the Commerce Committee except we had very limited jurisdiction when the bill was referred to us. I do have an amendment prepared and I propose to offer that just as soon as we dispose of this amendment.

The Senator is just trying to come through the back door again after we defeated him on the last amendment. The matter that is under consideration has not been proved conclusively except that saccharin causes cancer in rats. That is the only conclusive matter which has been proven in this matter. It is very inconclusive in the studies which have been made. In the Commerce Committee we did not think that we ought to spend as much time advertising the warning on the electronic media nor in the printed media as advertising the product itself.

We are going along completely with the warning on the package, with the labeling in the stores, and with the studies. But let us wait until those studies are completed and then find out if there is a basis for this kind of a ban.

Mr. President, if no one else wants time, I am willing to yield back the remainder of my time. I propose to table the Kennedy amendment, which is another attempt to do indirectly what he cannot do directly and which was defeated just a few moments ago on the motion to table.

The PRESIDING OFFICER. The chair advises that that motion is not in order until the Senator from Massachusetts either uses his time or yields it back.

Mr. KENNEDY. Mr. President, I yield 3 minutes to the Senator from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized for 3 minutes.

Mr. NELSON. Mr. President, I must say that the last vote did shock me. It is shocking enough, in my judgment, that this Congress is going to suspend the operation of the most important health protection law Congress has ever passed. Now for 18 more months we are going to allow a proven carcinogenic agent to be in the food chain.

If we are going to do that, I am going to vote against it. It is a bad principle. It violates a fundamental principle. We have never done it before and we should not start now.

Senator KENNEDY proposes that if we are going to feed people cancer-causing agents, let us at least tell them about it. If we are going to feed it to them, give them a little warning. Fifty-two people came onto the floor of the Senate and said, "Let us not tell them at all. Let us sneak it by."

What kind of irrational nonsense is this? I have been puzzling what it is that goes on in the Congress every so often. People call the Congress an organic body. I think that is right. Congress is now experiencing some kind of periodic menopausal hot flash. [Laughter.] Thus, we cannot address ourselves scientifically, sensibly, to the problem we face.

Now we are going to suspend the law and feed the people a cancer-causing agent. Saccharin has been irrefutably proven by scientific tests to cause cancer in animals. Nobody challenges that, still Members stand on the floor and say, "We have not yet proven it causes cancer in human beings."

I will repeat what Senator KENNEDY and I have said previously today. The frightening statistic is that every single agent known to cause cancer in human beings, except one, causes cancer in animals, and every cancer expert I know of fears that the converse is true. If it causes cancer in animals, it is very likely to cause it in human beings.

Yet a majority in the Senate is satisfied to say, "Well, the proof is not conclusive enough." It takes 10, 20, 30, or 40 years for many agents to cause cancer in humans.

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

Mr. NELSON. Will the Senator yield additional time?

Mr. KENNEDY. I yield.

Mr. NELSON. We are now all aware of the diethylstilbestrol disaster. Women were fed that as a medicine 25 or 30 years ago. Twenty years went by and finally those children who were fetuses at the time their mothers got diethylstilbestrol ended up with rare vaginal cancer, 20 years later.

This nonsense of saying we have not found anybody dead yet, we have not proved it yet, what kind of irrational nonsense is that? We know it causes cancer in rats. Therefore, we ought to at least warn the people of this country, if they are going to take it, if they are going to use it, that it causes cancer.

We have never in the food and drug law established the principle that we have to come up with conclusive proof that an additive does not cause damage. The burden of proof of safety is on the promoter of the additive. The only studies we have prove that saccharin causes cancer in animals. The minimum we can do is support this amendment and warn people of the danger.

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

Mr. CANNON. Mr. President, I yield myself 2 minutes.

First, I am advised by staff that the warning the committee would have us put on the electronic media takes 8 seconds to read. The average advertisement on the electronic media for the product itself is 10 seconds. So if one spends 8 seconds reading the warning there are 2 seconds left to advertise the product. I may say someone may develop something a little more complicated than that. Senator HAYAKAWA just sent me a typical warning that might be required. I will read it. This would take longer than 8 seconds.

Warning: If an individual consumes one can of diet soda and two servings of saccharin sweetened fruit a day for the next 200 years, his or her children will run a 17 out of 200 chance of developing bladder tumors if human beings have the same vulnerability to saccharin as Canadian rats.

I think that is a typical type of warning we might talk about, Mr. President.

Even on the cigarettes we have required a precise warning that the Surgeon General has determined that cigarette smoking is hazardous to your health. We do not say it causes it in animals. I will read it:

Warning: The Surgeon General has determined—

And he has not made any such determination in this case—

that cigarette smoking is dangerous to your health.

We are saying we should not burden the electronic media, and later I will say the written media as well, with that kind of a warning when we cannot come out precisely and support the type of a proposition which is advanced.

Mr. Chairman, I yield to the Senator from California.

Mr. HAYAKAWA. I would like to suggest this warning that I wrote be stamped on every stick of sugar-free chewing gum.

Mr. KENNEDY. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 3 minutes.

Mr. KENNEDY. Mr. President, it is stating the obvious that this is not a laughing or an amusing matter. There have been too many people who have been affected in this Chamber, directly and indirectly, on this whole issue for us to make light of it, an extremely important health issue before the Senate. The Senator from Nevada says that on the cigarette labels the Surgeon General has made a finding and he refuses, as this amendment permits, to permit the Surgeon General to make such a finding in this particular case.

We cannot have it both ways. We cannot say we are not going to put this message on the media because the Secretary has not made the determination, and yet included in this amendment is a requirement that the Secretary does make the determination and finds it necessary in order to protect the health of the American public.

The Senator complains because we are adding 21 words, and yet there is not a Member in this Senate who got here without adding onto their electronic media, for example, "This was paid for by the friends of JIM ABOUREZK in South Dakota."

Senators know what we are talking about. A few extra seconds has not

blunted the message that any one of us have used to get into the Senate. Now we are saying in the final hour we are going to deny a similar kind of communication to the American people on a matter which has been shown and proven to be carcinogenic in terms of animals.

Mr. President, I ask for consideration of this amendment. I yield back the remainder of my time.

Mr. CANNON. Mr. President, I yield back the remainder of my time and move to lay the amendment on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment on the table.

Mr. CANNON. 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 yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

On this vote, the Senator from Minnesota (Mr. HUMPHREY) is paired with the Senator from Maine (Mr. MUSKIE).

If present and voting, the Senator from Minnesota would vote "nay" and the Senator from Maine would vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN), the Senator from Arizona (Mr. GOLDWATER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

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

The result was announced—yeas 52, nays 42, as follows:

[Rollcall Vote No. 377 Leg.]

YEAS—52

Allen	Glenn	Nunn
Baker	Gravel	Packwood
Bartlett	Griffin	Pearson
Burdick	Hansen	Roth
Byrd, Harry F., Jr.	Hatch	Schmitt
Cannon	Hatfield	Scott
Chiles	Hayakawa	Sparkman
Clark	Helms	Stafford
Cranston	Huddleston	Stennis
Curtis	Jackson	Stevens
Danforth	Laxalt	Stevenson
DeConcini	Long	Stone
Domenici	Lugar	Talmadge
Durkin	Magnuson	Thurmond
Eagleton	McClure	Tower
Eastland	Melcher	Wallop
Ford	Morgan	Zorinsky
	Moynihan	

NAYS—42

Abourezk	Hart	Metcalf
Anderson	Haskell	Metzenbaum
Bayh	Hathaway	Nelson
Bellmon	Heinz	Pell
Bentsen	Hollings	Percy
Biden	Inouye	Proxmire
Brooke	Javits	Randolph
Bumpers	Johnston	Ribicoff
Byrd, Robert C.	Kennedy	Riegle
Case	Leahy	Sarbanes
Chafee	Mathias	Sasser
Church	Matsunaga	Schweiker
Culver	McGovern	Weicker
Dole	McIntyre	Williams

NOT VOTING—6

Garn	Humphrey	Muskie
Goldwater	McClellan	Young

So the motion to lay Mr. KENNEDY's amendment on the table was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the amendment of the Committee on Commerce to strike certain language from the amendment of the Committee on Human Resources.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum on my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on the Cannon amendment.

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

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, for the benefit of the Members, as I understand, Senator CANNON will offer a subsequent amendment, on which there will be an up and down vote, on the written part. He will do this very shortly, so there will be two votes quickly.

I yield to the Senator from Wyoming for a unanimous-consent request.

Mr. WALLOP. Mr. President, I ask unanimous consent that Deral Wiley, of my staff, have the privilege of the floor during the remainder of the debate.

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

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that the name of the Senator from Pennsylvania (Mr. HEINZ) be added as a cosponsor of S. 1750.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on the second Cannon amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is in order to order the yeas and nays at this time.

Mr. KENNEDY. I now 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 question is on agreeing to the Commerce Committee amendment. 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. HUDDLESTON (when his name was called). Present.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent because of illness.

On this vote, the Senator from Minnesota (Mr. HUMPHREY) is paired with the Senator from Maine (Mr. MUSKIE).

If present and voting, the Senator from Minnesota would vote "nay" and the Senator from Maine would vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN) and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 55, nays 39, as follows:

[Rollcall Vote No. 378 Leg.]

YEAS—55

Allen	Ford	Morgan
Baker	Glenn	Nunn
Bartlett	Goldwater	Packwood
Burdick	Gravel	Pearson
Byrd, Harry F., Jr.	Griffin	Roth
Byrd, Robert C.	Hansen	Schmitt
Cannon	Hatch	Scott
Chiles	Hatfield	Sparkman
Clark	Hayakawa	Stafford
Cranston	Helms	Stennis
Curtis	Jackson	Stevens
Danforth	Johnston	Stevenson
DeConcini	Laxalt	Stone
Dole	Long	Talmadge
Domenici	Lugar	Thurmond
Durkin	Magnuson	Tower
Eagleton	Matsunaga	Wallop
Eastland	McClure	Zorinsky
	Melcher	

NAYS—39

Abourezk	Haskell	Moynihan
Anderson	Hathaway	Nelson
Bayh	Heinz	Pell
Bellmon	Hollings	Percy
Bentsen	Inouye	Proxmire
Biden	Javits	Randolph
Brooke	Kennedy	Ribicoff
Bumpers	Leahy	Riegle
Case	Mathias	Sarbanes
Chafee	McGovern	Sasser
Church	McIntyre	Schweiker
Culver	Metcalf	Weicker
Hart	Metzenbaum	Williams

ANSWERED "PRESENT"—1

Huddleston

NOT VOTING—5

Garn	McClellan	Young
Humphrey	Muskie	

So the Commerce Committee amendment was agreed to.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the Commerce Committee amendment 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. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Alabama (Mr. SPARKMAN) who wishes to make an introduction of some distinguished guests.

VISIT TO THE SENATE BY MEMBERS OF THE JAPANESE DIET

Mr. SPARKMAN. Mr. President, we are very happy to have guests with us today, the distinguished members of the Japanese Diet and the Council.

I shall read their names, and I ask unanimous consent to have the complete list of participants in the RECORD.

Mr. Nobusuke Kishi, Mr. Takashi Sato, Mr. Shogo Abe, Mr. Kosaku Wada, Mr. Yoshito Fukuoka, Mr. Eisaku Sumi, Mr. Hiroshi Kodera, Mr. Kazuo Tamaki, and Mr. Tokichi Abiko. [Applause.]

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

LIST OF PARTICIPANTS: U.S. VISIT OF JAPANESE WORKING GROUP OF PARLIAMENTARIANS ON POPULATION AND DEVELOPMENT

HOUSE OF REPRESENTATIVES

Mr. Nobusuke Kishi, Head of Mission, President of Japanese Parliament Federation on Population (JPFP) (LDP).

Mr. Takashi Sato, Secretary of JPFP (LDP).

Mr. Shogo Abe, Chairman, Committee on Family Planning, Maternal & Child Health and Contraception of JPFP (SP).

Mr. Kosaku Wada, Director, Social and Labor Affairs Committee of the House of Representatives (DSP).

Mr. Yoshito Fukuoka, Director, Construction Committee of the House of Representatives (SP).

Mr. Eisaku Sumi, Director, Social and Labour Affairs Committee of the House of Representatives (LDP).

Mr. Hiroshi Kodera, Member of Social and Labour Affairs Committee of the House of Representatives (KP).

HOUSE OF COUNCILLORS

Mr. Kazuo Tamaki, Member of Social and Labour Affairs Committee of the House of Councillors (LDP).

Mr. Tokichi Abiko, Chairman, Foreign Affairs Committee of the House of Councillors, Ex-Director General, Food Agency (LDP).

Dr. Saburo Ohkita, President, Japan Economic Research Center.

Mr. Nihachiro Hanamura, Vice Chairman, Federation of Economic Organization.

Mr. Hisatsune Tokunaga, Vice-President, Nippon Steel Corporation.

Mr. Kazutoshi Yamaji, Chairman, Japanese Organization for International Cooperation in Family Planning Inc.

Dr. Eiichi Wakamatsu, Chairman, Japan Public Health Association.

Prof. Masaaki Yasukawa, Professor of Keio University.

Prof. Shuzaburo Takeda, Professor of Tokai University.

Mr. Akio Matsumura, Resource Development Officer, International Planned Parenthood Federation.

EMBASSY OF JAPAN

Councillor Matsuura.

Mr. Kiyohiko Nanao, First Secretary.

Mr. Hiroshi Sawamura, First Secretary.

RECESS

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the Senate stand in recess for not to exceed 5 minutes in order that Senators may have the opportunity to meet our friends from Japan.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time not be charged against either side on the bill.

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

There being no objection, the Senate at 4:01 p.m., recessed until 4:06 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ZORINSKY).

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair.

There being no objection, the Senate, at 4:07 p.m., recessed until 4:08 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ZORINSKY).

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I shall ask unanimous consent that the Senate proceed to the consideration of the following measures which have been cleared for passage by unanimous consent. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 379, 381, and 382.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, these matters have been on the calendar for some time. The reports have been filed in compliance with the 3-day rule, and there is no objection to proceeding to their consideration.

TEMPORARY SUSPENSION OF DUTY ON CERTAIN LATEX SHEETS

The Senate proceeded to consider the bill (H.R. 2850) to suspend until the close of June 30, 1978, the duty on certain latex sheets, which had been reported from the Committee on Finance with amendments as follows:

On page 2, beginning with line 1, strike "Sec. 2(a)" and insert "(b)";

On page 2, line 5, strike "(b)" and insert "(c)";

On page 2, line 12, strike "the first section of this Act" and insert "subsection (a)";

On page 2, beginning with line 19, insert the following:

SEC. 2. (a) Item 911.25 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "6/30/77" and inserting in lieu thereof "6/30/79".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption, after June 30, 1977.

SEC. 3. (a) Subpart B of part 12 of schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out "otherwise processed" in headnote 2(iv)(D) and inserting in lieu thereof "otherwise usefully processed".

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-419), explaining the purposes of the measure.

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

I. SUMMARY

The first section of H.R. 2850 would permit, through June 30, 1978, duty-free entry of imports of certain latex foam rubber sheets, used to make mattresses, which are now dutiable at 6 percent ad valorem.

Section 2 of H.R. 2850 would temporarily permit, through June 30, 1979, duty-free entry of imports of synthetic rutile, used to make white pigments for paint, paper, and plastic, which are now dutiable at 7.5 percent ad valorem.

Section 3 of H.R. 2850 would provide that film, strips, sheets, and plates of certain plastic or rubber must be usefully processed in a commercial sense before they can be classified as "processed" for purposes of the Tariff Schedules of the United States.

II. REASONS FOR THE BILL

There is no domestic production of sheets of molded pin core latex foam rubber used to make foam mattress blanks. Enactment of the first section of H.R. 2850 would eliminate an unnecessary cost, the existing duty, to domestic mattress manufacturers.

Section 2 of H.R. 2850 is a committee amendment containing the substance of H.R. 3387, 95th Congress. It would continue a duty suspension on synthetic rutile which was enacted in October 1974 and terminated on June 30, 1977. Enactment of section 2 would continue the elimination of an unnecessary cost of a raw material, synthetic rutile, which is not domestically produced in sufficient quantities and for which there is a growing demand.

Section 3 of H.R. 2850 is a committee amendment containing the substance of H.R. 5285, 95th Congress. Noncommercially useful processing of imports of acrylic sheets often results in such imports being assessed lower duties than imports of the sheets would be assessed if they were not considered processed. Enactment of section 3 of H.R. 2850 would permit imports of acrylic sheet to be classified as processed only if the sheets were usefully processed in a commercial sense.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended so as to read:

An act to suspend until the close of June 30, 1978, the duty on certain latex sheets, and for other purposes.

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

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

The motion to lay on the table was agreed to.

DUTY ON IMPORTATION OF COPYING LATHES USED FOR MAKING SHOE LASTS

The Senate proceeded to consider the bill (H.R. 3093) to provide duty-free treatment for certain copying lathes used for making rough or finished shoe lasts and for parts of such lasts, which had been reported from the Committee on Finance with amendments as follows:

On page 1, line 3, following "That" insert "(a)";

On page 2, line 8, strike "SEC. 2." and insert "(b)";

On page 2, line 10, strike "SEC. 3. (a)" and insert "(c)";

On page 2, line 10, strike "the first section of this Act" and insert "subsection (a)";

On page 2, line 14, strike "(b)" and insert "(d)";

On page 2, line 20, strike "the first section of this Act" and insert "subsection (a)";

On page 3, line 3, strike "(c)" and insert "(e)";

On page 2, line 3, strike "amendment made by section 2 of this Act" and insert "repeal made by subsection (b)";

On page 3, line 6, insert the following:

SEC. 2. (a) Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by adding immediately after headnote 3 the following new headnote:

"4. For so long as items 905.10 and 905.11 are in effect, headnotes 3, 4, and 5 of subpart C of part 1 of schedule 3 shall be suspended (except insofar as they relate to hair of the camel) and in lieu thereof—

"(a) for purposes of item 307.40—

"(i) the classification provisions for wool not finer than 46s shall apply to any package of wool containing not over 10 percent by weight of wool finer than 46s but not containing wool finer than 48s; and

"(ii) the citation for imports classifiable under item 307.40 shall be such item number followed by the item number for the part of the contents of the package which determines the rate of duty; and

"(b) for purposes of item 905.11, a tolerance of not more than 10 percent of wools not finer than 48s may be allowed in each bale or package of wools imported as not finer than 46s"; and

(2) by adding immediately before item 905.30 the following new items:

"	Wool (provided for in part 1C, schedule 3):			
905.10	All wool provided for in items 306.00 through 306.24	Free	Free	On or before 6/30/80
905.11	Wool not finer than 46s provided for in items 306.30 through 306.34	Free	Free	On or before 6/30/80 ".

(b) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of the enactment of this Act.

SEC. 3. (a) Subpart G of part 15 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by striking out—

"	Istle:		
192.65	Crude	Free	Free
192.70	Processed	20% ad val.	20% ad val. ".

and inserting in lieu thereof the following:

" 192.66	Istle	Free	Free ".

(b) Item 903.90 of the Appendix to such Schedule is repealed.

(c) The amendments made by this section shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–421), explaining the purposes of the measure.

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

I. SUMMARY

H.R. 3093, as amended by the committee, is designed to achieve three objectives:

To provide duty-free treatment for imports of copying lathes, and of parts for such lathes, used for making rough or finished shoe lasts (forms);

To provide for duty-free treatment until July 1, 1980, of imports of certain coarse wool; and

To provide for duty-free treatment of imports of istle, a plant fiber used as upholstery padding and in brushes and brooms.

II. REASONS FOR THE BILL

The provisions of the bill relating to copying lathes for making shoe lasts would make permanent the duty-free treatment of such imports which has existed for the last 21 years under repeated temporary duty suspensions. Duty-free treatment would remove an unnecessary cost to the domestic shoe last industry, which is totally dependent on imports, for the expensive lathes as there is no U.S. production of the lathes, permitting the shoe-last producers to hold down costs and maintain competitiveness with foreign shoe-last producers.

The provisions of the bill regarding temporary duty-free treatment of imports of coarse wool would make the products of U.S. firms using coarse wool more competitive with imported man-made fiber and woolen products. There is virtually no domestic production of coarse wools.

The provisions of the bill regarding istle would make the products of U.S. producers employing istle more competitive with imported products using istle. There is no domestic production of crude or processed istle fiber. Imported products made from processed istle, such as brushes, are subject to a lower duty rate than the processed istle fiber itself. Domestic producers of brushes claim that duty-free treatment of processed istle is needed to remain competitive with imported brushes. The duty has been suspended for nearly 20 years. Because istle is duty free under the Generalized System of Preferences, the major effect of this provision of the bill for the near term would be to end the requirement that importers file GSP forms.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended so as to read:

An act to provide duty-free treatment for certain copying lathes used for making rough or finished shoe lasts and for parts of such lathes, and for other purposes.

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

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

The motion to lay on the table was agreed to.

DUTY ON IMPORTATION OF CERTAIN HORSES

The Senate proceeded to consider the bill (H.R. 3259) to continue to suspend for a temporary period the import duty on certain horses, which had been reported from the Committee on Finance with amendments as follows:

On page 1, line 3, following "That" insert "(a)";

On page 1, line 6, strike "6/30/78" and insert "6/30/80";

On page 1, line 7, strike "SEC. 2. (a)" and insert "(b)";

On page 1, line 7, strike "the first section of this Act" and insert "subsection (a)";

On page 1, line 11, strike "(b)" and insert "(c)";

On page 2, line 7, strike "the first section of this Act" and insert "subsection (a)";

On page 2, line 14, insert the following:

SEC. 2. (a) The headnotes to part 10 of schedule 4 of the Tariff Schedules of the United States (19 U.S.C. 1202) are amended by adding at the end thereof the following new headnote:

"4. (a) For purposes of this headnote, the term 'petroleum' means crude petroleum (including reconstituted crude petroleum) or crude shale oil provided for in items 475.05 or 475.10.

"(b) Petroleum shall, if a product of Canada, be admitted free of duty and any entry therefor shall be liquidated or reliquidated accordingly if, on or before the 180th day after the date of entry, documentation is filed with the customs officer concerned establishing that, pursuant to a commercial exchange agreement between United States and Canadian refiners which has been approved by the Secretary of Energy—

"(i) an import license for the petroleum covered by such entry has been issued by the Secretary; and

"(ii) an equivalent amount of domestic petroleum or duty-paid foreign petroleum has, pursuant to such commercial exchange agreement and to an export license issued by the Secretary of Commerce, been exported from the United States to Canada and has not previously been used to effect the duty-free entry of like Canadian products under this headnote.

"(c) The Secretary of the Treasury, after consulting with the Secretary of Commerce and the Secretary of Energy, shall issue such rules or regulations as may be necessary governing the admission of Canadian products pursuant to the provisions of this headnote.".

(b) The amendment made by subsection (a) shall apply with respect to articles entered or withdrawn from warehouse, for consumption on or after the date of enactment of this Act pursuant to commercial exchange agreements referred to in headnote 4 of part 10 of schedule 4 of the Tariff Schedules of the United States (as added by such subsection) which are effective for periods beginning on or after such date of enactment.

SEC. 3. (a) Subpart B of part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by inserting immediately before item 907.60 the following new item:

" 907.20	Doxorubicin hydrochloride (provided for in item 407.85, part 1, or item 437.32 or 438.02, part 3, schedule 4, depending on source)	Free	No change	On or before 6/30/80 "

(b) The amendment made by subsection (a) shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after the date of enactment of this Act.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read:

An Act to continue to suspend for a temporary period the import duty on certain horses, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–422), explaining the purposes of the measure.

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

I. SUMMARY

H.R. 3259, as amended by the committee, would accomplish three objectives:

To suspend until the close of June 30, 1980, the duty now applicable to certain horses, thus ending tariff discrimination among breeds and avoiding customs valuation and bonding problems;

To assure a continued Canadian crude petroleum supply at the lowest cost to U.S. refiners located near the Canadian border by permitting the duty-free entry of Canadian crude petroleum and crude shale oil provided that an equivalent amount of domestic or duty-paid foreign crude petroleum or crude shale oil is exported to Canada from the United States; and

To reduce the cost to patients of doxorubicin hydrochloride, an anticancer drug, by suspending until the close of June 30, 1980, the import duty on that drug.

II. REASONS FOR THE BILL

The provisions of the bill regarding horses end the tariff discrimination among breeds, some of which are now entitled to duty-free treatment while others are not, avoid customs valuation problems with respect to foals and horses which have not yet raced, and avoid bonding problems resulting when a horse entered under a temporary bond is purchased in a claiming race.

The provisions of the bill regarding Canadian petroleum are intended to assure a continued crude petroleum supply at the lowest cost to U.S. refiners located near the Canadian border. Because of lack of pipelines and other factors, northern tier U.S. refiners do not have economical access to sufficient sources of crude petroleum except from Canada. The Canadian Government has established export quotas on crude petroleum to the United States, but has agreed to supply crude petroleum to the United States in excess of export quotas in exchange for exports to Canada from the United States of an equivalent quantity of crude petroleum. Duty-free treatment for imports of Canadian crude petroleum as provided by the bill would remove one economic barrier to such exchanges.

The provisions of the bill regarding doxorubicin hydrochloride are intended to reduce costs to cancer patients using the drug. There is no domestic production of doxorubicin hydrochloride. To the extent that savings from the duty-free treatment provided by the bill are passed along to the ultimate consumer, a cancer patient could have his drug bill reduced by as much as $50 to $75 per course of treatment.

TRANSFER OF MEASURES TO UNANIMOUS CONSENT CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are two measures on the calendar that are ready for transfer to the Unanimous Consent Calendar. Therefore, I ask that the clerk transfer Order Nos. 380 and 386 to the Unanimous Consent Calendar.

The PRESIDING OFFICER. They will be so transferred.

FEDERAL ELECTION COMMISSION

Mr. ROBERT C. BYRD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1435.

The PRESIDING OFFICER (Mr. ZORINSKY) laid before the Senate the amendments of the House of Representatives to the bill (S. 1435) to authorize appropriations for the Federal Election Commission for fiscal year 1978, as follows:

Strike out all after the enacting clause, and insert: That section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439c) is amended by striking out "and" after "1976", and by inserting after "1977" the following: ", and $8,123,000 for the fiscal year ending September 30, 1978".

Amend the title so as to read: "An Act to amend the Federal Election Compaign Act of 1971 to extend the authorization of appropriations contained in such Act."

UP AMENDMENT NO. 837

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate concur in the amendment of the House of Representatives, which is in the nature of a substitute for S. 1435, with an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. ROBERT C. BYRD) proposes an unprinted amendment numbered 837:

Strike the amount, "$8,123,000" where it appears at line 6, and insert in lieu thereof "$7,811,500."

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

PRIVILEGE OF THE FLOOR

Mr. NELSON. Mr. President, I ask unanimous consent that Mr. Scott Ginsburg of my staff be accorded the privilege of the floor during the consideration of the legal services bill and rollcall votes thereon.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, the time is not running against either side, I assume.

The PRESIDING OFFICER. At this point it is not.

Mr. ROBERT C. BYRD. I thank the Chair. I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair.

There being no objection, at 4:14 p.m. the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 4:32 p.m., when called to order by the Presiding Officer (Mr. ZORINSKY).

PROHIBITION OF SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate, at this time, proceed to the consideration of Calendar Order No. 308 for not to exceed 30 minutes.

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

The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 995) to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. ROBERT C. BYRD. Mr. President, is it clearly understood that at the end of 30 minutes, the Senate will proceed with the consideration of the saccharin bill?

The PRESIDING OFFICER. That is the order.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Human Resources with amendments as follows:

On page 1, at the beginning of line 1, insert "SECTION 1.";

On page 2, beginning with line 7, insert the following new section:

SEC. 2. (a) Except as provided in subsection (b) the amendment made by this Act shall be effective on the date of enactment.

(b) The provisions of the amendment made by section 1 of this Act shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act, for a period of one hundred and twenty days after the date of enactment of this Act.

SEC. 3. Until the expiration of a period of one year from the date of enactment of this Act or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided, further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise."

SEC. 2. (a) Except as provided in subsection (b) the amendment made by this Act shall be effective on the date of enactment.

(b) The provisions of the amendment made by section 1 of this Act shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act, for a period of one hundred and twenty days after the date of enactment of this Act.

SEC. 3. Until the expiration of a period of one year from the date of enactment of this Act or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided, further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS. I inquire what the time agreement is that we are operating under at this time.

The PRESIDING OFFICER. There are 3 hours on the bill. There are 2 hours on any amendment in the first degree, and 30 minutes on any amendment in the second degree.

Mr. WILLIAMS. I thank the Chair.

I yield myself such time as I may use within the agreement entered into, but we shall not proceed beyond 30 minutes at this time on this bill.

Mr. President, last December, in the case of Gilbert against General Electric, the Supreme Court ruled that title VII does not protect working women who are disabled by pregnancy or related conditions from discrimination under employee benefit plans. The Court held that title VII's prohibitions against sex discrimination do not preclude discrimination based on pregnancy. This decision nullified what I believe, and what the majority of the members of our committee believe, was the intent of Congress in enacting title VII—to protect all individuals from sex discrimination in employment—including pregnant women.

The bill before us will overcome the Court's decision and provide important protection for women affected by pregnancy as the testimony received by the labor subcommittee well illustrates. It is most important that this protection be provided to our Nation's working women.

It is important because a large number of working women need its protection for their financial security, and the security of their families.

Two-thirds of the 36 million women in our labor force work because of pressing economic need. These women are either single, widowed, divorced, or separated, or they have husbands earning less than $10,000 per year. It is a shocking fact that, among full-time workers employed throughout 1975, the median earnings of women were less than three-fifths of the median earnings of men. Our Nation's working women earned only 59 cents for every dollar earned by working men. Women were required to work nearly 9 days to earn the same gross income that men earn in only 5 days.

This legislation is also important because, in the long run, it will permit the 36 million working American women to assume their rightful place, and make a full contribution in our Nation's economy. Too often, sex discrimination has denied working women an opportunity to pursue a career. One reason for the gap between the earnings of men and women is that 90 percent of the entire female work force is concentrated in 10 female occupations.

These shocking statistics cannot be made better unless working women are provided effective protection against discrimination on the basis of their childbearing capacity. Testimony received by the Labor Subcommittee has shown that most policies and practices of discrimination against women in the workforce result from attitudes about pregnancy and the role of women who become pregnant which are inconsistent with the full participation of women in our economic system.

Because of their capacity to become pregnant, women have been viewed as marginal workers not deserving the full benefits of compensation and advancement granted to other workers.

The reported title VII cases reveal a broad array of discriminatory practices based upon erroneous assumptions about pregnancy and the effect it has on the capacity of women to work.

In some of these cases, the employer refused to consider women for particular types of jobs on the grounds that they might become pregnant, even though the evidence revealed that pregnant women are perfectly capable of performing the work in question. Even more common is the refusal to provide training, or advancement to management, because of the concern that women might become pregnant and leave the employer's service.

A common practice has been to place pregnant women on mandatory unpaid leave, regardless of their ability or inability to work. In some cases, women thus discriminated against are permitted to return to their former employment after delivery; but in other cases, mandatory leaves result in loss of previous position, lower pay, and loss of seniority and other benefits. In the extreme case, women who become pregnant have simply been terminated by their employers.

These practices have profound effects upon the ability of women to maintain their employment, and to advance their financial and career interest. Loss of seniority has frequently resulted in lower retirement benefits, loss or reduction of vacation and sick leave benefits, and the loss of opportunity for advancement or training.

Thus, the overall effect of discrimination against women because they might become pregnant, or do become pregnant, is to relegate women in general, and pregnant women in particular, to a second-class status with regard to career advancement and continuity of employment and wages.

These practices reach all working women of childbearing age, but they fall most heavily upon women who become pregnant; and 80 percent of women become pregnant in their working lives. In fact, approximately 40 percent of all pregnant women are employed during their pregnancy, and almost 40 percent of mothers with children under 6 years of age are employed.

Prior to the Supreme Court's decision in the Gilbert case, title VII was an important factor in protecting working women from sex discrimination. In 1964, 40 percent of all employers still did not even provide unpaid maternity leaves—women were simply fired. Among employers who did provide leave, more than one-half forced women onto leave before the 7th month of pregnancy. Only 6 percent of employers permitted women to use their sick leave for pregnancy-related illness or disability.

Title VII, which was interpreted to prohibit all forms of employment discrimination against women, including discrimination because of pregnancy, had a dramatic effect on these practices. By 1973, 73 percent of women workers received maternity leave accompanied by reemployment rights; and 26 percent were permitted to use sick leave for pregnancy-related illness and disability.

Now, however, the Gilbert decision has changed this effect of title VII and has left a gaping hole in the protection which title VII affords to working women.

This legislation will close that hole in a very straightforward way. It amends title VII by adding to section 701 of that statute a new subsection (k) which makes clear that the prohibitions against sex discrimination in the act include discrimination in employment on the basis of pregnancy or pregnancy-related disabilities. This legislation will prohibit not only discrimination in the provision of disability benefits, which was the type of discrimination which occurred in the Gilbert case, but it will also prohibit discrimination on the basis of pregnancy or conditions arising out of pregnancy for all employment-related purposes.

The central purpose of the bill is to require that women workers be treated equally with other employees on the basis of their ability or inability to work. The key to compliance in every case will be equality of treatment. In this way, the law will protect women from the full range of discriminatory practices which have adversely affected their status in the work force.

Section 2 of this bill provides that title VII's basic prohibition against discrimination based on pregnancy will be effective immediately upon enactment. There is no reason not to provide women with immediate protection against discriminatory employment practices.

However, section 2(B) of the bill will delay the effective date of this legislation as it will apply to fringe benefit and insurance plans. This delay will provide a reasonable period within which employers and insurance companies can make necessary adjustments in existing plans, in order to bring them into compliance with the law.

Section 3 of the bill makes clear what employers can and cannot do in adjusting their fringe benefit programs to come into compliance with this legislation. Based upon the experience of the Justice Department and the Equal Employment Opportunity Commission under title VII, we believe that most employers will come into compliance in a short period of time.

It is also the committee's view that this legislation ought not to interfere with the legitimate expectations of employees, as regards their current fringe benefit coverage, or result in instability in labor-management relations. For this reason, section 3 provides that current benefit levels may not be reduced as a means of coming into compliance with this bill, and that prohibition would prevail for prescribed periods of time.

These periods were prescribed on the assumption that, after employers have come into compliance and been in compliance for some time, it is very unlikely that changes in fringe benefit packages would be made because of the need to provide equal benefit for pregnant women.

Mr. President, the committee found that the cost of equal treatment of pregnancy has been greatly exaggerated. It is likely that employers will find, after some experience, that the cost of equality in this regard is not significant; and the impetus to alter benefit packages for this reason will disappear.

Accordingly, section 3 provides that benefits may not be reduced as a means of compliance for a period of 1 year or, where this is a collective bargaining agreement, until the expiration of that agreement. The latter provision recognizes the importance of stability in labor relations during the term of a collective bargaining agreement and, therefore, prevents reductions due to this legislation during the term of a current agreement.

In the committee's view, these time periods will provide all affected parties with an opportunity to gain experience with the actual impact of the legislation. Thereafter, careful and informed consideration can be given to the desirability of readjusting fringe benefit programs in the context of nondiscriminatory coverage of all covered conditions.

Mr. President, the effect of this temporary prohibition against reducing benefits as a means of complying with the legislation is mitigated by a proviso that appears in section 3. This proviso permits employers to apportion the increased cost associated with this legislation between themselves and their employees, in the same proportion that applies to the cost of existing benefits. For example, where employers and employees presently share the cost of these fringe benefit programs on a 50–50 basis, any increased cost as a result of this legislation may also be shared on a 50–50 basis.

A second proviso to section 3 makes it explicit that the prohibition against reducing benefits does not apply where the employer reduces benefits for reasons unrelated to this legislation.

In this way, the bill makes it clear that we are not "freezing" benefits. Employers will remain free to adjust benefits at any time for reasons unrelated to this legislation, and will be free to adjust benefits for any reason after 1 year, or upon the expiration of any applicable collective bargaining agreement.

Mr. President, I would also like to address briefly several issues which arose during the course of the committee's deliberations.

With regard to the cost of this legislation, the committee received helpful testimony from many witnesses. We have carefully examined this testimony, and it is the committee's view that the cost of this legislation to employers, while not negligible, will not be unduly burdensome.

The committee believes that the $191.5 million estimate made by the Department of Labor with regard to the costs which will be incurred under existing temporary disability plans is the most reliable estimate received by the committee with regard to such plans. This amount would be a 3.5-percent increase in the cost of temporary disability plans: It represents five one-hundredths of 1 percent increase as a percent of total payroll cost for workers covered by temporary disability insurance plans. I say that is not negligible, but it is not the heavy burden that was described by some who had escalated the figure, in some mysterious way, into the billions. Not so. These figures are hard figures from the Department of Labor that I am sure we can rely on.

Another significant cost factor will be incurred by employers who maintain discriminatory health insurance and hospitalization insurance plans. Although the committee did receive one estimate of cost which might be incurred under these plans, several other witnesses testified that they could not make an accurate estimate of cost under health insurance and hospitalization insurance plans because of the great variety of those plans and because of a lack of sufficient analytical data as a basis for that estimate.

In this regard, it is important to bear in mind that this legislation does not require that any employer begin to provide health insurance where it is not presently provided. Rather, it requires that employers who do provide health insurance do so on a nondiscriminatory basis. Because some plans do not cover maternity costs at all, while others provide limited coverage, and because the degree of coverage required for nondiscrimination would depend upon the degree to which conditions unrelated to maternity are covered, the costs incurred as a result of this legislation would be extremely variable from plan to plan.

The committee's report on this legislation, No. 95–331, discusses this matter in more detail and provides some analysis of existing health plans. A review of the Department of Labor's digest of health insurance plans revealed that, in 1974, only 41 percent of plans appeared to be discriminatory under this legislation.

With regard to cost, it is also important to note that this legislation will not increase the costs of employers who are already subject to State laws which mandate the equal provision of benefits for pregnancy and related conditions. At least 23 States currently interpret their own laws to require the equal provision of benefits to women affected by pregnancy and childbirth. In those States, most employers are already subject to State law and the effect of this legislation will be to reinforce the State requirement of nondiscrimination with a Federal requirement.

Another question which arose during committee consideration of this bill is whether there should be a special provision concerning abortion. In this regard, I think it is important to observe that this is a pro-life bill. The practical effect of this legislation will be to encourage women to bear their children rather than to undergo voluntary termination of their pregnancies.

The purpose of the bill is to insure that women who are disabled by conditions related to pregnancy are compensated fairly and given a fair amount of assistance with their medical bills, in relation to their fellow employees who are disabled by other medical conditions. Because full-term pregnancies almost always result in greater disability and higher medical expenses, this bill will provide an important financial cushion for women who might otherwise seek to avoid those burdens by electing abortion.

Finally, Mr. President, I want to emphasize testimony received by the Committee from the American Nurses' Association, and from an eminent obstetrician, Dr. Andre Hellegres, which documented the concrete connection between loss of income during the disability phase of pregnancy and a deterioration of the health of the pregnant woman and of her child which results from impaired access to a healthful life situation.

In addition, there is a relationship between infant prematurity and income. It is estimated that prematurity costs the Nation $1 billion per year for care and hospital nursing alone, not to mention the cost of certain lasting effects which can result from prematurity.

These problems can affect an enormous number of our Nation's children. Approximately 40 percent of all pregnant women work and, as we know, a large number of them are heads of households, or have unemployed or low-income husbands. In March 1976, nearly 46 percent of our children under age 18 had mothers in the workforce. There were 14.3 million children in families in which the father was either absent, unemployed, or not in the labor force. In each of these circumstances, the children were better off in terms of family income if their mothers were in the labor force; although families headed by women have lower family income generally than families headed by men.

The cost of this bill, therefore, cannot be measured in terms of what it will cost to pay for benefit plans which cover women during their pregnancy-related disabilities. We must also consider the cost which is imposed on society when working women and their families are denied adequate income for a decent standard of living. This cost is felt in terms of medical complications for both the women and their children, and it is

felt in terms of the loss to our economy of the productive value of their talents and energies.

In summary, Mr. President, this legislation restores to our working women a very basic and fundamental protection against sex discrimination, one which we intended to provide to them when title VII was enacted. The fundamental importance of this protection—to our working women, to their families, and to American industry itself—has been made manifest during our consideration of this legislation. We had a unanimous vote of the committee in reporting this bill. I am confident that these facts are well recognized in this body, and that we will pass this legislation and restore this important protection for working women.

Mr. President, I ask unanimous consent that the following members of the staff of our committee be granted all the privileges of the floor during the debate on S. 995 and during rollcall votes: Stephen Paradise, Darryl Anderson, Michael Forscey, Michael Goldberg, Donald Zimmerman, John Rother, and Gerald Lindrew.

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

Mr. WILLIAMS. Mr. President, with this measure coming up as it does, during a recess from the bill that was the pending business, and inasmuch as it will not be reached later this day, we know that our opening statements will be available. There will be an opportunity to review the record before we return to the debate, unless we are fortunate to have an opportunity to read it again this calendar day.

Mr. JAVITS. Mr. President, I am pleased to join with Senator WILLIAMS in urging passage of S. 995, legislation which would prohibit sex discrimination in employment on the basis of pregnancy. This legislation does not represent a new initiative in employment discrimination law, neither does it attempt to expand the reach of title VII of the Civil Rights Act of 1964 into new areas of employment relationships. Rather, this bill is simply corrective legislation, designed to restore the law with respect to pregnant women employees to the point where it was last year, before the Supreme Court's decision in *Gilbert* v. *General Electric Corp.*, 426 U.S. 125 (1976). In that case, the Court held that the exclusion of pregnancy and related conditions from an otherwise comprehensive disability insurance plan did not constitute sex discrimination in violation of title VII.

I hope the Senate will recognize the remedial purpose of the bill and approve it as reported from the Human Resources Committee.

The bill was thoroughly considered by the committee. We held extensive hearings, in which the administration, labor groups, civil rights organizations, women's groups and pro-life organizations all endorsed the bill, and several businesses informed the committee of their emment practices already in conformance with the bill's requirements. In addition to this very broad base of support, it is important to note that approximately 25 States have already, either legislatively or by administrative action, prohibited discrimination in employment against women who become pregnant. Thus, all that this legislation does is make uniform for the entire country not only a principle that we thought was well-established nationally prior to last year, but also a principle that continues to be enforced in half of the States of this country.

This principle, that discrimination against pregnant women is sex discrimination, is the substance of S. 995. As Mr. Justice Stevens stated,

> (b)y definition, such a rule discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male.

Accordingly, the bill would prohibit as sex discrimination any personnel practice, fringe benefit program or other employment related action which treats pregnancy or pregnancy-related conditions differently than other conditions which also cause inability to work for limited periods.

The bill requires equal treatment when disability due to pregnancy is compared to other disabling conditions. Although several State legislatures, including New York, have chosen to address the problem by mandating certain types of benefits for pregnant employees, S. 995 does not go that far. Instead, the bill adopts as its standard equality of treatment, and thereby permits the personnel and fringe benefit programs already in existence for other similar conditions to be the measure of an employer's duty toward pregnant employees. It definitely does not require a particular fringe benefit program; it does not require a certain disability benefit level; it does not require an unlimited duration for the benefit period; it does not require employer to hire pregnant women.

This approach represents only basic fairness for employees who become pregnant. Without this legislation, they may face a series of obstacles to continuing the pregnancy to term while maintaining their jobs and their incomes. Many women temporarily disabled by pregnancy have been forced to take leave without pay or to resign. In so doing, they have forfeited the income which holds their families together, which helps assure their children adequate nutrition and health care, and which helps keep their families from resorting to welfare. Faced with the dual cost of being forced to pay their medical costs plus losing their wages, many low-income women have felt that only one alternative remained—even unwanted abortion. Where other employees who face temporary periods of disability do not have to face the same loss, it is especially important that we not ask a potential mother to undergo severe disadvantages in order to bring another life into the world. I would hope that we all can see the injustice that has occurred and that continues to occur without this bill.

Mr. President, we can no longer in this country legislate with regard to women workers on the basis of outdated stereotypes and myths. The facts are that women, like men, often need employment to support families, that women, like men, find their work and their careers important sources of self-esteem and personal growth, and that women, like men, have the skills and motivation to make important contributions to this country's life, if only we will clear away the arbitrary restraints that sometimes stand in the way. I believe that this body's commitment to equality of treatment by sex is firm, and thus we should now reaffirm the policy of equality on the job, especially when the female employee is uniquely female, when she is pregnant.

Arbitrary job discrimination against women based on pregnancy or childbirth has no place in our society. It is my belief that the Federal Government, as a matter of vital social policy, has the responsibility of enacting those laws necessary to assure women of their opportunity for full participation in the workforce.

As in all legislation designed to correct social injustices, this bill will entail some costs to employers and to the public. In my judgment, however, the costs entailed are quite insignificant in light of the principle that underlies the bill. That discrimination on account of pregnancy or childbirth is sex discrimination, and that pregnancy and childbirth are conditions of unequalled importance to every family, are fundamental truths. We cannot let the estimate of very marginal percentage increases in the cost of these benefits, estimated at less than 5 percent of existing benefit costs, stand in the way of the full guarantee against sex discrimination in employment. As in the landmark Civil Rights Act of 1964, the legislation before the Senate now is designed to estabilsh a principle that clearly outweighs any marginal costs incurred in its implementation.

Mr. President, the Supreme Court has provided us with an opportunity within our constitutional authority to amend title VII to make clear that sex discrimination includes classifications based on pregnancy. I urge my colleagues to support S. 995 and by so doing, to demonstrate once again our commitment to the achievement of genuinely equal opportunity for women.

Mr. STAFFORD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STAFFORD. It is my understanding that at 5 o'clock we will return to the pending legislation on saccharin. Is my understanding correct?

The PRESIDING OFFICER. That will occur at 5:04.

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

Mr. STAFFORD. I yield.

Mr. WILLIAMS. Mr. President, the Senator from Indiana (Mr. BAYH) has been one of the leaders in the Senate in advancing this measure. I am glad he is in the Chamber as we begin our debate on the sex discrimination bill dealing with pregnancy and pregnancy related conditions and disability. He was with us at the time of the introduction of the bill and he was very forceful.

Mr. BAYH. I want to compliment him

as chairman of the committee for the leadership role he has played not only in holding hearings but also in being the chief sponsor, and I, along with several others, appreciate very much the opportunity to have joined with him.

I cannot think of an area where our country should make an extra effort to see that equality of treatment is accorded to all of our citizens to a greater degree than in the area of health. Brown against Board of Education, of course, was the landmark decision in the area of equality of education many years ago. But, unfortunately, we still have today rather substantial evidence in certain circumstances where certain classes of citizens who happen to be women are discriminated against relative to their ability to get health services delivered.

As will come out plainly in the debate, and has been mentioned before by our distinguished chairman and chief sponsor of the bill, what this measure is designed to do is not to say to manufacturers and employers "Thou shalt provide disability," but, indeed, "if you do either voluntarily or through the negotiating process between the work force and management determine that the work force should be covered by disability, thou shalt not discriminate against a classification within the work force, women, because women are uniquely capable of becoming pregnant."

I think we can make a good case on this not only on the basis of equity, but I think chapter and verse can be displayed or will be put on the record to show that those corporations that have provided pregnancy disability for women in the work force have really benefited as a result thereof.

Those who say this will present an unnecessary cost burden upon the industry in question should look at the record. The record shows, it seems to me, beyond dispute that in those instances where disability benefits for pregnancy have been made available for women in the work force, the time away from the job has been shorter, and thus the loss to the employer has been less, and the number of women who returned to the job, thus prohibiting the need to go out and get new workers and retrain them and reequip them for the job, the number of workers returning has been greater.

All of this, of course, is beneficial to the person who is running the plant.

So I think you can make a good dollars-and-cents case and, in my judgment, beyond dispute you can make a good case on the basis of the constitutional question of equity.

I again appreciate the distinguished Senator from New Jersey's contribution he has made to bring this to our attention, and I am looking forward to a successful legislative endeavor once again with him.

Mr. WILLIAMS. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. WILLIAMS. Under the agreement entered into, is there any more time on this bill or have we reached the time limit?

The PRESIDING OFFICER. The Senator has 1 more minute remaining.

Mr. STAFFORD. Mr. President, if the Senator will yield to me for that minute——

Mr. WILLIAMS. I will be happy to yield to the Senator from Vermont.

Mr. STAFFORD. I would like to reaffirm the statement of the chairman of the committee. The bill came out of our committee with a unanimous vote.

I will also tell the distinguished chairman of the committee that I thought his explanation of this bill was an excellent one. It is too bad there were not more Senators on the floor to hear it, but it covered all of the details in excellent fashion.

I hope our colleagues, Mr. Chairman, will have the opportunity between now and the vote later tonight or tomorrow morning to read your opening statement for their full understanding of this important legislation.

Mr. WILLIAMS. I appreciate that.

It has been a great pleasure to work with the Senator from Vermont, as we developed this legislation in our committee. Our relationship has been productive in this, as in other matters; and it is a pleasure to work for these measures that are designed to bring new opportunities to people who are denied equal opportunities, as women have been denied certain opportunities as a result of the Supreme Court's decision in the Gilbert case.

Mr. BAYH. Mr. President, I ask unanimous consent that a member of my staff, Barbara Dixon, be accorded the privilege of the floor during the debate which will occur and the votes which will occur on S. 995.

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

Mr. KENNEDY. Mr. President, we can set right the injustice of unequal health protection for male and female employees by passing S. 995. This amends section 701 of the Civil Rights Act of 1964 by providing that employers who offer disability benefits must offer them to cover pregnancies.

As a cosponsor of this legislation, and as one who spoke strongly in support of it in testimony delivered before the Labor Subcommittee, I welcome it to the Senate floor. It is a vital piece of legislation and must be passed.

It is only a shame that 13 years after passage of the Civil Rights Act we must still be addressing an elementary issue such as the one we face today.

In Gilbert against General Electric, the Supreme Court decided that employers did not have to include coverage for pregnancy and related illnesses in their disability plans. After all, neither men nor women were covered for their pregnancies.

But, as Justices Brennan and Marshall said in their dissent "A realistic understanding of conditions found in today's labor environment warrants taking pregnancy into account in fashioning disability policies."

Forty-seven percent of the labor force in the United States today are women. Seven of every 10 girls born today will at some point in their adult lives become a part of the labor force. In the past 30 years, the number of working mothers has tripled. In the past decade, women accounted for over 50 percent of the increase in the civilian labor force.

It is critical to remember that women work because they have to. Seventy percent of the women who work, over 25 million, are women who need the money to support their families, as they are either the sole wage earner, are married to husbands who earn less than $7,000 a year, or are single, divorced, or widowed.

Approximately 85 percent of working women become pregnant at some point during their working lives. Of the women who are briefly disabled by their pregnancies, 60 percent return to work.

At present, many of these women return to work at jobs that have not provided any disability coverage to them during the period of time they were medically certified as disabled.

Since women work to support their families, depriving them of such coverage at a time they and their families are very much in need of it discriminates not only against these women but against their families as well. This discrimination handicaps children who are born into families where a paycheck—possibly the only paycheck—has arbitrarily vanished.

This devastating effect is unfair and cuts to the heart of the Civil Rights Act. For, medical matters of far less serious concern are covered by these policies when they happen to affect men. Thus, the protections and attractions of the workplace are more comportable for men than they are for women. I would call that discrimination.

Now, an employer can provide disability benefits for cosmetic surgery but not provide such benefits to women with genuine pregnancy-related disabilities. Many, though not all, fringe benefit plans follow a discriminatory pattern of providing for types of cosmetic surgery, or nonessential surgery such as vasectomies, but not pregnancies. And pregnancy is as voluntary or involuntary as skiing accidents, or diseases caused by smoking, yet the latter events are almost always covered by major medical plans.

The proposed amendment conforms to the 1972 guidelines of the Equal Employment Opportunity Commission.

This amendment does not require all employers to provide disability insurance plans; it merely requires that employers who have disability plans for their employees treat pregnancy-related disabilities in the same fashion that all other temporary disabilities are treated with respect to benefits and leave policies.

The time has come for Congress to guarantee to the 39 million working women of this Nation that sex discrimination in employment is ended. The time has come for all of us to understand that the Nation's economy and the economic resources and stability of countless families depend to a significant degree on the earnings of women who make up over 40 percent of our country's workers. The time has come to end for all time the ridiculous notion that with the tremendous challenges facing this

Nation, we can any longer afford to waste, through discrimination, the wealth of talent and energy in our Nation's work force. Congress must take the responsibility of changing this situation by enacting this amendment.

SACCHARIN STUDY, LABELING, AND ADVERTISING ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1750, which the clerk will report.

The assistant legislative clerk read as follows:

S. 1750, a bill to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act, as amended, to conduct studies concerning toxic and carcinogenic substances in foods, to conduct studies concerning saccharin, and so forth.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The clerk will report the pending committee amendment.

The assistant legislative clerk read as follows:

On page 10, beginning with line 7 down through line 16 on page 11, insert new language.

The PRESIDING OFFICER. Who yields time?

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair, and I think we can get started in 2 or 3 minutes.

There being no objection, the Senate, at 5:05 p.m. took a recess, subject to the call of the Chair.

The Senate reassembled at 5:10 p.m., when called to order by the Presiding Officer (Mr. ZORINSKY).

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will state the pending committee amendment.

The assistant legislative clerk read as follows:

On page 10, beginning with line 7, insert new language down through line 16 on page 11.

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

Mr. KENNEDY. Mr. President, I understand that is a committee amendment; am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. KENNEDY. And there is a series of still pending committee amendments that have to be accepted.

The PRESIDING OFFICER. That is the last committee amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. CANNON. Mr. President, I call up amendment No. 834 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. CANNON) for himself and Mr. CRANSTON, Mr. DOMENICI, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. STEVENS, Mr. STONE, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, and Mr. ZORINSKY proposes amendment No. 834.

The amendment is as follows:

Beginning on line 7, page 10, strike out through line 10, page 11.

Mr. CANNON. Mr. President, there really is no debate necessary on this amendment as it is merely an amendment to insure that the print media and the electronic media are treated equally in terms of any advertising requirements Congress may or may not impose in this area.

This would strike the committee amendment requiring the warning to be printed in the advertisements in written communications.

It just does for the printed media precisely what we did in the previous amendment for the electronic media.

I have no desire to take any additional time.

I am willing to yield back my time unless there is further debate on this.

The PRESIDING OFFICER. The yeas and nays have been previously ordered on this amendment and would have to be vitiated.

Mr. KENNEDY. Mr. President, I yield myself what time I may use.

Mr. President, during the course of the debate on the previous two amendments that dealt with the electronic media the case was made, and the case was also made in the committee, first, that we are giving extraordinary discretion to the Secretary of HEW in fashioning a health message which would communicate the potential risk to the American consumer. There was serious resistance and reluctance among the membership to grant that kind of a broad authority to the Secretary of HEW, even though the committee believes that there is an extremely important and vital health issue in which the Secretary of HEW should be involved in protecting the health of the American consumer.

But the Senate went on record on that particular issue, saying we do not want to grant that authority based upon either the record of the committee or in the findings of the principal health officers of this country.

Then we went to the question that we will not grant that particular discretion which would give broad authority to the Secretary of HEW, without getting together with the Federal Communications Commission or other regulatory agencies. So then we indicated what we felt would be a fallback position which was to insist that in the electronic media they would still have the warning aspect added to the radio or to the television communication.

All that it would do in terms of television would require the same kind of warning label that would go on any of the particular food items or other items that had saccharin in it and we would require the similar kind of tag line which we add on the basis of all political advertising, a small simple tag line about the potential risk to your health and the potential risk of cancer. The Senate went on record in opposition to that because they said:

In a short ad of 10 seconds or 20 seconds that is advertising these soft drinks that have saccharin we just cannot add that particular message.

Here we want to strike with regard to advertising even in the printed media.

In the area of cigarettes we do include a warning, and all we are trying to do in terms of the printed media is include a similar kind of warning.

The proponents of this particular amendment cannot say:

That is going to interfere with the broadcast industry or it is going to be a health message which is difficult to define, we cannot really do it, we do not have the knowledge or wherewithal or the understanding about how to do it.

All we are really saying is we are going to do the same thing in the area of the cancer-forming agent of saccharin in animals that we do in terms of smoking.

It will be just lying there. The printed media will just be staring us in the face. It will not be a moving object. It will just be printed there, and people can give it what kind of consideration they want.

The simple kind of label that we mentioned before that indicates that:

Cancer has been found. The product contains saccharin which causes cancer in animals. Use of this product may increase your risk of developing cancer.

The members of the Commerce Committee want to strike that from the printed advertisement.

Mr. President, I think whatever legitimate arguments that the committee had before about unreasonable allocation of authority and power to the Secretary of HEW in an area where they were interested falls on this particular issue.

Mr. President, I know, although the argument has not been made here, some believe if we are going to strike it out in terms of the electronic media we should strike it out with regard to the printed media in order for fairness and equity.

Mr. President, if that is a constitutional issue or question, let the courts decide it, and I do say if we are going to commit discrimination let us discriminate in favor of the health of the American people on this particular issue.

That is what we are asking when we are talking about the danger of cancer in terms of the American society.

Mr. President, I would hope this amendment will be defeated.

I reserve the remainder of my time.

Mr. CANNON. Mr. President, the Senator did properly anticipate, I think, that this would raise the due process issue. If we treat the electronic media in one fashion, we need to treat the printed media in a similar fashion; otherwise we might well have an attack on the ground of due process.

I say to my good friend from Massachusetts that we are not proposing to make any change in the warning that is on the product itself. That warning remains there, and if the Senator is providing for the test here, within the bill, which again I support, if the results of those tests come back with some conclusive results such as we found in the

smoking situation, then at that time I would certainly support the warning in both the printed and the electronic media. But that is not conclusive at this time as to the results. The only conclusive point so far is that saccharin in huge dosages does cause cancer in Canadian rats or mice.

So I submit that in fairness we should treat the print media the same as the electronic media, and, under due process provisions, I think we would have to.

If there is no further debate, I am prepared to yield back the remainder of my time.

Mr. KENNEDY. Mr. President, just one point. A similar due process issue was raised in connection with cigarettes, where we had a prohibition in terms of the electronic media and the labeling in terms of the print media. That was challenged in court, and it was found that Congress had the authority and it was within the equal protection provision to take such action.

It seems to me now, Mr. President, that if we are going to make a choice and a decision, the Surpeme Court can make a judgment on that.

I daresay the precedents on this issue in terms of smoking—Congress had hardly passed the legislation with regard to smoking when that was being challenged by all the tobacco industries, and in the court decision they found the authority and the power were there. I ask unanimous consent that a portion of a letter from the Department of Justice to Senator MAGNUSON, Chairman of the Commerce Committee, be made part of the RECORD.

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

A somewhat similar issue was presented in *Capital Broadcasting Co.* v. *Mitchell*, 333 F. Supp. (D.D.C., 1971), *aff'd sub nom. Capital Broadcasting Co.* v. *Acting Attorney General*, 405 U.S. 1000 (1972). That case involved an attack upon the constitutionality of the provision of the Public Health Cigarette Smoking Act of 1969, 15 U.S.C. 1335, which prohibited advertising cigarettes on the electronic media. The district court upheld the statute. One argument made by the plaintiffs, and rejected, was that the statute contravened the Fifth Amendment because it created an arbitrary and invidious distinction between the electronic media and other media. 333 F. Supp. at 585–86. The district court found rational bases for the distinction, *e.g.*, the fact that youngsters might be influenced more by broadcast advertisements than by written ones and the fact that the airwaves are owned by the public and regulated by a federal agency.

Mr. KENNEDY. Let us discriminate in favor of protecting the American people's health in this case.

Mr. CANNON. Mr. President, I think it should be pointed out that in the case the Senator referred to, it was the reverse process. The prohibition existed as to the electronic media, and they raised the question that they were treated differently. Here we have permitted the electronic media to go ahead and advertise and have not required the warning; so I think it is just a reverse-type of situation. I do not know what the courts might find, but I just say in fairness, in my own judgment, irrespective of the due process provision, we ought to treat them the same.

Mr. KENNEDY. The point is that with the recommendation of the Commerce Committee, you have them being treated differently. You will have a labeling requirement in the printed media and on the product, and a prohibition of advertising in terms of the electronic media.

Mr. CANNON. Mr. President, I am prepared to yield back the remainder of my time if there is no further discussion.

Mr. KENNEDY. Mr. President, I understand the yeas and nays have been ordered.

The PRESIDING OFFICER (Mr. CULVER). That is correct. Does the Senator from Massachusetts yield back the remainder of his time?

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Nevada. On this question, 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 Minnesota (Mr. HUMPHREY) and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE), is absent because of illness.

On this vote, the Senator from Minnesota (Mr. HUMPHREY) is paired with the Senator from Maine (Mr. MUSKIE). If present and voting, the Senator from Minnesota would vote "nay" and the Senator from Maine would vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN) is necessarily absent.

The result was announced—yeas 59, nays 37, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS—59

Allen	Ford	Morgan
Baker	Glenn	Nunn
Bartlett	Goldwater	Packwood
Bumpers	Gravel	Pearson
Burdick	Griffin	Roth
Byrd, Harry F., Jr.	Hansen	Sasser
Byrd, Robert C.	Hatch	Schmitt
Cannon	Hatfield	Scott
Chafee	Hayakawa	Sparkman
Clark	Helms	Stafford
Cranston	Huddleston	Stennis
Curtis	Inouye	Stevens
Danforth	Johnston	Stevenson
DeConcini	Laxalt	Stone
Dole	Long	Talmadge
Domenici	Lugar	Thurmond
Durkin	Magnuson	Tower
Eagleton	Matsunaga	Wallop
Eastland	McClure	Young
	Melcher	Zorinsky

NAYS—37

Abourezk	Hathaway	Nelson
Anderson	Heinz	Pell
Bayh	Hollings	Percy
Bellmon	Jackson	Proxmire
Bentsen	Javits	Randolph
Biden	Kennedy	Ribicoff
Brooke	Leahy	Riegle
Case	Mathias	Sarbanes
Chiles	McGovern	Schweiker
Church	McIntyre	Weicker
Culver	Metcalf	Williams
Hart	Metzenbaum	
Haskell	Moynihan	

NOT VOTING—4

Garn	McClellan	Muskie
Humphrey		

So the amendment (No. 834) was agreed to.

(Later the following occurred:)

Mr. MATSUNAGA. Mr. President, on rollcall No. 379, I am recorded as having voted "nay." Inasmuch as the shift of vote will not in any way affect the final result, I ask unanimous consent that I be recorded as having voted "aye."

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing rollcall votes reflects the above order.)

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

Mr. HARRY F. BYRD, JR. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the amendments of the Human Resources Committee on page 11, lines 9 through 16, be considered and agreed to en bloc.

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

The question is on agreeing to the amendments en bloc.

The amendments were agreed to.

AMENDMENT NO. 855

Mr. CRANSTON. Mr. President, I call up amendment No. 855 and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) for himself and Mr. HAYAKAWA, proposes an amendment.

On page 7, line 18, insert the following: "The requirements of this subsection shall not preclude the Secretary from prescribing appropriate alternative methods for communicating such statement to consumers for food products for which manufacturing is completed on the effective date of this subsection, including sticker labeling or conspicuous notices accompanying the sale of such products at retail.".

Mr. CRANSTON. Mr. President, this will take probably 2 minutes.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. CRANSTON. Yes; I will.

Mr. ROBERT C. BYRD. Mr. President, may I have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate, when the Senate completes its work on the saccharin bill today, there will be no more rollcall votes today.

I thank the Senator from California.

Mr. CRANSTON. Mr. President, I am delighted that my colleague (Mr. HAYAKAWA) has joined me in sponsoring this amendment.

This amendment has been discussed with the staff of the distinguished floor leader for the bill (Mr. KENNEDY) and him, and with the staff of the ranking minority member of the Senate Health and Scientific Research Subcommittee (Mr. SCHWEIKER). It is my understanding that my amendment is acceptable to them.

This amendment simply clarifies the authority of the Secretary to prescribe alternative methods for saccharin warning information for food products for which manufacturing is complete on the effective date of the warning requirement. The language is intended to give the Secretary the flexibility needed to resolve the unusual difficulties faced by canners of dietetic-pack produce who do their canning once each year when the produce is harvested and thus will have substantial inventories on hand when the bill becomes law. The 90-day effective date for labeling requirements currently in the bill does not adequately address this particular manufacturing situation.

California canners are especially affected by the requirements of the bill, inasmuch as the average yearly pack in California represents 35 to 40 percent of the entire U.S. production of fruit and vegetables, including dietetic pack. The production timetable and inventory problems on dietetic-pack foods makes sticker labeling, for example, extremely expensive. One California company's cost estimate for sticker-labeling the 166,000-case inventory they expect to have on hand October 1, 1977, is some $197,000, or about 7 cents per can. That 7 cents per can would most likely be expressed as an additional 10 cents per can at the retail level. which I believe raises a question as to whether more efficient means of compliance in these unusual situations might be more swift and just as effective for both manufacturer and consumer.

I believe this is an equitable amendment, and I am very hopeful that the committee will accept it.

Mr. KENNEDY. Mr. President, we accept the amendment of the Senator from California. It basically clarifies language that is already in the legislation. It will conform to the thrust of the rest of the legislation. I have no objection to it. The Senator from Pennsylvania, I think, understands the full purpose of it.

Mr. SCHWEIKER. Mr. President, I have no objection.

Mr. CRANSTON. I thank both Senators very much.

The PRESIDING OFFICER. Do the sponsors of the amendment yield back their time?

Mr. CRANSTON. Yes.

Mr. KENNEDY. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. KENNEDY. Mr. President, I do not intend to take very much time. I am going to make a motion to recommit this bill to the Human Resources Committee. I shall make a very brief comment and then I hope that we shall vote on it.

At this time, I ask to have the yeas and nays on that motion at the appropriate time.

The PRESIDING OFFICER. Is there objection to that request at this time? There is no objection. Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I hope this bill will be returned to our Health Subcommittee. I shall state very briefly why I believe that it should be returned.

We reported a bill out of the Health Subcommittee that tried to be a careful balance between the risk and the benefits of the use of saccharin. In the days of hearings that we had and the reports that we had and the studies that we had, we did find that there were some benefits from the continued use of saccharin to some 40 million Americans and there were also some risks. So we tried to devise a formula by which the American public could make an informed and intelligent judgment about the use of products that contain saccharin and also insure adequate protection for the American public. Now, during the course of this afternoon, we have changed, in a very important and significant way, that ratio. We have changed it in a way that was not suggested or recommended by any of the medical professionals that appeared before our committee or testified before our committee or submitted evidence before our committee.

The principal debate between the medical professionals was, on the one hand, for a complete ban and, on the other hand, for a continuation of it with very carefully controlled warning and advertising recommendations. That is where the debate was. Now we have a proposal that is before the Senate which changes this particular balance in a very significant and dramatic way, a way that was never recommended or suggested by any of the medical personnel. Primarily, it was done as a result of those who are most concerned about the implications of this measure on the electronic and advertising industry.

The Commerce Committee, with all due respect, never held one single day of hearings on that particular issue—not one. I do not know, nor have I heard this afternoon, any comment or testimony or statement by members of the Commerce Committee that gave us informed judgments about what the broadcasters thought about this or whether they had an alternative, or whether they could make some suggestions by which they could live with the various advertising recommendations that were included in this bill and also protect the American public.

We shall call those particular broadcast individuals, representatives from the television and the radio industry, and ask them to come before our committee and help us devise a mechanism which they can live with and that will also protect the American public. We think that the Senate is entitled to that kind of information and that kind of judgment. We do not have it today. All we have is complete prohibition against any kind of advertisement by the electronic media and warnings about the danger or risk.

We ought to hear as well, I believe, so that Members of the Senate will understand, about what will be the increased consumption of the products of the soft drink industry.

There may be those in this body who feel that because we put a precise label on a particular product that has saccharin, we are doing enough in that area. But I daresay we will see an increase in advertising in each and every one of those products over a period of time and we will see a corresponding increase in price to the consumer.

That will be the result if we pass this particular piece of legislation and it is enacted into law. I daresay that will be the result. Sure, it will be more expanded than it is on Tab and Fresca. But we will find more advertising in the electronic media and more in the printed media without any kind of warnings and we may very well see a dramatic increase in the use of those particular products.

So I hope, Mr. President, this measure will be recommitted with the clear understanding that we would have hearings at an early time to listen to the suggestions of the broadcast industry. We would lay out before that industry the evidence that we have today about the potential risk and potential dangers.

We would ask them to help us devise a means and mechanistm by which that could be presented to the American people, and we would be able to report back as a result of this what the risks of such legislation would be.

Mr. President, I am prepared to move to a vote, unless others would like some time.

Mr. SCHWEIKER. Mr. President, reluctantly, I rise in opposition to the Health Subcommittee Chairman's motion to recommit this bill.

I supported the original bill in the form it was before us in the Health Subcommittee, as reported by our Human Resources Committee.

I was one of the two original sponsors of this bill. I, frankly, believed that it was important to have health warning information as widespread as we did in our bill, not only on the product label itself, but also in advertising.

On the other hand, I also happen to believe very strongly that there are many people with various health problems who are dependent on some kind of artificial sweetener, whether it is saccharin or something else. The tragedy is, of course, that there is no other choice. It is not a matter of having some other choice before us. Saccharin is the last non-nutritive artificial sweetener on the market in the United States.

I believe in view of that, the potential health benefits of saccharin still may outweigh the risks to the diabetic child, to the patient who is trying to keep obesity under control so that either his blood pressure or heart problem is manageable. I believe, all things said and done, as much as I prefer to have the health warning information disseminated in the advertising media as well as on the label, that it is important to have a bill.

So I commend Senator KENNEDY for his leadership on this bill on the floor. I have voted with him on all the other votes, but in this particular instance I, in good faith, cannot, because I believe there are a substantial number of people in this country who for differing legitimate reasons, including medical reasons, have a need for this product.

Therefore, I will have to oppose the motion to recommit the bill.

Mr. CANNON. Will the Senator yield me some time?

Mr. SCHWEIKER. I yield the Senator 5 minutes.

Mr. CANNON. Mr. President, I associate myself with the remarks of the Senator from Pennsylvania.

I think it is rather shortsighted to have this bill recommitted now to go into the matter further, to try to undo what the Congress elected to do here today on the floor.

The situation now is that FDA already came out with a proposed ban, a proposed rule to ban the use of saccharin, to ban the use in the present products on the market, and the time for comments would have expired July 15.

But when this legislation was pending, FDA extended the time to October 1.

Now, if this bill goes back to committee and no action is taken, they will simply step in and ban the use of saccharin and ban the sale of those products that have already been manufactured and on the market.

The distinguished Senator from Massachusetts himself earlier in the debate on this matter pointed out a lot of the good points in this bill, a lot of valuable points insofar as the saccharin uses that could be permitted.

The bill itself provides for a study. Let us find out conclusively what the situation is with respect to the use of saccharin on anything other than Canadian rats.

But I believe, Mr. President, that we are going to find ourselves in a very unfortunate position if we support the position to recommit this bill. We will find people that are entitled to be able to use saccharin all over this country that will be prohibited from using it if this bill is returned back to the committee.

I thank the Senator for yielding.

Mr. KENNEDY. Mr. President, just 1 or 2 more minutes.

The fact of the matter is that before we vote on this the membership should understand that they are going against the recommendations of every health expert in this country—every health expert in this country on this particular issue.

We had a divided scientific and research community about the best steps that could be taken. But with all due respect to the Commerce Committee, there is not one health scientist or researcher that has reviewed any of this material that would recommend what the Senate has done this afternoon, and we ought to understand that.

That is the situation. It is an attempt to see if we cannot find at least some way or means of attempting to deal with that that I make the motion for the recommittal.

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

Mr. SCHWEIKER. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The motion to recommit now occurs. 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 Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent due to illness.

On this vote, the Senator from Minnesota (Mr. HUMPHREY) is paired with the Senator from Maine (Mr. MUSKIE). If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Maine would vote "nay."

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "nay."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN) is necessarily absent.

The result was announced—yeas 24, nays 70, as follows:

[Rollcall Vote No. 380 Leg.]

YEAS—24

Abourezk	Javits	Pell
Bayh	Kennedy	Proxmire
Brooke	Mathias	Randolph
Culver	McGovern	Ribicoff
Durkin	McIntyre	Riegle
Hart	Metcalf	Sarbanes
Haskell	Morgan	Sasser
Hathaway	Nelson	Williams

NAYS—70

Allen	Eagleton	Metzenbaum
Anderson	Ford	Moynihan
Baker	Glenn	Nunn
Bartlett	Goldwater	Packwood
Bellmon	Gravel	Pearson
Bentsen	Griffin	Percy
Biden	Hansen	Roth
Bumpers	Hatch	Schmitt
Burdick	Hatfield	Schweiker
Byrd, Harry F., Jr.	Hayakawa	Scott
	Heinz	Sparkman
Byrd, Robert C.	Helms	Stafford
Cannon	Hollings	Stennis
Case	Huddleston	Stevens
Chafee	Inouye	Stevenson
Chiles	Jackson	Stone
Church	Johnston	Talmadge
Clark	Laxalt	Thurmond
Cranston	Leahy	Tower
Curtis	Long	Wallop
Danforth	Lugar	Weicker
DeConcini	Matsunaga	Young
Dole	McClure	Zorinsky
Domenici	Melcher	

NOT VOTING—6

Eastland	Humphrey	McClellan
Garn	Magnuson	Muskie

So the motion to recommit was rejected.

AMENDMENT NO. 858

Mr. NELSON. Mr. President, I call up my substitute amendment No. 858.

The PRESIDING OFFICER (Mr. METZENBAUM). The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes amendment No. 858.

The amendment is as follows:

Strike out all after the enacting clause and substitute the following:

"SECTION 1. (a) During the eighteen-month period beginning on the date of the enactment of this Act, saccharin—

"(1) shall be deemed to be 'unsafe' within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

"(2) shall be deemed to be a 'poisonous or deleterious substance' within the meaning of section 402 of the Federal Food, Drug, and Cosmetic Act;

"(3) shall not be deemed to be a 'new drug' for any purpose within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act; and

"(4) shall not be deemed to be a drug subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act; and

"(5) shall be deemed to be an over-the-counter drug.

"(b) Notwithstanding the provisions of subsection (a), it shall be unlawful for any person to distribute or offer for sale any saccharin product unless it meets all of the following:

"(1) the product is represented, and promoted, solely as a noncaloric tablet-top sweetener for use only by persons medically required to restrict dietary consumption of carbohydrates;

"(2) bears a warning label stating: 'WARNING: THIS PRODUCT CONTAINS SACCHARIN, WHICH CAUSES CANCER IN ANIMALS. USE OF THIS PRODUCT MAY INCREASE YOUR RISK OF DEVELOPING CANCER.' Such label statement shall be located in a conspicuous place on such packaging and labeling as proximate as possible to its name and shall appear in conspicuous and legible type in contrast to typography, layout, and color with other printed matter on the package; and

"(c) The Secretary of Health, Education, and Welfare shall, by order, specify the labeling and disposition of all articles for human consumption or use containing saccharin manufactured on or before the enactment of this Act: *Provided, however,* That no such products shall be recalled or removed from the market nor destroyed: *And provided further,* That the Secretary may permit the continued manufacture, marketing, or use of any product during the effective period of this enactment if he determines that such action is in the public interest.".

Mr. NELSON. Mr. President, there are 2 hours allowed on the amendment. I do not intend to take more than 2 or 3 minutes. I wonder if the majority leader would listen to this. I only intend to take 2 or 3 minutes since I have spoken several times today on the exact principle of this amendment, and I will ask for a rollcall.

Will there be two back-to-back rollcalls here before going to final passage as soon as I am defeated in my amendment?

[Laughter.]

Mr. ROBERT C. BYRD. Mr. President, I am not sure Senators are going to ask for a rollcall vote on final passage.

Mr. NELSON. I am going to ask for a rollcall vote.

Mr. ROBERT C. BYRD. The question is?

Mr. NELSON. I intend to speak for 2 or 3 minutes just to explain the amendment, and ask for a rollcall, and then just to inform the Senators, and if there were no other amendments we would immediately call for the vote on final passage.

Mr. ROBERT C. BYRD. Yes, if there are no other amendments.

Mr. CANNON. There will be one technical amendment.

Mr. ROBERT C. BYRD. One technical amendment.

Mr. NELSON. All right.

Mr. President, as I said a moment ago, I have been involved in this discussion

for the last 8 hours and 15 minutes, so everything I have had to say on this issue I have already said.

This substitute amendment would implement by statute what the Commissioner of the Food and Drug Administration would accomplish if we did not sustain his authority by passing the bill, that is to say, this substitute amendment would permit the sale of saccharin sweeteners over the counter so that anybody who wished to use saccharin as a sweetener could go to the grocery store or to the drugstore, buy the sweetener, prescribe it for themselves, add it to any food they desired, but it would prohibit the use of saccharin in any way in the food chain, whether it is diet soda or diet foods of any kind. That is what the amendment is all about.

I realize what the position of the vast majority in the Senate here is, and I do not think I need to say any more.

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

Mr. NELSON. Yes.

Mr. JAVITS. I would like to say this has been consistently Senator NELSON'S position. It is a highly principled position. The only reason why we reported this bill was, so far as I could see, to accommodate precisely the people whom he has mentioned. But in view of the way in which the Senate has acted on publishing the danger in print or in electronic media, this strikes me as the only responsible, properly responsible, way out.

If I do finally vote for the bill—because neither he nor I is too optimistic about this one—I would still like my tribute to the Senator to remain of record. He has been completely consistent and completely catholic to the purpose of this bill, and the constituency for which it was intended.

Mr. NELSON. Let me say that I thank the distinguished Senator from New York for those kind remarks. I did not think I was going to get anything out of this bill, so I am happy for your kind remarks. That is more than I hoped for.

I yield back the remainder of my time.

Mr. KENNEDY. I yield just 2 minutes.

Mr. President, I intend to support the amendment of the Senator from Wisconsin and then subsequently—and I believe as the Senator has stated it will not be accepted—vote against the bill.

Without accepting the amendment of the Senator from Wisconsin, if the Senate accepts this bill we will have effectively set aside one of the most important health laws that exists on the statutes of this country, and that action is going to minimize the protection of the health of the American people and maximize the risk in one of the most important areas of concern to the American people and that is in the area of cancer.

I think the Senate has gone on record during the course of this day. It seemed to me at the early part of the day, in the recommendation that was made by the committee, we had provided the kinds of protections so that free choice could be made. I am satisfied that the decisions that have been made by the Senate will result in the American people not be given the kind of information to make informed judgment, and given the risks that are attendant to this whole issue or question I intend to support the amendment of the Senator from Wisconsin and then subsequently vote against the bill.

Mr. NELSON. Mr. President, I did yield back my time. I wonder if the Senator will yield me a minute.

Mr. KENNEDY. I yield the Senator a minute.

Mr. NELSON. I want to say that I regret very much what the Senate is about to do, and I know how busy everyone is. But I suspect if everyone here had taken a fair amount of time to study carefully the scientific evidence involved here there would at least be many more Senators who would not vote in favor of the suspension of the law for 18 months.

I think we are all going to regret this major mistake and 18 months from now the situation is not going to be any different except there will be more deaths that show exactly the same thing. That it is carcinogenic in animals. There is no way in 18 months you are going to convincingly prove that it causes cancer in human beings unless there is some dramatic epidemological study of the right class of people with an exposure to saccharin. Unless that group of people can be found and that kind of study made, we will have more information but it will be the same information we already have and we will all regret we took a statute, which is probably the finest piece of health legislation passed by any country in the world, and decided, based upon our scientific expertise to suspend the law and continue to expose billions of people to carcinogenic agents.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. Is all time yielded back?

Mr. KENNEDY. I am prepared to yield back the remainder of the time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin.

Mr. NELSON. 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 clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent due to illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Maine (Mr. MUSKIE) would each vote "nay."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN) is necessarily absent.

The result was announced—yeas 18, nays 76, as follows:

[Rollcall Vote No. 381 Leg.]

YEAS—18

Abourezk	Hollings	Metcalf
Church	Javits	Nelson
Culver	Kennedy	Proxmire
Durkin	Mathias	Randolph
Haskell	McGovern	Ribicoff
Hathaway	McIntyre	Riegle

NAYS—76

Allen	Ford	Moynihan
Anderson	Glenn	Nunn
Baker	Goldwater	Packwood
Bartlett	Gravel	Pearson
Bayh	Griffin	Pell
Bellmon	Hansen	Percy
Bentsen	Hart	Roth
Biden	Hatch	Sarbanes
Brooke	Hatfield	Sasser
Bumpers	Hayakawa	Schmitt
Burdick	Heinz	Schweiker
Byrd, Harry F., Jr.	Helms	Scott
	Huddleston	Sparkman
Byrd, Robert C.	Inouye	Stafford
Cannon	Jackson	Stennis
Case	Johnston	Stevens
Chafee	Laxalt	Stone
Chiles	Leahy	Talmadge
Clark	Long	Thurmond
Cranston	Lugar	Tower
Curtis	Magnuson	Wallop
Danforth	Matsunaga	Weicker
DeConcini	McClure	Williams
Dole	Melcher	Young
Domenici	Metzenbaum	Zorinsky
Eagleton	Morgan	

NOT VOTING—6

Eastland	Humphrey	Muskie
Garn	McClellan	Stevenson

So Mr. NELSON'S amendment was rejected.

AMENDMENT OF AMENDMENT NO. 834

Mr. CANNON. Mr. President, on amendment No. 834, I inadvertently struck out lines 9 and 10 on page 11, which was the effective date of the act. Therefore, I ask unanimous consent that amendment No. 834 be amended to read as follows:

Beginning on line 7, page 10, strike out through line 8, page 11.

The PRESIDING OFFICER. Is there objection?

Mr. CANNON. The only thing that does is to restore the effective date as it is in the bill.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that technical and conforming corrections can be made in the engrossment of the bill.

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

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time. I do not know whether or not the Senator from Wisconsin wants to have a rollcall vote on passage. I would not insist upon it. It is up to the Senator from Wisconsin.

Mr. NELSON. 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. Is all time yielded back?

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

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

ADDITIONAL STATEMENTS SUBMITTED

Mr. BAKER. Mr. President, I am pleased that the Senate is today considering legislation to postpone the effective date of the FDA's proposed ban on saccharin. The saccharin issue is one which affects millions of Americans, and I commend the Committee on Human Resources for its prompt and thorough consideration of this matter over the past few months.

Although saccharin has been widely used as an artificial sweetener for over 80 years, its safety was not called into question until the FDA announced the results of laboratory tests which showed that saccharin caused cancer in animals. Serious questions arose as to whether or to what extent these results could be transposed to humans and as to the reliability of the studies on which FDA based its decision to ban saccharin. Since saccharin is the only artificial sweetener now available, it is heavily relied upon by persons who must reduce their sugar intake because of heart disease, diabetes, hypertension or obesity. It seemed clear last March, when the FDA made its announcement, that the widespread effect of a ban on saccharin warranted careful review by the Congress.

Since that time, the Committee on Human Resources has held thorough hearings on the saccharin issue, receiving testimony on both sides of the FDA ban and a report from the Office of Technology Assessment evaluating the scientific and technical information available. The Committee has concluded that more information is needed before a final determination is made on saccharin, and it has recommended an 18-month moratorium during which saccharin would continue to be available while the Secretary of HEW conducts studies to learn more about the risks and benefits of saccharin and to explore the possibility that the impurities present in commercial saccharin may be responsible for the carcinogenicity which has been shown to exist in laboratory tests.

I concur with the committee's recommendation that the Secretary have authority to remove saccharin from the market during this period if new evidence should be developed showing that saccharin represents an unreasonable and substantial risk to public health and safety. In addition, I agree that saccharin products should be required to bear a warning label so that the public will be aware of the possible risk involved in its use.

I am concerned, however, about the provision of the bill which directs the Secretary of HEW to develop a warning to be included in all advertising of saccharin products. In view of the conflicting opinions of the scientific community and the fact that conclusive evidence of saccharin's impact on humans has yet to be obtained, I believe that duplication of the warning in all media advertising is an unnecessary and overly burdensome requirement. I note that the Committee on Commerce has recommended deletion of this requirement as it affects broadcasters, and I hope that the Senate will favorably consider this suggestion as well as proposals to delete the restrictions on advertising in the print media.

With these modifications, I believe that this measure represents a reasonable solution to the controversy which has arisen over the FDA's proposed ban on saccharin. I hope that it can be enacted as quickly as possible so that work can begin on obtaining the additional information we need to further evaluate the toxicity of saccharin products.

Mr. WILLIAMS. Mr. President, on July 19, the Committee on Human Resources reported S. 1750, a bill to suspend the authority to ban saccharin for 18 months and to review other issues relating to the dangers and benefits of this substance, to the Senate floor. In recognizing the potential risk of allowing saccharin to continue to be marketed, the committee bill also requires that studies be undertaken to study the toxicity of saccharin and requires that all saccharin products carry a prominently displayed warning statement of all potential risks. The bill further requires that all advertisements include a health warning message and directs the Secretary of Health, Education and Welfare to determine the appropriate form and content to be used for warning messages so that the impact will be equivalent on print and electronic media.

This action to suspend the authority of the Food and Drug Administration to ban this substance was not taken lightly. It followed rather careful study by the Subcommittee on Health and Scientific Research after the initial proposal of the FDA of its intention to ban saccharin on March 9, 1977. The subcommittee first requested a study to be done of the technology to determine carcinogenicity and a review of the prior tests on saccharin by the Office of Technology Assessment. That report returned the following findings: First, that current testing methods can predict that a particular substance is likely to cause cancer in humans although they do not permit reliable estimates of the site or frequency of the tumors; second, the available tests led to the conclusion that saccharin is a potential cause of cancer in humans; third, that there is belief that saccharin, or some non-nutritive sweetner, has significant health benefits; and fourth, that an alternative non-nutritive sweetner is not available, nor likely to be, in the near future. Representative scientists who had conducted this study concluded in hearings before the Subcommittee that saccharin is a weak carcinogen which could have substantial adverse health effects because of the long latency period of cancer. Release of a later Canadian study, a retrospective, epidemiological study, strengthens these findings. It shows a correlation between the use of saccharin and the incidence of bladder cancer and concluded that risks to male users of developing bladder cancer was 1.6 times as great as male nonusers. The data did not show a relationship for women users and the incidence of bladder cancer.

Mr. President, there has been substantial controversy surrounding the proposed ban of saccharin. This controversy has raised questions regarding the adequacy of technology in predicting cancer and the ability of our tests to delineate between the effects of impurities and the effects of the substance. It has focused squarely on the fact that currently there is no alternative for a product, which at least for part of the population, has considerable health benefits. In view of the controversy, the lack of an available alternative and the benefits of this substance, I believe we have no choice but to suspend the authority for banning this substance for a reasonable period of time.

However, I continue to be concerned about the risk persons may undertake by ingesting daily amounts of the substance. Particularly, with our knowledge of the long development period of cancer, the continued marketing and use of saccharin may have grave consequences which we do not now suspect. It is for this reason that I believe that the labeling and advertising requirements of the bill as reported by the Committee on Human Resources are absolutely imperative if we are to take this unprecedented step. I believe that it is critical that the American public take the findings of the Canadian studies seriously, and to the extent that they can, eliminate this product from their diet. And I believe that it is important that they have available to them accurate information which shows them what the possible risks are. The only way for the public to make an informed decision, I believe, is through this mechanism.

The last issue, of course, is the finding of an alternative. I sincerely urge all manufacturers to search for an alternative to this product so that it may be eliminated from our diets.

Mr. DOLE. Mr. President, at this time, I would like to indicate my support for delaying the proposed saccharin ban. When the Food and Drug Administration announced the ban, they justified their actions on a Canadian study which linked saccharin intake to cancer in rats. I respect the FDA for their action, since under present laws, they had no other option available to them.

Immediately after this decision to limit drastically the availability of saccharin, congressional offices were flooded with requests to intervene, and to nullify the ban. I think the very fact that we are considering this bill today is evidence that citizens' voices are still heard and heeded in Congress.

The facts and theories available to us today indicate there is reason to be concerned about the intake of saccharin. Additional studies have also suggested the conclusions reached by the Canadian scientists. I would mention, though, that some studies refute the findings which link saccharin to cancer, and show no relationship between the two.

DIABETES

When thinking of those who benefit most from saccharin products, I think first of those with diabetes. I received hundred and hundreds of letters from diabetics protesting the saccharin ban. Most touching were those letters from mothers who wrote that because of saccharin, their diabetic children were able

to lead almost normal lives. They could join their friends at the drugstore for soft drinks, swap bubble gum with their team-mates, and be almost free from dangers posed by sugar consumption.

It is hard to conceive how the possible risk from saccharin could be worse than the predictable effects of sugar.

I realize that the FDA has considered allowances for over-the-counter sale of saccharin, but this would be quite inconvenient, and would eliminate already-prepared foods and beverages from one's diet.

OBESITY

As a member of the Select Committee on Nutrition and Human Needs, I have gained a better appreciation for the value of good nutrition. I have also learned more of the relationship between diet and disease as a result of a year-long series of hearings conducted by the committee.

I understand the seriousness of the topic at hand. In addition, I have heard and read testimony on health problems caused or complicated by obesity. Diets that are high in sugar almost inevitably lead to obesity. For persons threatened by obesity, saccharin is a welcome substitute for sugar.

Many persons have written me claiming that the small risk of cancer from saccharin is a preferable risk to the known effects of sugar consumption. Certainly, one should have the liberty to choose between sugar or a sugar substitute.

PRECEDENT

As I think of the people that depend on saccharin, I am convinced that more time is needed to study thoroughly the effects of saccharin. We simply do not know enough about it. And, I think the saccharin issue is a foretaste of what is ahead. As technology continues to improve, scientists will be able to detect traces of materials which before were not noticed on less accurate instruments.

It may be proven that our food and environment contain many more carcinogens than we now suspect. We could find ourselves in this same position again. For that reason, it is necessary to consider this problem seriously and without haste.

SUMMARY

In closing, I want to reaffirm my support for an 18-month delay in the saccharin ban. This is a serious matter, and merits proper attention during the next 1½ years.

I trust that the medical and scientific communities—as well as the Congress—will take seriously this additional responsibility, so that at the proper time, we can resolve this controversy in a safe and beneficial manner.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? 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 Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Arkansas (Mr. MCCELLAN) are necessarily absent.

I also announce that the Senator from Maine (Mr. MUSKIE) is absent due to illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Maine (Mr. MUSKIE) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Utah (Mr. GARN) and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

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

The result was announced—yeas 87, nays 7, as follows:

[Rollcall Vote No. 382 Leg.]

YEAS—87

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

NAYS—7

Abourezk	Kennedy	Proxmire
Haskell	McGovern	
Hathaway	Nelson	

NOT VOTING—6

Eastland	Griffin	McClellan
Garn	Humphrey	Muskie

So the bill (S. 1750) was passed, as follows:

Be it enacted by the Senate and House of Represenatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Saccharin Study, Labeling, and Advertising Act".

SEC. 2. For the purposes of this Act, the term "saccharin" includes saccharin, calcium saccharin, sodium saccharin, and ammonium saccharin.

SEC. 3. Unless otherwise indicated, the effective date of the provisions of this Act shall be the date of enactment.

SEC. 4. Title V of the Public Health Service Act is amended by adding at the end thereof the following new subsections:

"SEC. 514. (a) The Secretary shall arrange for the conduct of a study or studies to assess and evaluate—

"(1) current technical capabilities to predict the direct or secondary carcinogenicity or other toxicity in humans of substances which are added to, become part of, or naturally occur in food, and which have been found to cause cancer in animals;

"(2) the direct and indirect health benefits and risks to individuals from foods which contain carcinogenic or other toxic substances;

"(3) the existing means of evaluating the risks to health from the carcinogenicity or other toxicity of such substances, the existing means of evaluating the health benefits of foods containing such substances, and the existing statutory authority for, and appropriateness of, weighing such risks against such benefits;

"(4) instances in which current legal requirements to restrict or prohibit the use or occurrence of such substances do not accord with the relationship between such risks and benefits; and

"(5) the relationship between existing Federal food regulatory policy and existing Federal regulatory policy applicable to toxic and carcinogenic substances used as other than foods.

"(b) The study or studies, required under subsection (a), shall be completed within one year of the date of the enactment of this section. Within thirty days from the date of completion of such study or studies, such study or studies and the report or reports on such study or studies shall be submitted by the Secretary to the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report or reports shall include recommendations if any for legislative and administrative action.

"(c)(1) The Secretary shall first request the National Academy of Sciences acting through the Institute of Medicine or other appropriate units (hereinafter in this section referred to as 'Academy') to conduct the study or studies, required under subsection (a), under an arrangement whereby the actual expenses incurred by the Academy directly related to the conduct of such study or studies will be paid by the Secretary. If the Academy is willing to do so, the Secretary shall enter into such an arrangement with the Academy.

"(2) If the Academy declines the Secretary's request to conduct one or more of such studies under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate public or nonprofit private groups or associations to conduct such study or studies and prepare and submit such study or studies and the report or reports thereon as provided in subsection (b).

"SEC. 515. (a) The Secretary shall conduct or arrange for the conduct of a study or studies to determine to the extent feasible—

"(1) the chemical identity of any impurities contained in commercially used saccharin.

"(2) the toxicity or potential toxicity of any such impurities including their carcinogenicity or potential carcinogenicity in humans, and

"(3) the health benefits, if any, to humans resulting from the use of nonnutritive sweeteners in general and saccharin in particular.

"(b) The study or studies, required under subsection (a), shall be completed within one year of the date of enactment of this Act. Within thirty days from the date of completion of such study or studies, such study or studies and the report or reports on such study or studies shall be submitted by the Secretary to the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report or reports shall include any recommendations for legislative and administrative action the Secretary deems appropriate.".

SEC. 5. During the eighteen-month period beginning on the date of the enactment of this Act—

(1) the interim food additive regulation of the Food and Drug Administration of the Department of Health, Education, and Welfare applicable to saccharin published on March 15, 1977 (sec. 180.37 of part 180, subchapter B, chapter 1, title 21, Code of Federal Regulations (42 Fed. Reg. 14638)), shall, notwithstanding paragraph (c) of such regulation, remain in effect; and

(2) the Secretary may not take action under the Federal Food, Drug, and Cosmetic Act, as amended, or any other authority to prohibit or restrict the sale or distribution of saccharin or any food, food additive, drug, or cosmetic containing saccharin on the basis of the carcinogenic effect of saccharin, unless the Secretary determines, on the basis of data reported to the Secretary after the date of enactment of this Act, that saccharin presents an unreasonable and substantial risk to the public health and safety. In making such determination, the Secretary may take into account the cumulative significance of all existing data including data reported to the Secretary prior to the date of enactment of this Act.

SEC. 6. (a) Section 403 of the Federal Food, Drug, and Cosmetic Act, as amended, is amended by adding at the end thereof the following new subsections:

"(o)(1) If it contains saccharin, unless its label and labeling bear the following statement: "WARNING: THIS PRODUCT CONTAINS SACCHARIN, WHICH CAUSES CANCER IN ANIMALS. USE OF THIS PRODUCT MAY INCREASE YOUR RISK OF DEVELOPING CANCER". Such statement shall be located in a conspicuous place on such label and labeling as proximate as possible to the name of such food and shall appear in conspicuous and legible type in contrast by typography, layout, and color with other printed matter on such label and labeling. The Secretary shall periodically review and revise, if necessary, such statement to make sure that it accurately conveys the current state of knowledge concerning saccharin.

"(2) The Secretary shall prescribe the methods by which the statement required by paragraph (1) is to be affixed to such label and labeling. In prescribing such methods, the Secretary shall take into consideration whether or not the manufacturing process has been completed by the effective date of this subsection. The requirements of this subsection shall not preclude the Secretary from prescribing appropriate alternative methods for communicating such statement to consumers for food products for which manufacturing is completed on the effective date of this subsection, including sticker labeling or conspicuous notices accompanying the sale of such products at retail.

"(p) If it contains saccharin and is sold through a vending machine, unless the vending machine bears the statement as set forth in subsection (o). Such statement shall be located in a conspicuous place or conspicuous places on such vending machine as proximate as possible to the name of each food containing saccharin that is sold through such vending machine and shall appear in conspicuous and legible type in contrast by typography, layout, and color with the name of each such food.

"(q) If it contains saccharin and is offered for sale not for immediate consumption at a retail establishment unless it is offered for sale at such retail establishment accompanied by a prominently displayed notice of conspicuous and legible type and at a place of reasonable proximity to such food. Such notice shall be in such form and manner as required by the Secretary. The Secretary shall prepare the text of such notice and shall include information on the nature of the controversy surrounding saccharin including evidence of its carcinogenicity. The Secretary shall periodically review and revise, if necessary, the text of such notice to make sure that it accurately conveys the current state of knowledge concerning saccharin. In prescribing the form, text, and manner of display of such notice, the Secretary should afford an opportunity for the submission of views from all segments of the public but shall not be obligated to comply with the requirements of the Administrative Procedure Act, chapter 5 of title 5, United States Code, or with any provision of the National Environmental Policy Act or with regulations implementing either statute. In any suit for judicial review, the decisions of the Secretary respecting the form, text, and manner of display of such notice shall be sustained unless found to be clearly unreasonable or in excess of statutory authority.

(b) The effective date of this section shall be ninety days after the date of enactment of this Act.

SEC. 7. It is not the intention of Congress that enactment of the Saccharin Study, Labeling, and Advertising Act, promulgation of regulations thereunder, or compliance therewith should be considered to in any way reduce or affect the common law or statutory rights or remedies of any person affected by the usage of saccharin.

SEC. 8. (a) Section 204(d) of Public Law 93–348, as amended by section 18(a) of Public Law 94–573, is further amended by striking out "36-month period" each place it appears and inserting in lieu thereof "42-month period".

(b) Section 211(b) of Public Law 93–348, as amended by section 18(b) of Public Law 94–573, is further amended by striking out "January 1, 1978" each place it appears and inserting in lieu thereof "November 1, 1978".

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

Mr. LEAHY. 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 suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LEAHY). 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.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Mr. James M. Moorman to be an Assistant Attorney General.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

DEPARTMENT OF JUSTICE

The assistant legislative clerk read the nomination of James M. Moorman, of California, to be an Assistant Attorney General.

Mr. BAKER. Mr. President, I only rise to advise the majority leader, as I have previously done privately, that this nomination has now been cleared on this side. We have no objection to its confirmation.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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 that the President be immediately notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

PRIVILEGE OF THE FLOOR—S. 995

Mr. CANNON. Mr. President, I ask unanimous consent that the privileges of the floor be granted to Bruce Eggers, of my staff, during the consideration of S. 995 when it is made the pending business tmorrow.

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

ROUTINE MORNING BUSINESS

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

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senator by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

Also in executive session, the President Officer laid before the Senate a message from the President of the United States submitting the nomination of Rafael E. Juarez, of Colorado, to be U.S. marshal for the District of Columbia, which was referred to the Committee on the Judiciary.

AMENDMENTS TO REORGANIZATION PLAN NO. 1—PM 113

The Presiding Officer laid before the Senate the following message from the President of the United States, which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

I herewith transmit amendments to Reorganization Plan No. 1 of 1977, which I transmitted to you on July 15, 1977. Except as specifically amended hereby, Re-

organization Plan No. 1 remains unmodified.

JIMMY CARTER.

SEPTEMBER 15, 1977.

MESSAGES FROM THE HOUSE

At 12:23 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its clerks, announced that the House recedes from its disagreement to the amendment of the Senate to the resolution (H. Con. Res. 341) revising the congressional budget for the U.S. Government for the fiscal year 1978, and concurs therein with an amendment in which it requests the concurrence of the Senate.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDING OFFICER laid before the Senate the following communications which were referred as indicated:

EC–1987. A letter from the Assistant Secretary for Congressional and Intergovernmental Affairs of the Department of Transportation transmitting, for the information of the Senate, an option paper detailing the major choices for refining the Nation's transportation grant programs.

Mr. ROBERT C. BYRD. Mr President, I ask unanimous consent that EC–1987, a communication concerning the major choices for refining the Nation's transportation grant programs, be referred jointly to the Committees on Banking, Housing, and Urban Affairs; and Environment and Public Works.

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

EC–1988. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report on a proposed deferral for the Energy Research and Development Administration contained in the President's 18th special message; jointly, pursuant to the order of January 30, 1975, to the Committees on Appropriations, the Budget, Energy and Natural Resources, and Environment and Public Works, and ordered to be printed.

EC–1989. A letter from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals for September 1977 (with an accompanying report); jointly, pursuant to the order of January 30, 1975, to the Committees on Appropriations; the Budget; Armed Services; Commerce, Science, and Transportation; Foreign Relations; Environment and Public Works; Energy and Natural Resources; the Select Committee on Small Business; Human Resources; Agriculture, Nutrition, and Forestry; Finance; the Judiciary; Governmental Affairs; Banking, Housing, and Urban Affairs, and ordered to be printed.

EC–1990. A letter from the Acting Deputy General Counsel of the Federal Energy Administration transmitting, pursuant to law, two separate notices of meetings related to the International Energy Program (with accompanying papers); to the Committee on Energy and Natural Resources.

EC–1991. A letter from the Secretary of the Interior transmitting a draft of proposed legislation to reform the mining law, and for other purposes (with accompanying papers); to the Committee on Energy and Natural Resources.

EC–1992. A secret communication from the Comptroller General of the United States transmitting, pursuant to law, a report on the stockpile of lethal chemical munitions and agents—better management is needed (LCD–77–205) (with an accompanying report); to the Committee on Governmental Affairs.

EC–1993. A letter from the Director of the Office of Management and Budget, Executive Office of the President, transmitting a draft of proposed legislation to provide, in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463 as amended by Public Law 94–409, for the repeal of advisory committees no longer carrying out the purposes for which they established (with accompanying papers); to the Committee on Governmental Affairs.

EC–1994. A letter from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, copies of a Navy proposal on a new system of records, in accordance with the Privacy Act (with accompanying papers); to the Committee on Governmental Affairs.

EC–1995. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Technical Assistance: A Way to Promote Better Management of Guam's Resources and to Increase its Self-reliance" (GGD–77–80) (with an accompanying report); to the Committee on Governmental Affairs.

EC–1996. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Audit of Financial Statements of Saint Lawrence Seaway Development Corporation Calendar Year 1976" (FOD–77–13) (with an accompanying report); to the Committee on Governmental Affairs.

EC–1997. A letter from the Attorney General of the United States transmitting a draft of proposed legislation to establish fees and allow per diem and mileage expenses for witnesses before United States courts (with accompanying papers); to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Without amendment:

S. 1654. A bill for the relief of Thuy Bach Kanter (Rept. No. 95–430).

With an amendment:

S. 1005. A bill for the relief of Young Shin Joo (Rept. No. 95–431).

By Mr. BIDEN, from the Committee on the Judiciary:

Without amendment:

S. Res. 245. A resolution waiving section 402(a) of the Congressional Budget Act with respect to the consideration of S. 1682. Referred to the Committee on the Budget.

By Mr. LONG, from the Committee on Finance:

With amendments:

H.R. 1904. An act to suspend until July 1, 1980, the duty on intravenous fat emulsion (title amendment) (Rept. No. 95–432).

H.R. 2849. An act to suspend until July 1, 1978, the rate of duty on mattress blanks of latex (title amendment) (Rept. No. 95–433).

H.R. 3373. An act to extend for an additional temporary period the existing suspension of duties on certain classifications of yarns of silk (title amendment) (Rept. No. 95–434).

By Mr. BIDEN, from the Committee on the Judiciary:

With an amendment:

S. 1682. A bill to provide for the implementation of treaties for the transfer of offenders to or from foreign countries (Rept. No. 95–435).

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

S. 2104. An original bill to establish a comprehensive natural gas policy (together with additional views) (Rept. No. 95–436).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Charles M. Adkins, Jr., of West Virginia, to be U.S. marshal for the southern district of West Virginia.

Richard J. Dunn, of Nevada, to be U.S. marshal for the district of Nevada.

William J. Evins, Jr., of Tennessee, to be U.S. marshal for the middle district of Tennessee.

James I. Hartigan, of Massachusetts, to be U.S. marshal for the district of Massachusetts.

Bennie A. Martinez, of New Mexico, to be U.S. marshal for the district of New Mexico.

Paul J. Puckett, of Virginia, to be U.S. marshal for the western district of Virginia.

Howard J. Turner, Jr., of Pennsylvania, to be U.S. marshal for the western district of Pennsylvania.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Proctor R. Hug, Jr., of Nevada, to be U.S. circuit judge for the ninth circuit.

Alvin B. Rubin, of Louisiana, to be U.S. circuit judge for the fifth circuit.

Harry H. MacLaughlin, of Minnesota, to be U.S. district judge for the District of Minnesota.

Mr. MAGNUSON. As in executive session, I report favorably sundry nominations in the Coast Guard and National Aeronautics and Space Administration which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them in the RECORD, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of September 15, 1977, at the conclusion of the Senate proceedings.)

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. HEINZ:

S. 2098. A bill to amend the Urban Mass Transportation Act of 1964 to revise the program of Federal operating assistance provided under section 17 of such Act; to the Committee on Banking, Housing and Urban Affairs.

By Mr. WEICKER:

S. 2099. A bill to amend the Regional Rail Reorganization Act of 1973 to authorize the Secretary of Transportation to guarantee notes issued to State and local taxing authorities to secure payment of real property tax obligations owed by a railroad in reor-

ganization; to the Committee on Commerce, Science, and Transportation.

By Mr. PACKWOOD (for himself and Mr. HATFIELD):

S. 2100. A bill for the improvement of Roberts Field, Redmond, Oreg.; to the Committee on Commerce, Science, and Transportation.

By Mr. HASKELL:

S. 2101. A bill to modify the boundary of the White River National Forest in the State of Colorado; to the Committee on Energy and Natural Resources.

By Mr. EASTLAND:

S. 2102. A bill for the relief of Charles F. McKellar, Jr.; to the Committee on the Judiciary.

By Mr. PACKWOOD (for himself, Mr. ALLEN, Mr. CHURCH, Mr. CURTIS, Mr. JACKSON, Mr. MCCLURE, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MELCHER, Mr. SPARKMAN, Mr. TOWER, Mr. YOUNG, and Mr. ZORINSKY):

S. 2103. A bill to exempt disaster payments made in connection with the 1977 crops of wheat, feed grains, upland cotton, and rice from any payment limitation; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

S. 2104. An original bill to establish a comprehensive natural gas policy. Placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WEICKER:

S. 2099. A bill to amend the Regional Rail Reorganization Act of 1973 to authorize the Secretary of Transportation to guarantee notes issued to State and local taxing authorities to secure payment of real property tax obligations owed by a railroad in reorganization; to the Committee on Commerce, Science, and Transportation.

Mr. WEICKER. Mr. President, I am introducing today a bill to amend the Regional Rail Reorganization Act of 1973 to require the Federal Government to guarantee notes issued to States, municipal governments, and other taxing authorities for payment of taxes owed by the Penn Central Transportation Co.

The object of this legislation is simply to assure that financially beleaguered States, cities, and school districts will collect the full amount of the tax dollars owed them by the Penn Central.

When the Penn Central declared bankruptcy in 1970, the Federal district court in Philadelphia ordered the trustees of the Penn Central to make no tax payments until further ordered. The constitutionality of this Federal intervention in local tax abatement authority is a question which ought to be examined carefully. It has alarming implications not only for those directly affected in the Midwest and Northeast corridor but for every State, county, and city in the Nation.

At present, those tax authorities which have claims against the Penn Central are being offered two alternatives. They can take 50 cents on the dollar for what they are owed. Or they can take 20 percent of the obligation up front in cash, and the remainder in interest bearing notes offered by the Penn Central.

The decision on which option to choose must be made by October 22 of this year. There is a difficulty for taxing authorities in making this decision, however. By choosing to accept only 50 cents on the dollar, they clearly suffer substantial loss. By choosing to accept the Penn Central notes, they face a very substantial delay in receiving what they are owed. Since the notes would not mature until 1987, and since cessation of payments was ordered in 1970, a full 17 years will have passed before the States and cities and school districts can collect what is owed.

It is generally accepted that those notes are good. However, because of the bad reputation—and I must say the well-deserved bad reputation—of the Penn Central, the notes are not deemed marketable. It is the inability to market the notes that would make it necessary to hold them to maturity. Backed by the full faith and credit of the Federal Government, the notes will be immediately marketable, and our States, cities, and school districts will be immediately able to realize the money owed them.

I would like to point out that in this period prior to October 22, the Penn Central has been sending out checks at 50 cents on the dollar, falsely claiming that the recipients have only 3 weeks to decide to accept the money and, by a number of accounts, using high pressure tactics to urge acceptance. It is just these kinds of shenanigans that earned Penn Central its reputation to begin with.

I would also like to point out that this amendment does not constitute a bailout of Penn Central. If it could be construed as a bailout, the trustees would not have their people trying to muscle our States and cities to take 50 cents on the dollar instead of taking the notes. The notes will be secured by Penn Central assets, and the effect of this amendment, far from bailing-out the Penn Central Co., will be to assure that some of those assets go to pay their bills.

Finally, I have this concern: Many of our most financially troubled cities are in the Northeast corridor and the Midwestern States affected by the Penn Central bankruptcy. The Federal Government is faced with trying to find ways to help alleviate these difficulties, and a lot of Federal tax dollars go into the effort. I endorse those efforts, but I also think it would be useful and helpful if corporations like the Penn Central were compelled to honor their debts and pay their bills.

As I understand it, with the exception of the State of Kentucky, my own State has the lowest tax claim of the 15 States and the District of Columbia, which are affected. The estimated obligation to the State of Connecticut in taxes and interest is some $868,000. I want to see us get every penny of it. But that sum is almost negligible compared with what others are owed.

What I am concerned about, and the principal reason I am introducing this legislation, is that the State of New York is owed an estimated $143.859.000, with some $63 million of that owed to the city of New York.

The financial problems of New York City concern us all and affect us all. The real bail-out, the real failure of responsibility on our part, would be to permit the Penn Central to pay the city of New York, with whatever part of the sum goes to its schools, $31.5 million instead of the full $63 million owed. Sixty-three million dollars is not going to solve New York City's problems. But it can help. And it can help at no cost to the Federal Government.

The language of my bill matches exactly the language of its companion bill, H.R. 8882. I hope this will help to speed passage of the bill which should be passed or show evidence of eventual passage before October 22, so that those who are owed back taxes need not be stampeded into taking half of what they are owed, in order to get anything before 1987.

Let me add a final note, for those who might question whether we are setting a bad precedent with this legislation. I will not address the issue pending hearings, but I simply want to point out that we are trying here to offset a bad precedent which may have already been set—which was to insert the Federal Government between State and local governments and a private corporation, to relieve the corporation of its financial obligations, and to abrogate the authority of those State and local governments. We are not trying to set a precedent, we are trying to destroy one.

Mr. President, I ask unanimous consent that table I outlining alternative property tax claim settlement options; table II, listing estimated property tax claims by State; and the text of the bill be printed at this point in the RECORD.

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

TABLE I

I. COMPROMISE

Cash payment of 50% of principal (no interest or penalties) of postpetition claims (taxes owed after June 21, 1970); or 44% of principal of total tax claims.

Whichever is greater.

Or:

II. PLAN OF REORGANIZATION

(a) Cash payment of 20% of principal of total tax claims; plus:

(Taxes on retained assets)

(b) 10% of principal of total claim in interest-bearing one-year general obligation series "D" notes;

(c) 10% of principal of total claim in interest-bearing two-year general obligation series "D" notes;

(d) 10% of principal of total claim in interest-bearing three-year general obligation series "D" notes;

(e) 50% of principal total claim, and 100% of all interest due to the consummation date in interest-bearing general-obligation notes maturing on Dec. 31, 1987, or later if the Valuation Case is not concluded or has not produced sufficient proceeds for retirement of the notes.

NOTE: General obligation series "D" notes will be issued on the solvency of the reorganized Penn Central alone.

(Taxes on conveyed assets)

(b) 80% of principal total claim and 100% of all interest due to the consummation date in series "C" interest-bearing notes matur-

ing on Dec. 31, 1987, or later if the Valuation Case is not concluded.

NOTE: Series "C" notes will be secured only by the proceeds of the Valuation Case. They will not be general obligations of the reorganized Penn Central Company.

TABLE II.—ESTIMATED PROPERTY TAX CLAIMS

[In thousands of dollars]

State	Total taxes and—		
	Interest	Interest related to conveyed property	Interest related to retained property
Pennsylvania	32,052	22,152	9,900
Connecticut	868	124	744
Delaware	1,438	1,231	207
District of Columbia	1,638	1,540	98
Illinois	28,665	24,255	4,410
Indiana	49,500	44,550	4,950
Kentucky	273	244	29
Maryland	11,385	9,936	1,449
Massachusetts	24,288	21,390	2,898
Michigan	27,888	24,080	3,808
New Jersey	41,019	18,642	22,372
New York	143,859	58,735	85,124
Ohio	79,998	64,290	15,708
Rhode Island	8,576	6,728	1,848
Virginia	1,085	703	387
West Virginia	1,435	1,126	309
Total	453,967	299,726	154,241

S. 2099

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) is amended by adding at the end thereof the following new section:

"GUARANTEES BY THE SECRETARY

"SEC. 606. (a)(1) In any proceeding for the reorganization or liquidation of a railroad under section 77 of the Bankruptcy Act in which the Corporation, the Association, or the Federal Government, including any agency, instrumentality, or department thereof, asserts a priority inpayment out of the estate of such a railroad over tax obligation owed to State or local taxing authorities, the Secretary shall guarantee the payment according to their respective terms of principal and interest on securities and obligations, including securities and obligations issued to refinance any such securities and obligations, issued by a railroad in reorganization to such State and local taxing authorities.

"(2) The maturity date of such securities, obligations, and loans, including all extensions and renewals thereof, shall not be later than twenty years from their date of issuance.

"(3) All guarantees entered into by the Secretary under this section shall constitute general obligations of the United States of American from which the full faith and credit of the United States shall be pledged.

"(b) No guarantee made by the Secretary under this section shall thereafter be terminated, canceled, or otherwise revoked; the issuance of such guarantee shall be conclusive evidence that the guarantee complies fully with the provisions of this chapter and shall constitute proof of the approval and legality of the principal amount, interest rate, and all other terms of the security or obligation guaranteed, which shall be valid and incontestable in the hands of a holder except for fraud or material misrepresentation on the part of such holder.

"(c) If at any time the moneys available to the Secretary are insufficient to enable him to discharge his responsibilities under guarantees issued by him under subsection (a) of this section, he shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Secretary from appropriations available under subsection (d) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations as acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(d) There are authorized to be appropriated to the Secretary such amounts, to remain available until expended, as are necessary to discharge all his responsibilities under this section.".

SEC. 2. The table of contents of the Regional Rail Reorganization Act of 1973 is amended by adding at the end thereof the following new item:

"Sec. 606. Guarantees by the Secretary.".

By Mr. PACKWOOD (for himself and Mr. HATFIELD):

S. 2100. A bill for the improvement of Roberts Field, Redmond, Oreg.; to the Committee on Commerce, Science, and Transportation.

Mr. PACKWOOD. Mr. President, I am today introducing a bill on behalf of the city of Redmond, Oreg., which will enable them to make needed improvements to their airport, Roberts Field. The land on which the facility sits was originally deeded by the Federal Government in 1950 with the provision that the land would revert to the Federal Government if it were not used for "airport purposes." Due to this reverter clause, lending institutions are unable to help finance certain necessary capital improvements related to the airport's operation. Since there is a theoretical possibility that the Federal Government could reclaim the land, no mortgage is obtainable.

There is a precedent for such action. In fact, four bills of this nature were passed during the last Congress alone.

In addition, there is no cost to the Federal Government involved here. All that is required is a change in the deed; and, since the planned development is in conformity with the original agreement turning the land over to Redmond, there is no violation of the intent of that agreement.

It is also a fact that there are some 88,000 people served by this facility, people who could be better served if the city were given the option of expanding operations at the airport.

I doubt the Federal Government's original purpose in placing the reverter clause in the deed was to obstruct progress, and since the plans of this municipality for the land fit both local needs and the spirit of the deed's provisions, I feel that all parties concerned can only benefit from the prompt enactment of this measure.

By Mr. PACKWOOD (for himself, Mr. ALLEN, Mr. CHURCH, Mr. CURTIS, Mr. JACKSON, Mr. MCCLURE, Mr. MCGOVERN, Mr. MAGNUSON, Mr. MELCHER, Mr. SPARKMAN, Mr. TOWER, Mr. YOUNG, and Mr. ZORINSKY):

S. 2103. A bill to exempt disaster payments made in connection with the 1977 crops of wheat, feed grains, upland cotton, and rice from any payment limitation; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. PACKWOOD. Mr. President, today, I am introducing, along with several cosponsors, legislation which would remove compensation determined necessary to assist producers through this year's disaster from the payment limitations imposed on wheat, feed grains, upland cotton, and rice programs.

Current law states that a wheat farmer, for example, may not receive more than $20,000 in USDA program payments in any crop year. Therefore, if a farmer qualifies for disaster payments up to say $15,000, he could only receive $5,000 in deficiency or other program payments.

In all of the consideration of the payment limitations in the farm bill, the 1977 crop year payment limitations were overlooked and the $20,000 figure remained in effect. In future years, under the farm bill, not only is the payment limitation increased to $40,000 in 1978, $45,000 in 1979 and $50,000 thereafter, but the disaster payments are not included under these payment limitations. The conference report passed by the Senate at section 101(2) says that beginning in 1978—

> The term "payments" as used in this section shall not include . . . any part of any payment which is determined by the Secretary of Agriculture to represent compensation for disaster loss. . . .

My amendment would not increase any 1977 payment limitation, it would simply define "payments" so that compensation for disaster, as determined necessary by the Secretary of Agriculture, would not be included in the 1977 crop year, just as is provided in the farm bill for future years.

Several areas of the country are affected by this legislation because several States have had less precipitation this year than any other year on record. Oregon wheat production is roughly half of normal. According to a recent poll, 1,350 producers are eligible to receive disaster payments in Oregon alone. Over 200 of these producers would qualify for additional disaster payments if the new farm bill definition of "payments" were used. These 200 producers represent 15 percent of those who qualify for disaster pay-

ments in Oregon. The problem is even more severe in Washington where a full 1,000 producers, or one-fifth of those qualifying for disaster payments, would be limited to $20,000.

As a very practical matter, since the price of wheat has dropped to just over $2 per bushel, and under current law the Pacific Northwest could lose another $45 million in disaster compensation, we should recognize that areas such as this, which are so dependent on agriculture, will suffer irreparable economic damage. We can do very little about this year's extremely low prices of these commodities, but, we can make the worth of this program reflect current values and needs, and adequately compensate producers for their disaster-related losses. These financial resources would, of course, result in a direct infusion of vitality to the communities surrounding drought and other disaster-stricken croplands.

In this worst year of drought on record, the wheat producers in the Northwest and the feed grain, upland cotton, and rice producers elsewhere in the country are prohibited from taking advantage of the program which was designed specifically for such disasters. My legislation would correct this unfortunate circumstance.

Congressman TOM FOLEY, chairman of the Agriculture Committee, and Oregon's AL ULLMAN, chairman of the Ways and Means Committee, are actively coordinating similar legislation in the House of Representatives.

This is a very simple bill. It is a fair bill. It is necessary. I urge my colleagues to support it.

I ask unanimous consent that the text of the bill, along with an endorsement of the bill by the National Association of Wheat Growers, be printed in the RECORD.

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

S. 2103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the term "payments" as used in section 101 of the Agricultural Act of 1970, as amended, and section 101(g)(13) of the Agricultural Act of 1949 shall not include any part of any payment which is determined by the Secretary of Agriculture to represent compensation for disaster loss with respect to the 1977 crops of wheat, feed grains, upland cotton, and rice.

NATIONAL ASSOCIATION
OF WHEAT GROWERS,
Washington, D.C., September 14, 1977.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PACKWOOD: The National Association of Wheat Growers wishes to express its support for the exemption of 1977 disaster payments from the $20,000 payment limitation established by the 1973 Farm Act.

At our Executive Committee meeting, September 14, the Committee unanimously supported legislation that would exempt disaster payments for the 1977 crop from the $20,000 provision.

In 1977, many wheat producing areas of the United States were affected by adverse weather conditions and low yields making these areas eligible for disaster payments. The Pacific Northwest states were severely affected by drought this year, causing losses of thousands of dollars to wheat growers in these states. We feel that it is imperative to recognize the present situation and try to help alleviate some of the financial problems farmers would face if disaster payments are set within the payment limitation.

Presently, wheat growers are experiencing the worst economic conditions in decades. Nationally, wheat market prices are averaging $2.02 a bushel and in many areas of the country, the market price is below that figure. The cost of producing wheat is estimated at $3.40 to $3.70 a bushel, which is a loss of $1.38 to $1.60 a bushel to wheat growers. On farms affected by drought, they still have the cost of producing a crop, but no return from the market place.

The 1977 Farm Bill provides a $40,000 limitation for the 1978 crop with escalations for future years and an exclusion of disaster payments from payment limitations. We feel that the 1977 crop year should also be excluded from payment limitations, because of the added economic hardship imposed by crop loss and payment limits. These growers need all the financial support that can be obtained to continue their vital role in agriculture.

We urge your support for the pending legislation to exempt the 1977 disaster payments from within the $20,000 payment limitation.

Sincerely,

JERRY REES,
Executive Vice President.

ADDITIONAL COSPONSORS

S. 294

At the request of Mr. MELCHER, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 294, to amend the Meat Import Quota Act.

S. 1820

At the request of Mr. METCALF, the Senator from Minnesota (Mr. ANDERSON) was added as a cosponsor of S. 1820 to establish programs for the maintenance of natural diversity.

S. 1821

At the request of Mr. ROBERT C. BYRD (for Mr. HUMPHREY), the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1821, the Athletic Opportunities Assistance Act.

S. 1855

At the request of Mr. HATCH, the Senator from South Carolina (Mr. THURMOND) and the Senator from Nebraska (Mr. CURTIS) were added as cosponsors of S. 1855, the Employee Bill of Rights Act.

S. 1974 AND AMENDMENT NO. 849

At the request of Mr. CULVER, the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1974, the Regulatory Flexibility Act, and of amendment No. 849, intended to be proposed to S. 1974, supra.

SENATE CONCURRENT RESOLUTION 31

At the request of Mr. GRIFFIN, the Senator from Arizona (Mr. GOLDWATER), the Senator from Virginia (Mr. SCOTT), and the Senator from Wyoming (Mr. HANSEN) were added as cosponsors of Senate Concurrent Resolution 31, to disapprove the Federal motor vehicle safety standard pertaining to passive restraints.

AMENDMENTS SUBMITTED FOR PRINTING

UNION ORGANIZATION IN THE ARMED FORCES—S. 274

AMENDMENTS NOS. 859 AND 860

(Ordered to be printed and to lie on the table.)

Mr. ABOUREZK. Mr. President, together with Senators JAVITS and WILLIAMS, I submit two amendments for printing which I intend to propose to S. 274, and I ask unanimous consent that they be printed in the RECORD.

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

AMENDMENT NO. 859

Strike all after the enacting cluase and insert in lieu thereof the following:

SEC. 1. (a) Chapter 49 of title 10, United States Code is amended by adding at the end thereof a new section as follows:

UNION ORGANIZING AND MEMBERSHIP

(a) As used in this section—

(1) 'Member of the armed forces' means a member of the armed forces who is (A) serving on active duty, or (B) a member of a Reserve component in his military capacity. Such term shall not include any person employed as a civilian technician by a reserve component and who is also a member of that component.

(2) 'Labor organization' means any organization which engages in or has as one of its objectives (A) negotiating or bargaining with the Government of the United States, on behalf of members of the armed forces, concerning the terms and conditions of combat, combat preparedness, and/or tactical training exercises; or (B) striking, picketing, or engaging in any other work slowdown or similar job action directed against the Government of the United States. Such term does not include any professional, fraternal, military, or veterans organization or association if such organization or association does engage in or have as one of its objectives representation of a member of the armed forces or a civilian employee of the Department of Defense (A) in any grievance proceeding not involving the terms and conditions of combat, combat preparedness, and/or tactical training exercises, (B) in legal proceedings before administrative boards or under the Uniform Code of Military Justice, or (C) regarding pay, retirement, disability, equal opportunity, and fringe benefits, or if such organization or association does not engage in or have as one of its objectives any of the activities described in the first sentence of this paragraph.

(3) 'Civilian employee of the Department of Defense' means any civilian officer or employee of the Department of Defense as defined in sections 2104 and 2105 of title 5, any officer of the Department of Defense holding an Executive Schedule position under subchapter II of chapter 53 of such title, and any civilian employee who is employed by an instrumentality described in section 2105(c) of such title and who is compensated from nonappropriated funds.

"(b) It shall be unlawful for any member of the armed forces, knowing of the activities or objectives of a particular labor organization, to join or to maintain membership in such organization, or to solicit any other member of the armed forces to join

or maintain membership in such organization.

"(c) (1) It shall be unlawful for any member of the armed forces, or any civilian employee of the Department of Defense, to negotiate or bargain, or attempt to negotiate or bargain, on behalf of the United States, concerning the terms and conditions of combat, combat preparedness and/or tactical training exercises of members of the armed forces with any individual, organization, or association which represents or purports to represent members of the armed forces.

"(2) It shall be unlawful (A) for any individual, organization, or association to negotiate or bargain, or attempt to negotiate or bargain, with the Government of the United States, on behalf of members of the armed forces concerning the terms and conditions of combat, combat preparedness and/or tactical training exercises, or (B) for any individual, organization, or association to organize or attempt to organize, or to participate in, a strike or any other work slowdown or similar job action involving members of the armed forces directed against the Government of the United States.

"(d) (1) It shall be unlawful for any individual, organization, or association to use and military installation, facility, reservation or other property of the Department of Defense for any meeting, demonstration, or other similar activity if such meeting, demonstration, or other activity concerns any of the activities prohibited by subsection (b) or (c) (2) of this section.

"(2) It shall be unlawful for any member of the armed forces, or any civilian employee of the Department of Defense, to permit or authorize the use of any military installation, facility, reservation, or other property of the Department of Defense for any meeting, demonstration, or other similar activity if such meeting, demonstration, or other activity concerns any of the activities prohibited by subsection (b) or (c) (2) of this section.

"(e) Nothing in this section shall limit the right of any person (1) to join or maintain membership in any organization or association not constituting membership in any organization or association not constituing a 'labor organization' as defined in (a) (2) of this section; (2) to seek or receive information from any source; (3) to be represented by counsel in any legal or quasi-legal proceeding, as authorized by applicable laws and regulations; (4) to petition the Congress for redress of grievances; or (5) to take such administrative action to seek such administrative or judicial relief as is authorized by applicable laws and regulations.

"(f) (1) Any individual who violates the provisions of subsection (b), (c) (1), (c) (2), (d) (1) or (d) (2) of this section shall be punished by a fine of not more than $10,000 or by imprisonment for a term of not more than five years, of by both such fine and imprisonment.

"(2) Any organization or association which violates subsection (c) (2) or (d) (1) of this section shall be punished by a fine of not less than $25,000 nor more than $250,000 for each violation.

"(b) The table of sections at the beginning of chapter 49 of title 10, United States Code, is amended by adding at the end thereof the following:

"975. Union organizing and membership".

Amend the title so as to read: "A bill to amend chapter 49 of title 10, United States Code, to regulate union organization and membership in the armed forces, and for other purposes.".

AMENDMENT No. 860

1. On page 5, line 15 insert after the word component: "in his military capacity. Such term shall not include any person employed as a civilian technician by a reserve component and is also a member of that component."

2. On pages 8 and 9 strike subsection (f).

3. On page 9, line 15 strike all through page 10, line 4.

LEGAL SERVICES CORPORATION ACT—S. 1303

AMENDMENT NO. 861

(Ordered to be printed and to lie on the table.)

Mr. HAYAKAWA submitted an amendment intended to be proposed by him to the bill (S. 1303) to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes.

NOTICES OF HEARINGS

INTERCONNECTION AND WHEELING

Mr. JOHNSTON. Mr. President, the Subcommittee on Energy Conservation and Regulation of the Senate Committee on Energy and Natural Resources will hold a hearing on Tuesday, September 20, 1977, on subpart 3 of part E of S. 1469 dealing with interconnection and wheeling. The hearing will commence at 8 a.m. in room 3110 of the Dirksen Senate Office Building.

The subcommittee will receive testimony from the administration and selected private witnesses. Questions concerning this hearing should be directed to Benjamin Cooper or James Bruce of the subcommittee staff at 224–9894.

ADDITIONAL STATEMENTS

WILDERNESS AREAS ACT

Mr. STEVENS. Mr. President, section 17(d) (2) of the Alaska Native Claims Settlement Act of 1971 authorized the Secretary of the Interior to withdraw up to 80 million acres to study for inclusion in the national park, wildlife refuge, forest, and wild and scenic river systems. There have been several bills introduced into the House and Senate to deal with the settlement of section 17(d) (2), all with different approaches.

I would like to point out what the people of Alaska, including myself, feel are some of the weaknesses of H.R. 39 and S. 1500, bills which embody one approach to resolution of the "d–2" question. First of all, we feel the areas to be set aside as parks, refuges, forests, wild and scenic rivers, and wilderness areas are too large and have received too little study. H.R. 39 and S. 1500 set aside one-quarter of the timber-rich region of southeastern Alaska as wilderness areas without adequate study to determine the resources of those areas that are of economic or strategic importance to the United States. They would also create huge tracts of inaccessible parks, refuges, and wilderness areas throughout the State. They would then extend the already too large areas by giving the Secretary of the Interior control over "areas of ecological concern" surrounding the proposed areas.

Not only do H.R. 39 and S. 1500 give the Secretary of the Interior control over areas of ecological concern, but they also give him unnecessary control over management of fish and wildlife resources including seasons, bag limits, and subsistence hunting and fishing. He is also given the authority to determine who is and who is not a subsistence hunter. All these decisions have traditionally been part of State management under the present system existing on Federal lands and do not bode well for the future of State management on Federal lands throughout the country.

Substantial revision of these proposals are necessary in order to properly serve the national interest. The proposed reservation areas need to be smaller. The Alaska Department of Fish and Game, which has done a good job of managing the fish and wildlife resources in Alaska, should retain jurisdiction of the fish and wildlife management of the State. The bill should establish a system of using revenue from Federal lands to establish parks and other reservations in the lower 48, and they must be modified to allow the State to complete its land selection guaranteed under the Statehood Act.

Mr. President, I ask unanimous consent that the article from the Ketchikan Daily News entitled, "Revise H.R. 39," be printed in the RECORD. I believe it gives an accurate view of how the people of Alaska feel about H.R. 39.

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

REVISE H.R. 39

When Congressman Morris Udall introduced HR 39 in January, he said, "While this bill is a countermeasure to that proposed by the secretary of the interior, it is not to be considered final . . . The final decision is that of the Congress and ultimately the American people."

It is the American people about whom we all are concerned.

The Alaska Division of Tourism reports that 280,000 people visited Alaska as tourist, hunter, fisherman or hiker in 1976. It would take over 700 years for the entire U.S. population of 210 million to visit Alaska and enjoy the parks and wilderness at a rate of 280,000 a year.

Few residents of Ohio, for example, can afford the $500 air fare, plus hotel rooms, meals and other expenses for a vacation near Ketchikan.

Alaska Senator Ted Stevens has introduced legislation that takes wilderness to the people who can't afford the trip to Alaska. His bill puts revenues from development of Alaska lands in a fund to buy private land in other states to create parks. This could be used to expand the Cuyahoga Valley Wilderness Area in Ohio, for example. That would benefit the 11 million people in Ohio more than a 2.4 million acre wilderness area near Ketchikan, Alaska.

Also of benefit to the people of Ohio would be the development of mineral resources near Ketchikan. Molybdenum from this area can harden Ohio steel.

We do not propose ripping up all of Southeastern Alaska for minerals or chopping down all of the trees. But before we do the opposite and lock it up in wilderness, it should be thoroughly explored for its values and a plan developed. HR 39 not only makes no provision for planning, it negates planning authorized or in progress.

There should be no rush to lock up the land or to fully develop without study. There is no immediate threat to the destruction of Southeastern Alaska. The area is 20 million acres in size, compared with 26 million acres comprising Ohio. Yet the population of

Southeastern Alaska is 42,000 compared with Ohio's 11 million. There is only one active mine in Southeastern Alaska, the barite mine on Castle Island, although there is immediate potential for another barite mine, a molybdenum mine and a copper mine.

Washington state has 12 million acres of forested land compared with 16 million acres of national forest in Southeastern Alaska. Washington has wilderness areas and parks and still harvests eight billion board feet of timber per year, keeping 35,000 people employed. By contrast, one sixteenth that volume of timber is harvested each year in Southeastern Alaska by one-tenth the work force.

There is room for expanding both the timber industry and mineral production in Southeastern Alaska and still having large tracts of roadless and wilderness areas for fish, wildlife and people. But not with HR 39 in its current form.

We are encouraged by Congressman Udall's comment that HR 39 is not to be considered final. We believe reference to lands in Southeastern Alaska should be deleted from the bill, or at least modified to include for wilderness study only those areas previously recommended in 1970.

We believe HR 39 should be modified to make proposed reservation areas smaller.

HR 39 should be modified so that the Alaska Department of Fish and Game administers fish and wildlife resources in Alaska, even in federal reservation systems.

HR 39 should be modified to adopt the Stevens proposal of using revenues from federal lands in Alaska to establish parks and other reservations in the U.S. where such public lands are in short supply.

HR 39 should be modified to allow the state of Alaska to complete its land selection so Alaska can contribute to the wealth of the nation rather than be a drain upon it in administering huge reservations.

AID FOR RAIL MASS TRANSIT COMMUTERS

Mr. HEINZ. Mr. President, on June 23 this body passed S. 208, the National Mass Transportation Assistance Act of 1977. I was a cosponsor of that bill and wholeheartedly supported its passage.

S. 208 contained two key provisions which are critical to the continuation of effective mass transit programs in many older urban areas of this country: The emergency commuter rail operating assistance program and the operating subsidy formula grant program. S. 208 extended, for 2 years, the commuter rail operating subsidy program and redressed the disparities in the section 5 operating subsidy program by establishing a two-tier formula system. Both provisions go a long way in providing the necessary assistance to maintain existing rail transit systems in many of our older cities and metropolitan areas.

If the prospects for S. 208 becoming law during 1977 were at all likely, I would not be here today offering an amendment to the Urban Mass Transportation Act of 1964. Unfortunately, the administration and the House Public Works Committee have decided to postpone any action on major mass transit legislation for another year. This decision, of course, implies that there is no urgency in adopting major changes in the mass transit programs. Unfortunately, the facts do not bear out this assumption.

There is a great deal of urgency in continuing and altering the basic subsidy level for the section 17 emergency operating assistance program for commuter rail systems. Without emergency assistance now, rail passenger services in Massachusetts, Rhode Island, New Jersey, New York, Delaware, Indiana, and Pennsylvania will be jeopardized. Thousands of passengers will find themselves without access to a convenient form of mass transportation, with few options other than the automobile available as an alternative.

If there is no immediate action to alter the present section 17 subsidy level many State and local governments will be unable to bear the increased burden of continuing rail commuter services beyond April of 1978. At that time the level of Federal assistance to commuter rail lines will fall from 90 to 50 percent for a 6-month period. At the end of the 6-month period all assistance to commuter rail systems will cease.

In recent years there has been general agreement that discontinuation of subsidies to commuter rail systems was unreasonable and antithetical to our national commitment to mass transportation and energy conservation. S. 208 attempted to resolve the long-term subsidy issue. Had the provisions contained in S. 208 become law this year the 50 percent subsidy period would have been extended for 2 years. Additionally, the section 5 operating subsidy program would have been increased and restructured in such a way as to give additional moneys to metropolitan areas which have invested heavily in mass transit systems in the past and which have commuter rail lines in operation.

My amendment to the Urban Mass Transportation Act of 1964 is a very simple one. It can be accommodated within existing authorizations and as a result has no budgetary impact. The amendment does two things: First, it removes the requirement that local transit authorities provide satisfactory assurances to the Secretary of Transportation that the services will be continued at present levels beyond April of 1978 without Federal assistance. Second, it increases the basic subsidy level from 50 to 80 percent during the last 6 month period of the present section 17 subsidy provision. This amendment will assist State and local governments in continuing passenger rail services until more comprehensive action can be taken by the Congress in 1978.

I believe it would be foolish and ill advised to allow a major mass transportation system which operates in seven States and serves hundreds of thousands of commuters daily to be curtailed or even terminated because of congressional inaction over the short term. Our commitment to mass transit, particularly in light of our pressing energy and environmental needs, must be more consistent and equitable. I believe that this amendment should be passed quickly by both Houses in order to maintain a critically important component of our existing mass transit system. Unless we move at once, rail mass transit commuters themselves may be brought to a sudden halt. We should not permit such gross dislocation and confusion. I urge immediate action on my proposal.

HANDGUNS

Mr. KENNEDY. Mr. President, perhaps no argument, however logical or poignant, can persuade the gun lobby of the tragedy we create by allowing the profusion of handguns in America.

But for those who still may be undecided on this issue, I can think of nothing in recent years that has provided more startling proof of the need to control the gun menace than the article on the front page of last Saturday's Washington Post. Cold statistics often blunt the human element of the message they convey. But not in this case. Murder has become the leading, the No. 1, cause of death among young black males in our inner cities. It outranks cancer, accidents, and every other cause of death. And the chief instrument of these murders is the handgun, so readily available to settle momentary disputes or domestic squabbles.

Perhaps there are those who can be so cynical as to shrug off this news, claiming that it applies to only a small segment of our population. But let them beware. The flood of handguns is rising in every part of our country, and the grim statistics that now apply to only part of our people will, unless we act, one day engulf us all.

I ask unanimous consent that the article from the Washington Post be printed in the RECORD.

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

MURDER IS FOUND NO. 1 KILLER OF NONWHITE MALES

(By Warren Brown)

Murder has passed accidents and any single disease as the leading cause of death among young nonwhite men in the nation's metropolitan areas, according to a report published yesterday in the New England Journal of Medicine.

"The national increase [between 1960–1970] in homicide mortality in this population group was 80 per cent," said the report.

It added: "Nationally . . . [homicide] rates have increased dramatically for both sexes and among whites and nonwhites, with the greatest absolute increase occurring in nonwhite men . . ."

The report was based on a study of homicide in Cleveland and 56 of its suburban communities from 1958 to 1974. But the researchers—most of them doctors at Case Western Reserve University—said the Cleveland figures reflect national trends.

"The homicide trends reported in this study shock us," the researchers said. "What has happened in Cleveland reflects, in a magnified way, national trends during the same period."

In Cleveland about 98 per cent of "nonwhites" are black.

Between 1958 and 1962, 82 of every 10,000 black Cleveland men between the ages of 25 and 34 died as the result of "intentional violence," the report said. That figure rose to 344 of every 10,000 between 1969 and 1974, according to the report.

An estimated 13 per cent of all homicides in Cleveland between 1958 and 1974 could be called legally justified, according to the re-

port. Most of the justifiable homicides were by police, and most of the persons killed in those incidents were blacks, the report said.

However, the report noted that white Cleveland men have also begun to get killed with increased regularity. "The greatest relative increase [in Cleveland homicides during the complete study period] occurred in white city men—455 per cent. Their rate now surpasses that of nonwhite women, altering the traditional ranking of race-sex homicide mortality found in Cleveland and other urban communities," the report said.

The report attributed the upsurge in homicides—which it said has abated somewhat in recent years—to the ready availability of handguns.

"Guns are so numerous in the United States that at least half of all American homes harbor at least one firearm," the report said. "A handgun in the home is more likely to be used in a domestic homicide or to cause serious injury, intentional or accidental, than to deter a robber or burglar," it said.

The report offered no sociological explanation for the preponderance of nonwhite homicides in Cleveland and elsewhere. However, such an explanation was forthcoming from Dr. Alvin Poussaint, a nationally known psychiatrist at the Harvard Medical School, who has specialized in studying mental problems in the black community.

"A lot of it," said Poussaint, "stems from the historical problems that have affected blacks—racism, joblessness. . . . People living in frustration tend to turn on one another.

"A lot of it has to do with manhood struggles—the 'Who's going to save face kind of a thing.' Sometimes, it [a murder] can happen over an argument over a quarter."

TREND IN BLACK HOMICIDES IS "SHOCK" TO RESEARCHERS

BOSTON, Sept. 8.—Researchers surveying homicides in Cleveland discovered that the death rate among young black men increased 320 percent in 17 years. During that time, the age of most victims dropped from the early 40's to the late 20's.

"The homicide trends reported in this study shock us," the researchers wrote. "What happened in Cleveland reflects, in a magnified way, national trends during the same period."

In Washington, Alice Haywood, a spokesman for the National Center for Health Statistics, an agency of the Department of Health, Education and Welfare, said that, nationally, homicides were the leading cause of death among nonwhite males 25 to 34 years old.

A TIME TO REMEMBER OUR FAILURE TO RATIFY THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, although acts of genocide have taken place throughout the course of history, no doubt the most obvious and heinous example of it was the systematic extermination of over 6 million Jews during World War II.

Immediately following the conclusion of the war, the United States and its Allies expressed their shock and outrage over such acts by drafting the Genocide Convention. Acting Secretary of State James Webb, in presenting the Convention to President Truman in 1948, emphasized that the crimes of World War II had provided the primary impetus for its adoption. Since that time Presidents of both parties reminded us of that commitment. Finally, President Carter last spring recalled the treaty's wartime roots in his strong plea for its ratification.

Mr. President, between the 13th and 22d of September, millions of American Jews will be observing the High Holy Days. This is not only a time for celebration of the New Year, but also a time when particular attention is paid and honor given to the dead. Certainly, during these memorial services, the holocaust of World War II cannot help but be on many minds.

Mr. President, although the Genocide Convention is no more a "Jewish" act than it is "Protestant," "Roman Catholic," or "Hindu," I feel that this is a particularly appropriate time to recall its origins and to call for its quick ratification.

SUPPORT IN MASSACHUSETTS FOR THE AGENCY FOR CONSUMER PROTECTION

Mr. KENNEDY. Mr. President, I was extremely pleased to learn of the support of the House of Representatives, the Attorney General, and the Consumers' Council of the Commonwealth of Massachusetts, for legislation to create a Consumer Protection Agency. For over 8 years I have supported—and fought for—legislation to give consumers' voices greater prominence in agency decisonmaking. Special interests have their advocates and agencies in Washington: consumers should too.

The Consumer Protection Agency would not only provide vigorous advocacy for consumers; it would also serve an ombudsman function in handling consumer complaints and would collect, analyze, and disseminate information to assist consumers in making enlightened choices in the marketplace. Establishment of this agency is long overdue, and it is my hope that S. 1262 will be enacted during this Congress.

Mr. President. I ask unanimous consent that the following resolutions, the first adopted by the Massachusetts House of Representatives and the second adopted by the Commonwealth of Massachusetts Consumers' Council, be printed in the RECORD.

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

RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO APPROVE THE CREATION OF THE FEDERAL AGENCY FOR CONSUMER PROTECTION

Whereas, The interest of the citizens and consumers of Massachusetts and the Nation do not receive adequate representation and protection in the deliberations of the Federal Government; and

Whereas, Consumer offices within the Federal Government are currently widely scattered and many are ineffective; and

Whereas, The Federal Agency for Consumer Protection would be empowered to advocate the interests of consumers before federal agencies and courts and seek judicial review of agency actions unfavorable to consumers; and

Whereas, The Federal Agency for Consumer Protection would be minimal representing less than $.25 per taxpaying family; and

Whereas, The creation of the Federal Agency for Consumer Protection has the support of a substantial majority of the American public and numerous consumer, farm, senior citizen, environmental and labor groups; and

Whereas, The Federal Energy Administration last summer, in a decision which cost consumers between 800 million and two billion dollars this winter, removed price and allocation controls from heating oil, a decision the Agency for Consumer Protection would have opposed; and

Whereas, The National Transportation Safety Board recommended to the Federal Aviation Administration (F.A.A.) that a defective cargo door on DC–10's should be modified and the F.A.A. acceeded to the manufacturers desire that the modification be optional, a decision the Agency for Consumer Protection would have fought, and subsequently, because of the defect, a DC–10 crashed killing 348 persons; and

Whereas, The Interstate Commerce Commission (I.C.C.) now requires many trucks to return empty from deliveries, make mandatory, often out of the way stops, and generally limits competition in the trucking industry, all of which artificially inflates the cost to the consumers; and the Agency for Consumer Protection would provide strong consumer advocacy in all proceedings of the I.C.C. to alleviate unnecessary costs; therefore be it

Resolved, That the House of Representatives of the Great and General Court of Massachusetts urges the Congress of the United States to enact legislation creating the Federal Agency for Consumer Protection; and be it further

Resolved, That copies of these resolutions be sent forthwith by the Clerk of the House of Representatives to the President of the United States, to the presiding officer of each branch of Congress and to each member thereof from this Commonwealth.

RESOLUTION OF THE MASSACHUSETTS CONSUMERS' COUNCIL

Whereas federal agencies set rates for certain consumer goods and services, establish health and safety standards, and otherwise make decisions which vitally affect consumers, and

Whereas because consumer interests are not adequately represented before federal agencies, decisions are often made after hearing only the viewpoint of the regulated industry, and

Whereas the creation of a federal Agency for Consumer Protection would redress this imbalance by ensuring that federal agencies hear the consumer's voice before making such decisions, and

Whereas the creation of such an agency would cost the average taxpayer about 5¢ per year—or roughly two hours of the Pentagon's annual budget—

Therefore, be it resolved that the Massachusetts Consumers' Council strongly urges Rep. Margaret Heckler (R-Wellesley) and Rep. Silvio Conte (R-Pittsfield) to protect the interests of the consumers in their respective districts, and join the rest of the Massachusetts Congressional delegation, by giving their full support to H.R. 6118, a bill creating an Agency for Consumer Protection, and by opposing the McCloskey Amendment and any other amendments which weaken the proposed agency; and

Furthermore, be it resolved that the Massachusetts Consumers' Council expresses its deep gratitude to the remainder of the Massachusetts Congressional delegation for their support of the Agency for Consumer Pro-

tection and urges them to continue resisting the considerable pressures mounting on them to reverse their stand, or to vote for the McCloskey Amendment or other amendments designed to weaken the proposed agency.

STATEMENT BY SENATOR CLAIBORNE PELL: U.N. SECURITY COUNCIL DEBATE ON CYPRUS

Mr. PELL. Mr. President, the United Nations Security Council is currently considering an appeal by the Government of Cyprus regarding Turkey's failure to comply with United Nations resolutions calling for a withdrawal of the Turkish forces occupying northern Cyprus.

The appeal by Cyprus is particularly relevant and compelling at the present time because of the recent Turkish action in moving Turkish Cypriot settlers into Varosha, a suburb of Famagusta. This is an alarming development because it has been generally assumed that under any peace plan Famagusta and Varosha, which up until now have been uninhabited since the 1974 Turkish invasion, would be returned to the Greek Cypriots.

The Turkish settlement plan clearly calls into question whether Turkey is prepared to withdraw from any of the territory it occupied in 1974. More ominously, it calls into question whether Turkish forces will confine themselves to the territory already occupied or whether there are further expansionist designs on Cyprus.

In my view, the United States should join other members of the Security Council in condemning the Varosha settlement and calling for an end to the Turkish occupation of northern Cyprus. The United States must not abstain, as it did in the case of General Assembly Resolution 3395 of November 20, 1975, when clear calls for the end of a cruel occupation are made.

Mr. President, the distinguished British newspaper, The Guardian, published two very interesting and perceptive articles on the planned Turkish settlement of Varosha on August 30. I commend them to my colleagues and ask unanimous consent that the full texts of these articles be printed in the RECORD.

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

CYPRUS PRESSURE TO GET TURKS OUT OF VAROSHA

(From John Bierman in Nicosia)

The Foreign Minister of Cyprus, Mr. John Christophedes, flew to New York at the weekend to present his Government's case in a Security Council emergency debate this week on the "deteriorating situation" on the island.

His opposite number, Mr. Vedat Celik, "Foreign Minister" of the self-proclaimed Turkish Federated State of Cyprus, is already in New York, helping the Turkish permanent delegation to the UN to muster support.

A decision to consider the Cyprus Government's complaint was due last night after the Security Council president, Ambassador Jacques Leprette of France, completed his soundings of the 14 other members. These include Pakistan and Libya, which may be expected to take up a pro-Turkish stand.

According to UN sources it is expected that a two-day special session of the Security Council will begin today.

The Cyprus Government decided last week to seek immediate recourse to the Security Council on two counts—in general, the Turkish failure to comply with past UN resolutions on Cyprus, and in particular the announced Turkish intention to start resetting the Famagusta suburb of Varosha on September 1.

Previous resolutions have called in vain for a withdrawal of the Turkish troops occupying Northern Cyprus—now estimated at between 25,000 and 30,000 with about 150 tanks—and the return of 10,000 Greek Cypriot refugees to their homes there. The Greeks are demanding Security Council action to ensure Turkish compliance.

It is a demand they have made before, without success, and there is an element of ritual in this latest attempt. The new element is the Varosha issue, which the Greek Cypriots regard as of vital importance and extreme urgency.

They describe the plan to settle Varosha as "Attilla 3"—the third phase of the Turkish invasion—the first having been the initial landings on July 20, 1974, and the second the August 1974 offensive in which Turkish troops swept east and west across the island after a fitful period of ceasefire to end up in occupation of 36 per cent of Cyprus.

It was in this second offensive that they took the eastern port city of Varosha and its wealthy tourist suburb, also called Varosha, which at the time contained almost half the island's hotel accommodation, as well as being home to some 40,000 Greek Cypriots.

The Turkish Army sealed Varosha off and it remained the one captured area in which displaced Turkish Cypriots were not settled—a brooding ghost town of luxury hotels and high-rise apartment blocks, strung out along a new eerily deserted sweep of sandy beach, deteriorating slowly in the scorching eastern Mediterranean sun.

The understanding was that Varosha was being held as a bargaining counter pending an overall settlement, and indeed unless the Greeks believe there is a chance of getting it back there seems very little for them to negotiate about.

Now, with Turkish Government approval, the Turkish Cypriot administration is about to move 100 families into Varosha and to open a refurbished luxury hotel as a hotel training institute.

So far as the Security Council's proceedings are concerned, the Americans will doubtless continue to prefer private persuasion to public condemnation. The Soviet Union has shown itself consistently unwilling to offend the Turks over Cyprus. The Chinese are known to regard the issue as an imperial leftover, in which they have no interest either way.

The British are likely to follow the American line. The French appear in general to be sympathetic to the Greek Cypriots, but it is not a subject about which they feel particularly strongly.

So much for the five permanent members of the Security Council. The line-up does not seem likely to produce the strong resolution the Cyprus Government would like.

WORDS WON'T SHIFT TURKEY

As the world accretes new problems, so old problems sink lower down the pile. Cyprus, for instance, may stir in crisis; even this week strive for a Security Council emergency debate: but who supposes much will happen about Varosha when the Horn and Cape of Africa—not to mention the Middle East—consume all energy? What can the United Nations say to Turkey that it has not said vainly a hundred times before?

Yet Cyprus remains a moral issue as well as a purely political mess. And it becomes constantly easier to comprehend the full extent of Greek Cypriot distress. For a moment, see it through their eyes. Cyprus is a sovereign state floating a few dozen miles off the Turkish coast. Turkey, for centuries, has been an expansionist power. The Ottoman empire is not so long gone. In the summer of 1974, the Greek Cypriots made a fatal mistake. They fell out amongst themselves. An extreme right-wing coup toppled but failed to kill Archbishop Makarios. Though there was no immediate threat to the Turkish Cypriot minority, the longer-term threat of a pro-Enosis regime run by Nicos Sampson was too much for Ankara. They invaded in two separate waves. They camped along the Attila Line, holding 36 per cent of Cyprus. They have not budged since. Worse, they have relentlessly filled northern Cyprus with mainland emigrants, squeezing all but a handful of Greeks from their territory. Peace plans have always visualised a measure of Turkish withdrawal. But no peace talks have got anywhere; and now Varosha—a resort that every peace plan envisages returned to Greek hands—is to be progressively settled by Turks. Makarios's long, hard struggle goes on without Makarios. Who can wonder, then, that the Greeks fear not merely permanent division along the Attila Line but, at some suitable future moment with some suitable future excuse, a further Turkish push to swallow all of Cyprus? Will world opinion be any more help then than it is now?

British and American observers, examining this thesis, may find it too doom-fraught. Turkey, from their standpoint, is a quavering giant, shot through with political dissent and dominated more by inertia than dreams of conquest. None the less, they must see how the facts support the Greeks. Ankara has settled the north. Ankara has refused meaningful negotiation. Ankara (Begin-style) is moving people into Varosha. Perhaps all the Greek Cypriots can do is seek some UN succour. But the West—and most specifically, America—is in a tighter spot. There is no doubt where Jimmy Carter's sympathies or campaign loyalties lie. From the start he has given Cyprus some priority and, in Clark Clifford, a wily old negotiator. But nothing has come of it. The settlement of Varosha, indeed, will be a calculated snub to Washington. And unhappily, for all the intricacies of Cyprus, the essential issues are (as we have said) moral ones. Can a country invade another under the West's nose and get away with it? Is might right? And if might is not right, what is Mr. Carter going to do about it?

SOUTHERN GOVERNORS ENDORSE DEREGULATION

Mr. SCHMITT. Mr. President, I indicated yesterday that I would be introducing for the consideration of my fellow Senators the natural gas pricing resolutions of various regional Governor's conferences. Today, I am offering the resolution adopted by the 43d Annual Southern Governor's Conference.

Perhaps the most significant outcome of these energy statements made by our Nation's governors is that their beliefs do not conform to geographical regions. Deregulation is not a regional issue. It is supported by the overwhelming majority of the Nation's governors representing gas producing States and gas consuming States.

Why is this the case? I believe is because our State governments, working daily with the problems of unemploy-

ment, realize that our people are equally sensitive to the availability of gas as they are to the cost of gas.

Mr. President, I ask unanimous consent that section 5, Energy Policy Statement, of the Resolutions Adopted by the 43d Annual Southern Governors' Conference be printed in the RECORD. The specific recommendation is under the "supply" section of the general heading of "Specific Action Recommendations."

There being no objection, the statement is ordered to be printed in the RECORD, as follows:

SECTION 5. ENERGY POLICY STATEMENT

We, the Southern Governors, hereby submit this policy statement as an expression of our unified concern over this nation's continuing energy problems. We have determined that the economic well being of our nation and the Southern Region are inextricably tied to these energy problems and the effects on the economic system of each set of solutions to the energy problems we all face must be carefully weighed and considered. We must promote solutions which guarantee adequate energy resources and maintain a balanced economic system for the nation.

FINDINGS

Energy is the underlying base of almost all economic and social activity in our states.

The limited availability of energy adversely affects every segment of our lives.

Continued economic health and opportunities for sustained growth are possible only with secure and dependable energy availability.

Oil and natural gas will continue to be major sources of energy for at least the next decade. Under present regulatory practices and those contemplated by the House passed energy bill (H.R. 8444) the domestic supplies of these premium fuels will continue to diminish and our nation each year will become more dependent upon expensive, foreign energy supplies.

The region represented by the Southern Governors' Conference produced in 1976, some 68 percent of this nation's energy output, including 72 percent of the oil, 84 percent of the natural gas, 53 percent of the coal, and 30 percent of the nuclear generated electricity.

About one-half of this nation's proven and potential fossil fuel resource base is under the control of the Federal government; in 1976, it produced only 10 percent of our national energy output.

Alternative sources of energy will be expensive to commercialize and their effective penetration into the marketplace will be long term, but it is necessary that their complement existing energy sources.

Industrial and commercial conversion from natural gas to coal will cause serious economic problems.

Present federal environmental standards are unnecessarily delaying, and in some cases make impossible, use of fuel sources which will help balance our national fuel mix.

The energy problems cannot be solved or alleviated unless our present domestic energy resource base is expanded and energy usage in terms of both individual life style and economic activity becomes compatible with limited supplies.

The South is heavily dependent on private transport in non-urban areas and on the car-driving tourist for state general revenue. Thus the Federal government must consider that an adequate system of highways and a sufficient supply of gasoline and diesel fuel are essential to the maintenance of a sound economy in our region.

Although conservation can substantially alleviate the short term energy problem, current federal energy pricing policies work against the conservation of energy resources.

Artificially low wellhead prices for domestic oil and natural gas will not increase or encourage exploration. They will, in fact, hasten the decline of domestic production, expand imports, and by creating an unnaturally high demand provide little or no incentive for conservation.

Long-term solution to the energy problems of this nation are dependent upon an aggressive research, development, and demonstration program. Alternative energy systems and non-depletable or renewable energy resources must become our new energy base.

No one system or any single resource can provide a lasting answer to energy sufficiency with adequate economic health; our R, D & D programs must not ignore any potential technology in seeking those long range answers.

A strong state-federal relationship is the keystone to assuring truly national solutions; a coordinated, central federal energy agency can provide the focus necessary to achieve a needed national consensus.

There is increasing concern about energy facility safety; the public lacks confidence in present procedures which determine facility need and is dissatisfied with the site selection and approval process.

Uncertanties concerning federal and state regulatory attitudes are limiting the availability of capital to finance construction of needed energy facilities.

The impacts of energy facility siting, construction, and operation are regional in scope; and the interstate aspects of energy planning will play a more prominent role in the decision-making process in the future.

GENERAL POLICY STATEMENTS

We believe that the following 15 point general policy responds to the findings we have made and provides a framework within which regional and national energy goals can be achieved.

1. We urge the President to appoint an assistant secretary for intergovernmental relations in the new Department of Energy whose sole responsibility would be to work with the states and regional organizations in identifying significant energy issues, in achieving national consensus, in advancing appropriate solutions, and in expediting state relations with all offices and divisions in the department.

2. We call upon the President and Congress not to abandon any technologies which could assist this nation in bridging the gap between supply and demand or become the basis for energy self-sufficiency. Breeder reactor technologies and nuclear fuel reprocessing must receive adequate commitment for federal research, development, and demonstration. With our present resource base so short-lived we must pursue all options that are technologically sound.

3. We strongly urge the Congress and the President to abandon policies which create artificial incentives for increased consumption of dwindling fuel sources. Present federal natural gas pricing policies in the face of mounting prices for rival fuels have substantially undervalued interstate gas with respect to other fuels

4. We urge the Congress to address the social problems that might occur with increased energy prices or other energy policies by direct assistance through established social welfare programs, not through the back door of price controls or utility rate structures.

5. We strongly believe that the effect of any federal energy policy must not cause any state or region to bear a disproportionate share of the burden either through too rapid depletion of its resource base or through economic disruption.

6. We urge that federal curtailment policies be reconsidered so that the maintenance of family income be of major importance in any schedule of priority distribution of energy.

7. We applaud the decision to institute a regional solar energy network which will permit research, development, and demonstration of this resource to address the unique and specific needs of individual states. We commend this approach for the expenditure of federal R, D & D funds of other programs in which regional impacts ought to be emphasized.

8. We urge Congress and the Administration to review federal environmental standards which impede energy development so that a realistic balance between environmental quality on the one hand, and energy availability and economic health on the other can be achieved.

9. We recommend that the Federal government allow the states greater flexibility in the use of highway trust funds and other energy-related tax revenues dedicated to transportation purposes in order to respond to various state transportation needs.

10 We subscribe to the position that the states must have to the greatest extent possible a voice in determining priorities for the expenditure of federal R, D & D funds.

11. We urge that the President and Congress consider the socioeconomic impact on states and communities when large federal energy-related installations are built and operated. Some form of assistance is needed to help communities provide increased services for construction and operating crews and to maintain the local tax base; such assistance programs as "grants in lieu of tax payments" should be studied.

12. We submit the following as significant topics which ought to receive priority consideration by the research arms of the Federal government:

A. in the area of coal utilization, such subjects as improved mining techniques, transportation systems, conversion to other fuels, and sulfur-removal technologies.

B. in the area of oil and natural gas development and production, such subjects as improved exploration techniques and enhanced recovery.

C. in solar technologies development, such subjects as biomass conversion, heating and cooling, small scale electricity generation, ocean thermal energy conversion, and legal questions such as sun rights and solar easements.

D. in nuclear power utilization, such subjects as breeder development, fusion, fuel recycling, and waste management and disposal.

E. in the area of conservation programs and incentives, such subjects as life-cycle cost analysis, energy efficiency building codes, utilization of waste heat, and modular integrated utility systems.

13. We subscribe fully to the policy that state government itself must set the example for conservation in buildings and operations and for the wise use of all energy resources.

14. We urge the responsible conservation and utilization effort of our precious natural resources and toward that end we urge the conservation of our nuclear fuels and the development and evaluation of alternative nuclear fuel reprocessing cycles and safeguard measures that will ultimately make available for power production these otherwise wasted nuclear fuel resources and at the same time, meet the practical international nonproliferation objectives.

15. We urge the President and the Congress

to consider the social disruptions which may occur under a widespread energy shortage, such as those which occurred in the national coal shortage of 1918, and to formulate in advance legislation mechanisms and policies to deal with such an emergency. In many areas of the South, dependence upon the automobile as a form of transportation is greater than in some other areas. To avoid regional unfairness, any standby emergency gasoline rationing plan should consider (1) variations in the historic per capita use of gasoline, (2) the density of population, (3) the availability or lack of availability of forms of transportation as alternatives to the automobile.

SPECIFIC ACTION RECOMMENDATIONS

Within the general framework of the foregoing policy, we recommend the following specific actions be undertaken by the appropriate level of government.

Supply

1. Natural Gas Deregulation.—Federal legislation should be enacted which would remove wellhead price controls on new natural gas. The legislation should also contain provisions designed to limit or eliminate windfall profits by requiring reinvestment in exploration and development. The deregulation should be phased into effect to mitigate its impact on consumers.

2. Outer Continental Shelf Development.—Maximum effort should be devoted to the prompt, environmentally safe development of all OCS areas, including the Atlantic Seaboard.

Federal legislation to encourage such development should:

(a) streamline the administrative procedures to prevent unnecessary delays in the acquisition of permits and in the leasing of OCS lands.

(b) maximize state government input in the leasing, production and planning for lands off their coasts. It is essntial to improve Federal/State cooperation in the development of OCS lands.

(c) expand the impact assistance program adopted by the 94th Congress to help coastal states handle the socioeconomic impacts of OCS development.

(d) encourage private exploration on the OCS rather than exploration by the Federal government. The American taxpayer should not be required to pay the bill for offshore oil exploration.

3. Boiler Fuel Conversion.—A maximum but reasonable time should be allowed to replace natural gas with coal as a boiler fuel. Temporary exemptions should be given to users who demonstrate a good faith effort to convert to other fuels for base load requirements. Permanent exemptions for peak load use of natural gas based on cost effectiveness, environmental considerations, and conservation efforts should be granted. In addition, small commercial and industrial users should be granted permanent exemption from mandatory conversion to coal. Energy conservation efforts should also be considered in granting exemptions.

4. Coal Transportation.—The Federal government should determine the need for and oversee the renovation of rail beds to be used for long-haul, heavy, sustained use by unit trains. The same ought to be done for waterways and highways which can be expected to bear the brunt of heavy coal transport. A method should be devised at the federal level, however, which insures that the coal, not the general taxpayer, bears the cost of using improved transportation systems.

5. Nuclear Power.—The Federal government should support R, D & D of both nuclear fission and fusion so that the nation will have access to this energy in the future under environmentally safe conditions. Licensing procedures should be streamlined and decisions in the nuclear fuel cycle and waste management areas should not needlessly inhibit the growth of nuclear power.

6. Synthetic Fuels.—Free market prices should be allowed to provide the basic incentives for private sector commercialization of all alternative energy sources, including synthetic fuels. Until it is demonstrated that the free market can work, however, the Federal government should provide the funds necessary to bring the synfuels industry to commercial viability.

7. Domestic Oil Production.—To expand the production of domestic oil, wellhead prices should be phased to the world market price and an excess profits tax, with plowback provisions, should be imposed to guard against excessive profits instead of a wellhead tax.

Demand

1. Conservation.—The concept of life-cycle cost analysis should be encouraged for all building construction. States should strictly enforce the 55 miles per hour speed limit. Energy efficiency building codes should be adopted by all levels of government and energy efficiency in building operations should be encouraged.

2. Agriculture.—The curtailing of natural gas for essential agricultural, food processing, and food packaging purposes, including irrigation pumping, crop drying, and as a feedstock in the production of fertilizer, should be prohibited to the maximum extent possible.

3. Environmental Considerations.—Environmental standards should address regional differences. High cost unproven pollution controls for protection against unknown or speculative levels of risk should be required only as a result of a clear expression of public willingness at the local level to pay the price involved. Such decisions should be made on a timely basis to avoid project delays and undue financial hardships. We urge the adoption of a statute of limitations that would provide a reasonable but fixed timetable for addressing environmental challenges to energy projects.

Energy management

1. The Federal Department of Energy.—Efforts must be undertaken to insure that the very size of the new DOE does not make it difficult for states and local governments to approach it.

2. State-level Energy Agencies.—States should tailor their own energy agencies to meet their specific and unique needs, remembering that a single point of focus for issues as important as energy should facilitate action by and to state government. The Federal government should assume a greater share of the cost of implementing state programs mandated by the federal laws or policies.

Utility regulation

1. Federal Preemption.—The recent trend toward more federal preemption of historically state prerogatives must cease. The states can best respond to their own circumstances with regard to utility regulation and should be permitted to do so without unnecessary and burdensome federal legislation.

2. State Structures.—States should examine closely existing rate structures with an eye toward insuring more equitable cost sharing by consumers; no one class of customers ought to subside another.

Energy facility planning and siting

1. Public Confidence.—Government and industry must take steps to restore public confidence in all aspects of energy facility planning and siting. Means must be developed to streamline and integrate the present approval processes so that adequate energy supplies will be available to maintain economic health.

2. Regional Siting Procedures.—States must begin to work together and with the appropriate federal agencies to develop the necessary institutional mechanisms to insure interstate cooperation in energy facility planning and siting. Specifically, the Southern Governors' Conference and its staff must work closely with the National Governors' Conference's subcommittee on energy facility siting so that this region's needs and concerning are adequately considered.

Availability of natural gas supplies

We urge early action by the President in designating the route of the pipeline for bringing Alaskan natural gas to United States markets; and we further recommend that the United States government provide appropriate financial assistance in the building of a gas pipeline to bring natural gas from Mexico to U.S. markets.

National dialog on a national energy program

Since the national energy policy currently being debated by the Congress, as proposed by the Administration, has created great uncertainty in the minds of the American public as to the alternative courses of action available to this nation in the future, particularly in relation to the balance to be struck between the need for the increased production of oil and gas in this country and our capacity to increase that production, the possible reliance upon other sources of energy, including the expanded use of coal, the environmental constraints which have been placed upon expanded development of our various energy resources, and the ability of the nation to achieve its goals largely through conservation measures; and

Since the uncertainties and confusion in the minds of the American people (from the information made available to the Congress and the nation to date by the various federal agencies and offices and by the oil and gas industry, as to the potential of the nation to increase production of oil and gas from known reserves of oil and gas, the reserves believed to exist which have been yet undiscovered, our capacity to mine and transport coal, the technology available for use of alternate sources of energy) have assumed monumental proportions, and grave doubt exists as to whether we are placing the economic and political security of the nation in serious jeopardy, by the proposed legislation; and

Since, the Southern Governors' Conference believes the best interests of the nation would be served by national debates on the entire subject matter which might be accomplished through presentations by knowledgeable persons, carefully selected, to present to American people the various sides of these issues. A series of such debates on national television, organized under the authority of a national non-partisan organization, could achieve the goal of informing the people of this country.

Therefore, we urge President Carter to request of Congress a delay in the enactment of the current energy program for a reasonable time, and that the President be further requested to arrange nationally televised public debates on these critical issues during this delay, in order that the public may have the issues placed before it, and the Congress and the Administration may become better informed, on the alternative solutions to the critical questions now before the nation in respect to its national energy policy of the future.

TOMORROW'S LEADERS

Mr. THURMOND. Mr. President, last March, Gen. Walter T. Kerwin, Vice Chief of Staff, U.S. Army, addressed the Association of Military Colleges and Schools during the annual meeting. In his remarks, General Kerwin recognized the important role of the junior ROTC program. I wish to share his wise counsel to the leaders of the association with my colleagues. Accordingly, I ask unanimous consent that "Tomorrow's Leaders" be printed in the RECORD.

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

TOMORROW'S LEADERS

(By Gen. Walter T. Kerwin, Jr.)

First of all, I would like to thank Colonel Risher for his generous introduction. This has been an extremely enjoyable evening. It's delightful to see so many old friends and new friends who are engaged in the exciting business of building the foundation for America's Officer Corps for the future.

In so many ways, I truly envy this Association. There's a wealth of talent and military experience gathered in this room tonight. You are each involved in the everyday business of molding the minds, the character and the attitudes of tomorrow's leaders. It is a great challenge.

I fully recognize that the schools and colleges represented by the Association of Military Colleges and Schools cover a wide spectrum of education ranging from secondary schools to major colleges. But we all have one unifying purpose and that is to continue to provide the finest young men and women to promote and defend our ideals and principles.

The schools and colleges represented here tonight are unique. You're unique in that you use the discipline and rigors of military training to augment and reinforce first-rate academic training. We need this type of institution!

Also the country needs the disciplined, mature and professional students your institutions provide. And, speaking for the Army—the other services—and the Nation, we need the kind of young men and women that your schools and colleges provide in such abundance.

In my 38 years in the Army, I have worked for—worked with—and led as you have—so many of your distinguished alumni, some of whom are here tonight. The leadership around this room has kept our military institutions throughout the Nation strong and fruitful during a period when patriotism and duty—discipline and honor—responsibility and obligation—were derided and ridiculed by the disruptive elements of the counter-culture.

There have been some lean years. But each of your schools and colleges maintained their standards. Those that did not . . . are not represented here tonight. Some things have changed, but you have not bent to permissiveness and erosion of standards. You have continued to mold young men and women who had demonstrated character and competence—into young leaders with bearing, confidence and a sense of duty and obligation.

Future generations will seek these leaders who can foster legitimate change without destroying the institutions which require changing.

Now I'd like to comment specifically tonight on the contribution of several elements of your Association which we of the Army have, quite frankly, slighted in both our interest and in our support. The first of these is the Junior ROTC program.

We have, in the past, taken quite a narrow view. We found we could not correlate X amount of support dollars to Y amount of trained officers in the services, so we tended to overlook the real value of the Junior ROTC programs.

All the services must bear in mind that you and I are in the business of protecting and defending the Constitution of the United States—not just fighting wars. And I can think of no better way to protect and defend that Constitution than by helping to prepare our young men and women for citizenship and responsible leadership when they are in their young years. The Junior ROTC program has made remarkable contributions toward that end and deserves the support and recognition of the Army and the other services.

The second point is our Class II military institutes—some 44 first-rate military high schools and junior colleges. Again, we have been short-sighted in the Army's recognition of these cornerstone institutions. Why? Well, again we have not been able to make a firm correlation between program costs and input of military leaders, but I'm convinced there is a correlation and a strong one.

I'm also convinced that these uniformed training grounds foster strong ties between the civilian population and the military. They provide many graduates who go on to become outstanding military leaders. They also produce other graduates who have learned to appreciate the value of self-discipline . . . who have learned the value of organizations that establish demanding standards . . . and who insure that participants live up to those standards. These young civilian graduates will become standard bearers in their professions as well. We tend to forget that!

In sum, the Junior ROTC program throughout the Nation, both directly and indirectly, supports the goals of the Army, our sister services and the Nation. While the Junior ROTC program is not a recruiting program, still one survey indicated that 12 percent of Army officers, 7 percent of our enlisted strength and 33 percent of the Senior ROTC scholarship recipients participated in the Junior ROTC program.

This is most impressive! Consider only the scholarship winners who will serve on Active Duty for a minium of four years. These are proven leaders that you have helped mold in the early years.

I was certainly impressed when I found that all of these "JROTC-prepared" scholarship winners are in the top 50 percent of their class, 35 percent are class officers, 65 percent are National Honor Society members and almost 60 percent are varsity athletes. It's impressive!

One last thought on the Military Junior Colleges. I recognize there has been some vacillation concerning this program. As you have been told, your cadets, upon completion of MS IV, with an associate degree, can be commissioned and enter the active duty for training program.

By no means is this a "down-grading" of the requirements for officers in our Army Reserve and Army National Guard units. We need strong, qualified officers for this important task. But if we permit these young men, as fine as they may be, to enter Active Duty without a baccalaureate degree, we are doing them a disservice as they cannot compete with their contemporaries in today's Army.

A second avenue will be open to your graduates. After commissioning, they may enter into an educational delay status, pursue a baccalaureate degree, and then apply for Active Duty along with the ROTC graduates from 4-year institutions. Details of this approach are being worked on and I expect final approval very soon.

I know that, in the past, you have recruited high school graduates, sent them to the Basic Course at Fort Knox, and then enrolled them in your institutions as advanced ROTC students.

You can continue to do this, and if they win a 2-year scholarship at Fort Knox, they may attend the military junior college of their choice. With this, I hope you can settle into a routine and continue to commission quality officers for the Total Army.

Now at this point, I would like to address a few comments to the representatives from our military colleges and universities. Most of you know that the Chief of Staff, just last month, approved a directive that gives priority status to graduates from the six military colleges who request Active Duty status. I'm delighted to see this change. Your essential military colleges and universities have contributed many of our finest leaders who have led the Army in the hardest times. Men like George C. Marshall, General Ernie Harmon and General Earl Rudder.

While I recognize that you are justly pleased by this priority status, it represents a great responsibility. Not all your graduates have earned priority status. The future of that status depends on your willingness to cull out those who do not deserve priority in competing with civilian colleges and universities for Active Duty. The responsibility is yours. You are in the best position to judge by an across-the-board total appraisal of the willingness and ability of each cadet to lead our soldiers and to represent your institutions in the Active Army. As you know, competition for the limited number of Active Duty officer openings is extremely stiff.

So I ask that you review each candidate carefully and approve only those who have demonstrated that they can pass what, I believe, is the acid test—that they will make the kind of officers you would want to lead your son or daughter in peace or war.

This Association represents and quite well, I believe, a fundamental and an essential element for the building, not only of American military leadership, but for national leadership as well. The kind of enlightened leadership, trained leadership, and leadership which understands and respects responsibility, duty, honor, country and sacrifice, those fundamental elements which make great leaders eager for great causes. The goals and objectives of this Association contribute to the goals and objectives of the services and the Nation, and I congratulate you on the excellence and energy of your effort and the quality of your membership.

Now, I would like to make one final point. As many of you know, I am an alumnus of the United States Military Academy. As all of you know, the United States Military Academy at West Point has just emerged from one of the most trying periods of its long and distinguished history. I was involved in that problem. The impact of the recent honor scandal on the Corps of Cadets has, as you well recognize, been severe. But we can all learn a lesson from this temporary breach of standards.

All military institutions, private or public, share fundamental values. We speak a common language. We strive to set high standards for our cadets—standards and demands which are not asked by any other institution within the Nation. Each military institution should maintain the unique traditions of its heritage.

Each should seek to understand the customs, traditions and operations of the other to discover new ways to improve their own standards.

And each should look carefully at the failures of the other to preclude the same thing occurring at home. There are several reasons why, in my view, the failure of the Honor System at West Point has come about.

1. The rapid expansion of the Corps during the 1960's doubling in size within eight years.

2. The pressures of the Vietnam war and the great national debate over our involvement in it.

3. The estrangement of the West Point ideals from the norm of social behavior throughout the country.

4. The failure of leadership to perceive the development of a subculture within the Corps which took upon itself to modify the Honor Code, aligning it with less satisfactory standards elsewhere in our society.

During this period we thought that the principles of Duty, Honor, Country were as solid as the rocks on which the Academy itself rests. We were wrong. We thought that there was harmony between the standards of the officers charged with running West Point and the students who passed through the institution. We were wrong.

The fundamentals of an ethical system—expressed at West Point—a cadet will not lie, cheat or steal or tolerate those who do—cannot just be announced. Only when individuals have adopted these institutional values as their own—when they have internalized them and made them part of their daily lives—only then can we be certain that the values will endure. Each student generation, each class, must be committed to the task of strengthening and preserving these values for itself, and for those who follow.

There are some lessons that I'm convinced the Military Academy has now learned and that are worth repeating here tonight.

1. First, that you cannot take the overt continuance of standards for granted, or you may find that the students have two standards—a formal one for the administration and a lesser or informal one for themselves.

2. Second, that every tactical officer, every instructor, and every administrator is responsible for standards of performance, standards of integrity, and standards of honor. And, they must continually evaluate those standards, as practiced by the cadets and the Academy's administration, in an open and cooperative interchange.

3. Third, we cannot allow a "we and they" relationship to become established between the Corps and the administration. While both have distinct responsibilities toward the other, fundamentally the goals, objectives, and standards must be common.

4. And, finally, everyone must feel the obligation to discover the flaws and reveal them. No one likes to hear about more problems, but if you don't seek the small flaws, you'll most certainly face the catastrophies.

Military schools function on a very precarious balance

1. Between discipline—and hazing;

2. Between human honor and integrity;

3. Between fruitful tradition and ceremony—and silly timewasting foolishness.

4. And between strong, yet understanding, compassionate leadership—and authoritarianism.

As I see it, the future of all military institutions looks bright. West Point is emerging from its crisis stronger and wiser for the experience. The country is regaining its sense of national pride and patriotism. The applications at most of our military schools, colleges and academies are on the rise. We can all be more selective. It appears that the membership of this Association has survived one of the severest periods of anti-militarism in the history of the Nation.

Each of you and this Association has great reason to be proud of this accomplishment. But there is no room nor time for complacency. When we deal in the minds, the energies and the future of our young men and women, every failure on our part is measured in human waste and tragedy. Conversely, every success is measured in human progress. How can any of us rest an instant? We did at West Point! The lesson is there.

Thanks for inviting me.

THE REFUGEES OF CYPRUS

Mr. KENNEDY. Mr. President, for tens of thousands of Cypriots, being a refugee has become a way of life. Thousands still live in tents, and countless more are crowded into temporary, inadequate housing. Over 3 years have now passed since the Turkish invasion of Cyprus, and not a single refugee has been able to return to his home or lands a few miles away.

The continuing tragedy of Cyprus has tended to slip from our view, as the Cyprus crisis has been overtaken by newer problems in new areas. But, fortunately, articles occasionally appear in our press which serve to remind us that the Cyprus problem continues, unchanged, and that we cannot forget the plight of the Cypriot people.

Such an article appeared in today's New York Times by William Farrell, describing the life of the Cypriot refugees in the small town of Kolossi. It captures what life is like as a refugee in one's own country—with one's home and fields only a short distance away, but blocked by an army of occupation.

Mr. President, we cannot forget the refugees of Cyprus, even as we cannot ignore the problem of Cyprus, because they represent more than just a humanitarian problem or a political issue. More than anything else, Cyprus is a moral issue, which we can ignore only at our peril. As a recent editorial in the Guardian of Manchester stated:

For all the intricacies of Cyprus, the essential issues are moral ones.

Can a country invade another under the West's nose and get away with it? Is might right? And, if might is not right, what are we going to do about it?

Mr. President, I commend to the attention of Senators the Guardian editorial and the article in today's New York Times, and I ask unanimous consent that they be printed in the RECORD.

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

[From the Manchester Guardian, Aug. 30, 1977]

WORDS WON'T SHIFT TURKEY

As the world accretes new problems, so old problems sink lower down the pile. Cyprus, for instance, may stir in crisis; even this week strive for a Security Council emergency debate; but who supposes much will happen about Varosha when the Horn and Cape of Africa—not to mention the Middle East—consume all energy? What can the United Nations say to Turkey that it has not said vainly a hundred times before?

Yet Cyprus remains a moral issue as well as a purely political mess. And it becomes constantly easier to comprehend the full extent of Greek Cypriot distress. For a moment, see it through their eyes. Cyprus is a sovereign state floating a few dozen miles off the Turkish coast. Turkey, for centuries, has been an expansionist power. The Ottoman empire is not so long gone. In the summer of 1974, the Greek Cypriots made a fatal mistake. They fell out amongst themselves. An extreme right-wing coup toppled but failed to kill Archbishop Makarios. Though there was no immediate threat to the Turkish Cypriot minority, the longer-term threat of a pro-Enosis regime run by Nicos Sampson was too much for Ankara. They invaded in two separate waves. They camped along the Attila Line, holding 36 per cent of Cyprus. They have not budged since. Worse, they have relentlessly filled northern Cyprus with mainland emigrants, squeezing all but a handful of Greeks from their territory. Peace plans have always visualized a measure of Turkish withdrawal. But no peace talks have got anywhere; and now Varosha—a resort that every peace plan envisages returned to Greek hands—is to be progressively settled by Turks. Makarios's long, hard struggle goes on without Makarios. Who can wonder, then, that the Greeks fear not merely permanent division along the Attila Line but, at some suitable future moment with some suitable future excuse, a further Turkish push to swallow all of Cyprus? Will world opinion be any more help then than it is now?

British and American observers, examining this thesis, may find it too doom-fraught. Turkey, from their standpoint, is a quavering giant, shot through with political dissent and dominated more by inertia than dreams of conquest. None the less, they must see how the facts support the Greeks. Ankara has settled the north. Ankara has refused meaningful negotiation. Ankara (Begin-style) is moving people into Varosha. Perhaps all the Greek Cypriots can do is seek some UN succour. But the West—and most specifically, America—is in a tighter spot. There is no doubt where Jimmy Carter's sympathies or campaign loyalties lie. From the start he has given Cyprus some priority and, in Clark Clifford, a wily old negotiator. But nothing has come of it. The settlement of Varosha, indeed, will be a calculated snub to Washington. And unhappily, for all the intricacies of Cyprus, the essential issues are (as we have said) moral ones. Can a country invade another under the West's nose and get away with it? Is might right? And if might is not right, what is Mr. Carter going to do about it?

[From the New York Times, Sept. 15, 1977]

GREEK CYPRIOTS WHO FLED TURKS STILL IN TENT CITY

(By William E. Farrell)

KOLOSSI, CYPRUS.—This community of tents and tin-roofed shacks housing 500 Greek Cypriot refugees lies not too many miles from the bustling harbor of Limassol, which is booming with the construction of condominiums designed to lure affluent vacationers and retired people.

Some of the residents of the Kolossi refugee camp have been here for as long as three years ever since they fled the Turkish invasion of northern Cyprus in 1974. Many of them left all their worldly possessions behind, seeking succor "in just my slippers," as a tent-dweller put it.

The Greek Cypriots have made remarkable economic strides since 200,000 of them fled from the north. Construction, as in Limassol, is booming; there is a demand for labor, and there are even suggestions, thus far not approved by the Government, that workers be imported from abroad.

Diplomatic sources attribute the economic gains to the industriousness and high level of skill of the people, the infusion of foreign aid, much of it from the United States, and sound economic policies unmarred by corruption.

HOUSING REMAINS A MAJOR PROBLEM

But refugee housing remains a problem. According to a survey by the Labor Min-

istry in May, only one fourth of the 200,000 refugees are living in housing that was rated acceptable. According to the survey, 12.2 percent live in "extremely unsatisfactory conditions," and a government spokesman in Nicosia, said 12,000 were still living in tents such as are found at Kolossi.

In back of the warren of tents and shacks, the skeletons of cinder block housing units are visible and the residents eagerly await their completion before the onset of winter.

"Oh, the winter," said Paniota Salyas, a three-year resident of the tent city and a handsome woman with a weathered lined face that adds unfairly to her years.

"Sometimes the wind and the rain take away the tent," she said, not complaining but merely responding softly and accurately to a question.

Mrs. Salyas and her husband, Andreas, and their five children fled from their village of Lisi when the Turks attacked. Like others interviewed she spoke of her village and their modest farming plots and their lost way of life with longing but without self-pity.

Despite the harshness of their existence, the tent-dwellers seem a gritty, uncomplaining bunch determined on making do until the longed-for return home or, barring that, until they can move to a decent dwelling.

In the meantime, the tents are models of neatness as are the meager shacks. Many of the tents have greenery planted in the bleak alkali-white ground. It is a form of keeping up with the Joneses and perhaps as good an indicator of the unthwarted spirit of the refugees as there is.

Visitors are greeted warmly and hospitably. The litany of substandard conditions is recited without acrimony. Clusters of men, usually elderly, sit on straw chairs and stools in the shade creating a familiar tableau that is to be found in all Greek Cypriot villages.

Elderly women, their heads covered in dark bandanas, sit in front of their tent homes tatting lace. A traveling grocery store winds through the lanes separating the tents and residents eagerly peer into the back of the truck to make purchases. One enterprising woman with a large family has converted her shack into a taverena by placing a few chairs outside it and by providing a shady canopy of greenery under which she dispenses beer and soda.

Mrs. Salyas looked to the field where the cinder-block housing was being built, then tightened a rope on her tent and said something in Greek more to herself than to her visitors. A friend of hers whispered: "She is asking God for four walls before winter."

LIKE NORMAL PEOPLE

Mr. WILLIAMS. Mr. President, I would like to call my colleagues' attention to a series of articles which appeared in the Washington Post during the month of August concerning a young couple, Roger and Virginia Meyers, who are mentally retarded. These articles revealed the problems faced by mentally retarded persons and their families in the past and what changes still remain to be made.

The author of these articles, who is Roger Meyers' brother, quite excellently portrayed the real needs and problems that two individuals who happen to have a disability encounter in our society. The strongest point of these articles was in their ability to bring across Roger and Virginia's self-identity and strength and their similarities to any other young couple in this society.

I applaud both the author and the Washington Post for printing these articles. I believe they clearly raise public awareness and help break down the stigma and misconceptions surrounding handicapped individuals. Therefore, I hope this is just the beginning of many other public awareness articles addressing the real needs, lives and desires of disabled Americans.

Mr. President, because of the importance of these articles, I ask unanimous consent that they be printed in the RECORD.

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

RETARDED NEWLYWEDS SEEK NEW LIFE

My brother, who is 29 and has been mentally retarded since birth, took a day off from work this summer to marry the girl of his dreams.

The marriage of Roger Drake Meyers and Virginia Rae Hensler, 26, who has also been retarded since the day she was born, took place in the sun-speckled nave of a suburban California church. The bridegroom, a busboy in a local restaurant, wore a three-piece black suit and a flower in his lapel.

The bride, who is studying to be a housekeeper, wore a white satin wedding gown with a three-foot train and carried a bouquet of daisies and baby's breath flowers.

As the church organist played Mendelssohn's wedding music, flower girls strewed rose petals ahead of the bride, who was presented by her brother, a physician. The guests numbered several hundred, including family, friends, and community acquaintances.

That the marriage could have taken place—with I.Q.'s around 70, both my brother and his wife are in the borderline category of retardation—dramatically illustrates the changes that have occurred in the past few decades in the field of mental retardation and how experts now deal with people of limited intelligence.

As recently as 10 or 15 years ago these two persons probably would not have been able to marry, according to authorities.

Instead, they would have been warehoused in large state facilities, sterilized without their consent, frequently drugged for easy institutional care, allowed little or no contact with the "outside" world, and never encouraged to reach their own potential. There would have been few counselors to help them, and little or no state or federal money for their support and well-being.

Today, they are married, live in their own apartment, hold part-time jobs, receive about $450 each month in government aid in addition to their salaries, go out to local restaurants, and complain about high prices. In part because of their exposure to these "normalizing" experiences, their I.Q.'s have risen sharply, in Roger's case from 50—or only trainable—to 74—considered at the top of the educable scale.

"Getting married is like coming out of retardation," Roger told the minister in the small office where we waited before the ceremony. "I'm worried about being able to take care of Roger for the rest of our lives," Virginia said, as she checked in her dressing room a few doors away to make sure she was wearing something old, something new, something borrowed, something blue (she was).

"Being retarded means it's twice as hard showing people how we are, that we can live like normal people. We're not that dumb, we're just slowminded is all. You can see how far we've come," Virginia said before the wedding.

Her retardation occurred on May 25, 1951, when a physician injured her head with his forceps as he wrestled her from her mother's body. "It was like a tug of war, my momma says," Virginia related.

As a result, Virginia's left side is weaker than her right side. She has a speech impediment, limps, has scoliosis (or curvature of the spine), and is partially blind in one eye.

"It's difficult having handicaps," she said. "I had to practice making myself understood. And I would be scared to do things, like swimming, until Roger came along and told me not to worry, that I wouldn't sink because God was holding me up."

She sat in a chair in Roger's apartment the week before the wedding, her legs crossed at the ankles, handbag by her side, using the social graces she had spent so long in learning. "But I don't like to talk about it (the reasons for her retardation) because it makes me cry," she said.

Roger's retardation was caused by "a lack of oxygen," he said, repeating the information our parents had repeated to him. "It was when I was being born, and there was some problem, and not enough oxygen went to my brain."

His hands, proportionately small for his body, fluttered abstractedly as he talked. "So I don't like to say that I have brain damage, but just that I lost some oxygen when I was born. I used to ask my dad why they couldn't use a tube or something to give me more oxygen, but he said he didn't know."

Each of them learned this definition of themselves late in life. "I was 21 and (a family doctor) told me I was retarded," Roger said. "I didn't know what he meant. All the special education classes I'd been in, I thought that was normal. I got mad and I said, 'No, no!' "

Virginia was told she was retarded when she was 15. "It was shocking. All that time I thought I was normal. I was shaking. I asked my mother and she said yes and then it was true."

Neither likes the term. "I don't like being labeled 'retarded.' People look at you funny. We're slow-minded, which is why I like the simple life, but we're no different than anyone else," she said. Roger nodded in agreement.

In the step-by-step world of the slow-minded, where simple procedures like cooking take months to learn and complicated ones like making change take years, they and the 6.3 million other retarded Americans are now being encouraged to grab on to as much of life as they can.

Because of her traumatic birth, Virginia's special needs were noticed at once. She spent the first 18 months in a hospital, and then she began living in the first of several private facilities for the retarded. Her father, a wealthy physician, paid her fees. When she was 15 she moved to the West Coast facility where she and Roger met six years ago.

Roger came home from the New York hospital a week after he was born, and his retardation was not suspected until he was 6 months old. Roger lived with our parents until he was 22, with the exception of an 18-month stay in an institution where he was miserable: "The kids were rough and the people weren't nice," he said.

Then he was accepted at the nonprofit California residential facility where he lived in a unit with 25 other retarded children and adults. He lived there for six years and met Virginia there, moving last year to an apartment of his own in the community. Virginia also eventually moved into an apartment of her own, and each is still supervised by state social workers.

We met at the bunny rabbit," Roger said, mentioning a crafts exhibit at their residential facility where they literally bumped into each other seven years ago. "Ever since then, I've called her my 'bunny'."

The nonprofit facility, owned by a branch of the Lutheran church, cares for children and adults whose mental handicaps, sometimes compounded by physical handicaps, range from those so severe that individuals can do little more than feed themselves, to the borderline retarded who, like Roger and Virginia, can with minimal supervision lead relatively independent lives.

At the time they met, however—Roger was 22, Virginia was 20—they did not lead independent lives, and their activities often consisted of watching television all day, or playing their records, or doing little more than simply being at the facility.

It was a safe, secure world, with meals, entertainment, social and recreation programs available. But it was also a world that was too restrictive for them.

"We didn't have any privacy, we couldn't visit each other without the door being open. It was as if they (the supervisors) didn't trust us," Roger said.

Roger soon proposed—on his knees—to Virginia. "That's what normal people do when they get old enough," he said later. "They get married and have a home of their own."

But Virginia, overwhelmed by the complexities that marriage would entail, urged that they wait.

Beyond their desire, however, they were little prepared for marriage. They could read words, but they stumbled over concepts. Neither could sort out bus routes, bank accounts, deal with shopping, or other simple but essential tasks. Their personal hygiene was good, but each had a tendency to get violently angry.

There were (and remain) difficulties in physical coordination, and each had an innocence that has on occasion allowed them to be exploited by others. They knew about sex, but had no idea of contraception. They each believed that it is the duty of a married couple to have children, and refused for almost six years to believe that they would not be able to properly raise any child they might conceive. Because neither is congenitally retarded, their offspring would more than likely be of normal intelligence.

"But they also had, especially Roger, a tremendous desire to change," according to Dennis Martin, one of their counselors.

Roger had worked in various sheltered workshop situations, earning as little at 65 cents an hour for work that involved assembling packages of mechanical parts, or stuffing envelopes—jobs that on the whole do not exist outside the sheltered workshop environment.

But Roger, who wrote poetry, thought he could earn his living as a poet. Or as an artist. Or as a toymaker. Or as a teacher, since he had worked as a teacher's aide at the residential facility.

Although our parents did not feel that he could handle the responsibilities of marriage, they told Roger—almost as a stalling tactic—that he could not get married until he could support himself at a real job. He should not just "daydream" about being a poet or toymaker.

So five years ago, Roger slipped away from a group of other retarded people during one of the group's weekly outings to a bowling alley and applied for a busboy's job at a local restaurant. Seven months after applying, he was hired.

"He needs a certain amount of understanding that I don't extend to the other employees, but I don't give him any special attention," said Warren Mays, the restaurant manager. "The entire restaurant runs around the work of the busboys. If they're slow, we don't move the customers in and out, the waitresses don't get enough in tips, and we lose money. If he goofs off I take him in a corner and talk to him."

Roger has always been a part-time employee, working in the restaurant's bar, a physically small area in which he felt comfortable. Last June he asked for a chance to work in the much larger main dining room.

"The cat said he was getting married and that he needed the extra money," Mays shrugged. "There was a lot of opposition at first. The girls thought he couldn't handle it, that he would get too nervous. But I saw it as a clear case of prejudice, not of color, but of kind. He's retarded, but so what? He took care of people in the bar, maybe he can take care of people in the main room."

The experiment worked, Mays said.

"He goes up to customers and says, 'Hi, my name is Roger and I'm your busboy,' something he gets from the waitresses. That helps our image. He hustles from table to table and sometimes that tray weighs 24 pounds. And look at the way he sets things—the napkins are straight, and he wipes the crumbs into his tray, and not into the seat."

If a heart can ever be said to be bursting with pride, mine nearly burst shortly after talking with Mays when I watched Roger work the main room. Wearing his red busboy's coat, and black pants, he filled the water glasses, filled the coffee cups, lugged that busboy's tray into the kitchen, and then in Mays' phrase, "kept on trucking."

"After I bawled him out once for getting too friendly with the bar customers and for getting too slow on his cleanup, I started getting telephone calls from people volunteering to me what a wonderful busboy that guy is," Mays recalled. "Then Roger came up to me and asks me if I've been hearing anything about his work from the customers, and when I said yes, his face broke out into a big grin. I thought, 'Why you little fox, you asked them to call me.'"

He has one other working trait: when he feels pressure, he leaves the serving areas and disappears into the men's room for as long as an hour. It is his way to calm down.

The waitress he works with in the bar, Toni Frazier, says she has developed a simple solution to that: "I just march into the bathroom and say, 'Roger, you come right on out here, we're busy as sin and I can't get along without you.' If he ever quits I'll probably quit, too." I love him.

Once he got his restaurant job, Roger volunteered as a teacher's aide in the facility where he lived.

"Twenty years ago I couldn't do arithmetic. I couldn't carry numbers," he said. "But at home I worked hard at it, and now I can."

In his living room is a portable blackboard on which such exercises as 56 plus 3 equal 59 are written out by him in chalk. "I taught myself to do that," he said proudly, showing off some elementary school math books which our parents bought for him.

"In another 20 years I'll know even more, and I can teach others to do simple division," he said.

"Is that like subtraction?" Virginia asked.

"No, it's the opposite of multiplication," he said.

Roger especially remembers one of his "pupils" from his teacher's aide job. Lionel, a severely retarded man in his 40's, couldn't write his name very well. "I held his hand and showed him how to write it," Roger said.

(Lionel took one entire eight-inch-wide page in Roger's and Virginia's wedding guest book to carefully—and very proudly—print his first name.)

Virginia worked for a while in a sheltered workshop, doing piecemeal work, but that job ended when a grant ran out. Never as outwardly motivated as Roger, she devoted her time to preparing herself emotionally for a wedding that only the two of them believed would ever take place.

"We helped each other," she said. "Roger gets nervous, and juggles his leg a lot, and I would tell him, 'You're making me nervous, honey.' And I'd remind him to dot his i's when writing, and tell him when he wasn't pronouncing words correctly," she recalled.

She also began working on speaking without a nasal whine to her voice that is one of the legacies of the accident at her birth. She began to think about menu planning, and practiced saving the few dollars she earned every month, telling her mother that now she had earned four dollars, and could she please get married?

Roger and Virginia had arguments, and didn't speak for days on end. Roger had a violent temper, and learned through the growing force of his will to control it. Virginia stopped mothering him.

They developed habits spawned of familiarity: he started a sentence, she completed it. She nodded toward something, and he knew what she meant.

They developed a personal dignity others had never known in them before. They held hands. They kissed goodnight (when no one was looking). They took themselves seriously while no one else did. And they exhibited a growing self-confidence.

Once they were taking a walk together, and an angry neighborhood dog raced up to them, barking furiously. Virginia was literally paralyzed with fear. Roger, not knowing what else to do, started barking back. The dog turned tail and ran.

"In many ways Roger and Virginia are victims of the system," said Bill Stein, the former counselor who worked most closely with them, and who traveled all day by bus to attend their wedding. "They have labels on them. They're 'retarded,' so they're not supposed to learn. We tell them, 'You'll do wonderfully, but only at this level.' No one ever talked to them, so no one ever knew what they could do," he said.

In the world they had known for most of their lives, keeping busy was a daily occupation, and some of their friends had epileptic fits, or screaming nightmares. But outside, new ideas of dealing with the retarded were being tested. Most prominent among them was the concept of "normalization"—helping the retarded lead as common a life as possible.

These ideas filtered down to their residential facility, which in the early 1970s put up small apartment complexes on its campus, with mentally handicapped people such as Roger and Virginia by themselves, living in individual apartments, with counselors in residence on each floor.

After several years there, where they learned to wash dishes, budget, vacuum, shop, and perform many of the other chores of daily life which they had never been permitted to try before, they were moved out into the "normal" community with half a dozen other retarded adults.

"They are our best tenants," said Anita Tracy, manager of a typical 215-unit apartment complex where five apartments are rented to borderline retardates, including Roger and Virginia.

"This is their big chance," she said, "and they're very conscientious. They pay the rent at least one day ahead of time. They go out and mingle with the other tenants around the pool or at the laundry room and talk about soap powder. Things like that."

Her husband Charles saw renting to retarded individuals as simply a matter of dealing with yet another minority group. "It was like when we rented to black people," he said. "I watched them (Roger and Virginia) and the other tenants like a hawk. But there was no reaction. No one pays attention to them. We don't do it to be good, we do it because it's good business."

There are problems. "They get upset when the little things go wrong, when the garbage

disposal doesn't work," Anita Tracy said. "Roger forgot his doorkey so many times we suggested he wear a key ring on his belt, which he does."

It is not a carefree existence for Roger and Virginia. With every step of independence requiring a major exercise in logistics, there are problems. When Roger needed a place to store a package of meat once, he put it in his cupboard. Our mother found it there some time later, and the horror of what it smelled like still lingers in her mind.

Roger was cooking pancakes once when he decided to watch a TV show. So he left the pancakes cooking and sat down before the television. A neighbor saw smoke pouring out of Roger's living room window and called the fire department. Roger was fascinated as the red engines raced up, wondering what they were doing. After all, he recalled, there was smoke, but no fire.

As a child Roger showed a vivid sense of color in freehand oil pointings he did at school. As a teen-ager his patience allowed him to make accurate pencil drawings of buildings and street scenes. So, nearly independent, in his 20's, he enrolled in one of those "art schools" advertised on the inside covers of match books.

The cost—$425 for the course—was far beyond Roger's ability to pay, a point he had never considered. Our father got him out of that one, and though Roger did not protest too much, it was clear he would have preferred staying enrolled in the course.

Such incidents are steps in his laborious learning process. But they are mistakes he no longer makes.

The stress of independence created in him a normal response to anxiety—he overeats. Hot dogs, hamburgers, pie with ice cream, extra cream in the coffee—if it is fattening he discovers it. He gained 25 pounds shortly after moving out of his restricted environment and into his semi-independent living quarters at the facility. He gained another 25 pounds shortly after moving into his own apartment outside the facility.

In the three weeks before the wedding he dieted, exercised—and lost 30 pounds.

His $194-a-month apartment (which he now shares with his wife), is decorated with reminders of the known and familiar. There are pictures of music groups, the Beatles and the Bay City Rollers, and he has record albums featuring Elvis' Golden Hits and the original Mickey Mouse Club. There are dozens of school books, wooden toys he makes in the wood-working class he attends at night, the blackboard on which he practices the carrying of numbers in addition—a process that took him 20 years to master.

While their parents were convinced it would be years before the marriage would take place—if ever—Roger and Virginia had had an engagement ring made from an inexpensive pearl he had won in an amusement park, and Roger was paying $240 for two wedding bands at the rate of $20 a week. Virginia's mother had agreed despite her doubts to buy her a wedding dress for her "trousseau" although Virginia didn't know what that was. They had set their wedding for Easter Sunday.

At that point, with the parents clutching their fears, the counselors took over.

Marriage was their legal and moral right, Bill Stein, their chief counselor, told them. But could they handle the responsibility? Both thought they could. What about children? They wanted them, very badly, as if parenthood would be the final sign that they are like everyone else.

Stein and the other counselors, took them to a private home to change diapers on a new-born baby, told them about midnight feedings and childhood diseases. "We didn't make the decision for them, but we showed them some of the problems they might have," Stein said.

Giving up their dream of children was one of the hardest things for them to do. "But what if the kid came home from school and asked us for help and we couldn't help him, what would he think of us then?" she noted.

They reluctantly decided not to have children, and like millions of other people, chose a standard method of avoiding conception.

The wedding date was the next matter. Things were moving too quickly, at least for Virginia's family, who live nearly 1,000 miles away and were not up on all their plans. The date was changed to June 18.

There were wedding invitations mailed out to relatives in Indiana, Arizona, California, Washington, D.C., and invitations handed out to people, in their community who see them every day: the bus driver whose route takes him near their home, the clerk from the bank where they have a savings account, the waitresses from the restaurant, the manager of their apartment building.

Several dozen retarded friends from the residential facility where they had formerly lived, some of them in wheelchairs, others who giggle all the time, were also invited.

And nearly everyone who was invited attended.

The day of the wedding there were consultations with the maid of honor (Virginia's sister-in-law), and the best man (this nervous reporter). Panic over the delay in the arrival of the flowers. The arrival of the flowers. And then, finally, the magnificent strains of Mendelssohn's Wedding March, and the ceremony itself.

Pastor Ed Svendsen, who has known them both for years, told the couple at the altar and the congregants that a spring wedding was appropriate for a couple who had grown so much. Roger cued him, sotto voce to mention that getting married for them was like coming out of regardation. Svendsen mentioned it.

Roger cued him, sotto voce, to mention that Virginia had brown eyes, like the eyes of the bunny rabbit, around whose image they had first met. Svendsen mentioned it. Svendsen then decided to lead the congregation in prayer.

Then vows were exchanged, the wedding rings taken off the white satin pillow and placed on waiting fingers, and Svendsen pronounced them married in the eyes of the Father, and Son, and the Holy Spirit.

After a reception there was a two-day honeymoon at a fancy beach-front hotel, whose management was never told anything other than that a "honeymoon couple" was arriving, but who soon found out in no uncertain terms that the new Mrs. Meyers didn't like their inside room, and changed it for them the next day so they had a view of the sea.

After the honeymoon the couple returned home, where they are receiving friends.

Parents of Retarded Son Bear Sense of Guilt, Pain

At 6:30 a.m. Aug. 8, 1948, my mother felt the first stabbing pains of labor as her second son was about to be born.

"I told the nurse that I had delivered my first child very quickly, and I wanted the doctor nearby," Roslyn Willinger Meyers, 58, recalled. "But the doctor, a family friend, had gone downstairs for a pack of cigarettes. To delay delivery the nurse told me to cross my legs, and I did," she said.

Despite that attempt at delaying birth, her son—and my younger brother—Roger Drake Meyers, who has been retarded since birth, was born at full term, weighing exactly five pounds.

"I've always thought something happened when I crossed my legs, that his retardation was caused by me. There was an oxygen loss, or something happened, although I do recall having a cold for a few days during the pregnancy, and maybe that did it," she said. There were no signs of prenatal problems, she added.

My mother's uncertainty as to the cause of her son's retardation is not unusual, authorities say. The causes for the retardation of three out of four of the 6.3 million retarded people in the United States are never known, despite the fact that more than 350 causes have been identified, according to Dr. Frank J. Menolascino, president of the National Association for Retarded Citizens (NARC).

Whatever the cause, a retarded son had been born. "It became a fact of life, something we lived with. It became normal for us to have one son who is retarded," said Robert Townsend Meyers, 68, our father.

Our parents used to wake up late at night or very early in the morning, wondering if they had overlooked something, anything, that could be of help. But it was 1948—it might as well have been 1848—and there was nothing they could do. It left them despondent and feeling somehow guilty.

"There were no centers then, no place you could go for direct information," our father recalled. "We didn't know what to do, and we didn't know how to do it."

In fact, our parents did not begin to wonder about Roger's physical and mental capabilities until some six months after he was born.

"He was a quiet baby in the daytime, but he cried and cried at night. I nursed him for three months, but after that he wouldn't take it anymore," Mrs. Meyers said. He could sometimes be lethargic or extremely active. He looked to them like "the sweetest baby in the world."

Then, she recalled, "My mother came to visit her grandchildren, and she thought Roger was weak, that he didn't have any strength for finger pulls. I didn't know what to say."

For the next 18 months, our parents "hoped and prayed" that Roger's responses would speed up, that his strength would increase, that his fingernails would grow (they were never long enough to be cut until he was 8 years old). They compared his progress to mine—I was five years older—and it became apparent that Roger was not developing as he should.

When Roger was 2 they took him to a leading New York City neurologist. His conclusion was that "some retardation may be indicated."

"My first thought was 'Oh, my God, where do we go, what do we do?'" our father remembered.

My mother said, "I felt guilty, I had carried this baby, what had I done wrong? I felt lost and helpless. People—even doctors—told me not to worry, that things would be all right, but they weren't," she said.

That first medical report, written in 1950, carried the implication that Roger's difficulties could be located if only our mother viewed the situation differently. One sentence read, "The mother is too demanding and may be comparing Roger unfavorably with his older brother."

"It was so devastating to be told that there was nothing wrong, or not very much wrong, when you KNOW, you just KNOW . . ." she said.

At the same time, the idea that a drug, or a procedure, or even just the passage of time, would solve their problem was the kind of emotional carrot that led our parents on, though they were frustrated repeatedly over the years.

They had no way of knowing that Roger would turn out to be a married man, an apartment dweller, a job holder, a recipient of government aid.

They were "terrified, terrified" (our mother's phrase) that he would end up in a state mental institution—then the primary repositories of both the severely and mildly retarded. They saw the pictures in newspaper exposes of people there with bent and broken bodies lying half-naked in their own filth, abandoned by everyone except the flies, and it chilled them.

"Having a retarded child does not have to be the end of the world, but you've got to be able to handle stress well," said Menolascino. "You've got to have good support systems—brothers, sisters, cousins you can turn to—and you've got to have good professional service, which just didn't exist then," he said.

Neither parent knew anyone with a retarded child, and social stigmas kept them from asking too many questions. My mother's family was 3,000 miles away, eliminating them from a supportive role. Strained relations between my father and his sister broke down completely when he felt she was not helpful enough with Roger. They have not spoken in the 25 years since.

"I was so alone, so isolated," my mother said.

Our father threw himself into business, hoping to make a financial killing that would assure his son's comfort for life, while our mother tried to find help for Roger. Continually unable to find a solution, she now and then took one too many drinks.

The additional medical advice they received sometimes seemed to have been written by Franz Kafka, the master of insane "logic." One physician recommended megavitamin therapy. Another said to be thankful they lived in the 20th century, since Roger, who would never read or write, would be able to get all of his information about the world from television.

Another told them of a brain operation in Switzerland that might determine what the brain damage was, although the operation had a high chance of proving fatal. My mother accepted the advice in tearful silence; my father raged at the inadequacy of the advice.

Roger's behavior as a child varied widely. He could be bright and alert, and at other times lethargic, his gaze wandering and his head drooping. He had a soft bone structure, and before he was 5 he had broken both collarbones in falls from bed.

At a park one day a boy on a bicycle ran into him, and he had to have a hernia operation. He had a speech impediment, and it was often impossible for my parents to understand him. At such times I would be the translator, telling them what he had said. Roger would often wake up screaming during the night, and frequently walked in his sleep.

"He was so high-strung, trying to keep up with others, trying to make himself understand, that the frustration just came out at night," my mother said.

With my father involved more than ever in his marketing and advertising career, the task of taking Roger from doctor to doctor, from specialist to testing center, over and over again, fell to my mother. Abandoned before she was 10 by her father, she found the seemingly insoluble problem of raising a son some doctors said was retarded and others said was slow to develop increased her feelings of rejection, she said.

"We'd be walking along, the two of us, and I felt like we were two rejects, him and me. Society had rejected him, and I was rejecting myself. But we had each other to share our feelings with."

A favorite walking place, after doctors' appointments in New York, was the Museum of Modern Art, and a favorite picture was Picasso's "Woman in a Mirror." She said it shows the face of a woman fractured into a dozen planes and shapes. "Roger was very good at art, and he copied it for me," she said.

It was at this time that two new strains developed in her life, my mother said. One was what she called The Search. It was a 17-year-long attempt to find a residential facility to which the family could afford to send Roger, and it ended only in 1970 when he entered the nonprofit home where he met his eventual wife.

The other was what she described as a reliance on alcohol to ease the pain and frustration and which also ended in 1970 when she joined Alcoholics Anonymous.

Roger's first school was a private school in Queens, N.Y., followed by public schools, often supplemented with private tutoring. They believed he had more ability than showed up on any of the tests he was given (which, in a Catch 22 situation, they were never permitted by school authorities to see), and they attempted to give him as many "real-life" experience as possible.

"I took Roger to the rodeo, to the circus and took him into work with me on Saturdays. I taught him to say, 'L'addition, s'il vous plait,' (French for 'the check, please') just like I did with you," our father told me.

My mother spent hours with him on his school work and socialization—making sure he knew the importance of and method for brushing his teeth, combing his hair, taking care of his appearance.

There were problems. Roger was teased and taunted at school. "He'd always say, 'Well, Mom, I hate to tell you this, but they're making fun of me again'," she said. Other children laughed at him when he couldn't keep up with them, or they mocked his speech impediment.

There was an incident in Manhattan when a man tried to assault him sexually. "I got so hysterical I couldn't even dial the police. Roger called them himself, and I didn't think he knew how," she said. No arrest was made.

In the early 1960s the advertising agency market dried up for my father. He found himself out of work, with little money in the bank and a retarded son in need of care that was of questionable value and seemed available only in private—and expensive—facilities.

In search of a solution, he tried a business venture in Miami. It failed. They moved back to New York, had no luck and moved to the West Coast, where an expanding economy held out hope.

With their furniture in storage they settled in a furnished one-bedroom apartment, but the manager soon ordered them to leave because, as our mother said, "Roger was sitting on the front steps all day, talking to himself and shaking his hands" (a nervous gesture that mental health authorities say often stems from boredom). "Well, a lot of my friends talk to themselves, so I told the manager to stuff it and we left," she said.

She decided she would get a job for the first time in her married life to support her family and, most importantly, to put money aside for Roger. Through a friend, she talked her way into a secretary's position. But there was one problem: she couldn't type.

"I hired someone to type (her work) for me at night," she said. "I paid her out of my salary, which was $2.50 an hour." Then, the next morning at work she would turn in the finished product.

Because a number of people senior to her at work left their jobs shortly after she became a secretary, she was swiftly promoted. And she was given her own secretary to do the typing.

Today she is the manager of the division, handles a budget of $95,000 and earns $18,000 annually.

Our father had found a job as well, and the family moved to a nice apartment with Roger enrolled in a nearby junior high school. There his problem with so-called "normal" kids continued: a gang made him sing and dance in the schoolyard to their jeers. Roger, glad to have the attention, said, "I thought they liked my singing."

A neighborhood tough forced Roger to stand on his shoulders and knock out street lights. A bunch of kids cornered him at a park and made him take some clothes off.

My mother asked the school guidance counselor for help. His answer was to recommend that Roger be warehoused in a state facility.

"That made me so angry, I just can't tell you," he recalled. "All of the work I'd done with him, every book I taught him to read, all of his manners—to throw everything away in some place where he'd be taunted and sexually abused and placed in a corner—never, I never for one minute considered it. I wouldn't have been able to live with myself. I could barely live with myself as it was."

Roger was becoming a young man, really very handsome, with light brown hair which he combed over his forehead, and a willingness to tell everyone he met that he was retarded. He liked to watch movies and sports on television, especially golf, perhaps because it is a game of understandable moves. Horror movies were particular favorities, perhaps because he could watch them without fear, a sign that he had overcome the nightmares of his youth (his all-time favorite is Godzilla). He spent most of his time at home.

He was becoming interested in girls: teeny-bopper princesses with long blond hair. He put their pictures up on the walls and talked to the ones who walked by his house on their way to high school. But beyond that, he had little social life.

"He was lonely, I think that's why he wrote his poetry. He needed to know other kids like himself, but didn't," our mother said.

He knew about sex, and often used a then-popular phrase that something was "very sexy," but pronounced the words as if they were "sax" and "saxy."

But the real world could not forget that Roger was retarded, and our family was swiftly reminded of the fact on one painful occasion.

In 1968, when he was 19, Roger wrote a Valentine's Day poem to a girl he had met at the local YMCA, at the same time as someone else wrote her an obscene letter filled with sexual references. The girl's parents called police, who, because the mails were involved, call the Federal Bureau of Investigation.

Although the most explicit line in Roger's poem is, "A Valentine is sweet, because it's sharing warm, affectionate love," Roger was tagged as the prime suspect in the case.

An armed police officer went to the sheltered workshop where Roger was employed at 65 cents an hour, and took him into another room for interrogation.

"The policeman showed him the letter but Roger had to ask him what the (obscene) words meant," my mother said. Roger was frantic with fear that he would lose his job.

The policeman then showed the letter to my mother, covering up the dirty words. "I screamed that my son couldn't even *write* script (which the letter was written in), that he could only print," she said.

Roger's poem—decorated with large and small hearts—and the obscene letter, were both sent to the FBI for analysis.

The analysis determined that the real culprit was a "normal" 11-year-old boy who sat next to the girl in school. An FBI agent involved in the case later apologized saying, "I couldn't control the local cop. He thought Roger must have done it, because since he's retarded he's supposed to be 'different.'"

Such troubling events were becoming more frequent, as Roger's natural determination to lead a fulfilling life continually banged

up against the prejudices of a society that insisted he was "different."

The agony, however, was not something my parents shared with each other. It went unspoken. "I never told your father about them. I didn't want to disturb him. I felt I had to shoulder the responsibility myself, because it was somehow my fault," she said.

Her guilt drove her on in the seemingly endless search for a residential facility for Roger. In 1965, for instance, Roger was sent to one promising facility where tuition was $250 a month, but it ended after 18 months, a disaster like so many other efforts. "The house mother was like a warden from a Cagney movie," my father said.

My mother was drinking too much, she said, and fantasizing about starting a facility on her own with help from wealthy people she would somehow meet.

Then, in 1969, while she was talking about her frustrations in the local beauty parlor, she was overheard by an elderly woman who was having a permanent. "She told me about this group of people who raised money for a new residential facility. She said the group was having a meeting that night."

The meeting was the group's fund-raising ball, a black-tie affair. Although she didn't have an invitation, my mother talked her way in, met the director of the home, and later went down for a visit.

"There wasn't a good-looking kid there," she noted of the retarded people she saw. "But they all looked clean and happy. And the way they followed the director around, it was like they were following Jesus. I felt Roger could be happy there."

There was a waiting list for the home, however. "I made deals to get him in," my mother related. "They wanted to raise more money, and in my business I know people who know television stars and movie people. I arranged for some of them to come over and help and they could sell tickets that way."

My father put his expertise as an advertising copy writer to work, writing free promotional brochures for the home.

Roger moved there March 31, 1970.

His upkeep cost my parents $128 a month, with federal and state funds—never before available to him—picking up an equal portion. Several years later the government funding was increased so that it covered all of his costs under the Supplemental Security Income program.

The facility was not the perfect solution, because Roger was one of the smartest ones there. Initially he was not challenged enough to live up to his potential. But times were changing, and so were the traditional attitures toward the responsibility of government to provide help. With more and more government money available, there were more and more newly-trained counselors, bringing more and more ideas to challenge the residents to think and act for themselves. They went bowling, hiking, held discussion group meetings. Roger eventually moved into the individual living units on the facility's campus, then into his own apartment, and was married last June.

"When he moved into that facility I could say for the first time in my life that I no longer had to worry about what would happen to Roger when I was gone," my mother said.

Three weeks after he moved to the facility, on April 18, 1970, I was married. With both of her sons now "settled," my mother found that at last she could deal with the stress she had felt for so many years. One of the symptoms of that stress had been alcoholism.

"I didn't start out to have the disease of alcoholism," she said, "but it eased the pain. A retarded son, stress in my marriage, handling a job, finding a place for Roger. I drank to ease the pain, but then I couldn't stay away from it."

At my wedding reception, she had her last drink, a glass of champagne. The next day April 19, she joined the Alcoholics Anonymous (AA) program and has not had a drink since.

My parents' involvement with Roger was not over, but in their handling of it, a subtle and peculiarly 20th century role reversal took place: with my mother the primary breadwinner, my father became the main source of parental support to Roger.

"I had a feeling of remorse that I hadn't spent more time with him when he was an infant," he said. "But there always seemed to be the press of business. And once we knew he was retarded I had this desire to get more than a job, to get some equity, so that when I left this world I would leave something behind for him."

It didn't work out that way, though, and he entered semi-retirement holding a part-time job. With the increase in free time, he decided to spend more and more of it with Roger.

At least once every two weeks, and often more frequently, my father drove the 270 miles round trip from his home to Roger's. "I wanted to be with him, to show him he hadn't been abandoned. Some of those people (in the facility), adults like Roger, hadn't seen parents or friends in years."

In 1970, for the first time in the 22 years that he had been a parent of a retarded son, my father found a group of parents who also had retarded offsprings. He joined the group and became its president.

He read the legislation that was just then being proposed to deal with the developmentally disabled; he lobbied with other parents for their support of the legislation. He started spending more and more time at a hospital center that dealt with the handicapped, and soon started helping other parents of the retarded through the maze of bureaucratic red tape.

He proposed for himself, and was hired as a part-time consultant to the local hospital, earning for a while $6,000 a year, money that supplemented his wife's income and his Social Security payments.

Although the social climate regarding the retarded had changed for the better, my parents could not forget the rejection, disappointment, frustration and disillusionment they had experienced during the years they searched for help.

"I used to ask myself, 'Why me? Why did this have to happen to me?' But the answer is, 'Why not? What's so special about me?' " my father said shortly after Roger's wedding. "It's something we've lived with, and who can say how our lives would have been different if he had not been retarded.

"But I can tell you this, that Roger would have reached his potential a lot earlier if the programs that are available now were available when he was growing up."

The wedding of Roger and Virginia was for my parents filled with this same kind of melancholy reflection. Like their new daughter-in-law's bouquet, the memories were mixed. And sometimes the memories were overwhelming.

The wedding was scheduled for 1:30 in the afternoon. At 12:45 my father decided he had to have a sandwich, and a cup of coffee, and then another cup.

As my mother, dressed and ready to go, begged him to leave, my father, 68 years old and having seen a side of life different from what he'd expected to see 28 years before, sat in the motel restaurant near the church, stirring the coffee, watching the steam slowly rise and disappear. He was lost in thought as the minutes passed. The ceremony was delayed for 10 minutes until they had taken their place in the front pew.

Dark Ages of Neglect Over for the Retarded

In 1950, when my parents sought help for my 2-year-old, mentally slow brother, they were told that there was no one in the American medical community who specialized in the problem of mental retardation.

In 1951 they managed to find a neurologist with a subspecialty in mental retardation—but they found him only after reading an article the doctor had written in the Reader's Digest.

"Those were the Dark Ages," said Dr. Frank J. Menolascino, president of the National Association for Retarded Citizens (NARC), the nation's leading parent support group, which was not founded until 1950, two years after my brother, Roger Drake Meyers, was born.

"If you told a physician that your child was retarded, he'd shrug and tell you it was helpless and hopeless. Since no one figured the retarded could do anything, they also figured, why bother?" he said.

In the intervening quarter of a century since my parents first sought help for their retarded son, the field of mental retardation has undergone a sweeping change that has opened new horizons for mentally slow people like Roger.

Today Roger, 29, is married to a 26-year-old retarded woman, and both hold jobs in the community. They live in a typical suburban apartment building along with ordinary working people, receive about $450 a month in supplemental federal support funds, and benefit from frequent visits from a trained state guidance counselor.

All that is a far cry from the world that faced Roger when he was born retarded. Then the standard solution to dealing with all forms of retardation—no matter how mild—was to warehouse the individual, frequently in institutions that also housed the mentally ill, criminally insane and the physically handicapped.

Those retarded who somehow managed to avoid a life spent within a state institution remained community outcasts, held menial jobs that lacked even a semblance of dignity, received no support in the form of money or training from federal or state governments, and had no hope of living in a "normal" environment, much less of marrying.

Such attitudes on the part of society reach deep into the roots of our Western culture. The ancient Greeks and Romans abandoned the retarded in the wilderness while European cultures in the Middle Ages turned them into court jesters and fools. Some historians believe that the witches burned at the stake in 17th century America were in fact the retarded members of the community.

Three out of every four retarded individuals—and there are an estimated 6.3 million mentally handicapped people in the nation—are today considered educable to the point where they may be able to lead productive and independent lives within society.

That belief represents a dramatic shift from how, at the time Roger was born, the medical world viewed those same individuals, whose I.Q.s range between 50 and 70. Prevailing opinion then was that the mentally handicapped individual with an I.Q. of 50, such as Roger had at the age of 9, was locked into limited development—if he or she was able to develop at all.

Today Roger has an I.Q. of 74, an increase of more than 40 per cent. It is the result of his own hard work to learn simple tasks coupled with the enlightened training and education programs of the last decade.

Roger himself says it best. "People are retarded by what they don't know," he said. "That's why I work so hard to learn the things I don't know and become more normal."

All 50 states now have programs to aid the mentally handicapped, and nationwide, including federal expenditures, about $6 billion is spent in the field. In 1948, the year of Roger's birth, so little was spent and so little was the interest in the plight of the handicapped that no one even bothered to total up how much was being spent in the field.

The ever broadening spectrum of services available today to the retarded individual and his or her family—services that did not even exist 20 years ago—is impressive:

Immediate education evaluation and training is more and more frequently available at birth for those children suspected of suffering from retardation. My parents looked for years after Roger's birth for someone who could offer such a basic help.

Parents and siblings can find competent professional counseling—paid for by the state or federal government—to educate them to the needs of the retarded family member, keep them abreast of new developments, and help them to deal with whatever guilt or social stigma they may feel. My mother, for instance, spent some 20 years after Roger's birth carrying an intangible burden of guilt that drove her to drink heavily before competent counseling became readily available.

Public and private agencies and organizations now run job training programs, and volunteer adults help the mentally handicapped learn such routine tasks as cooking and shopping to help them integrate within the community.

There is even a whole range of prenatal tests available to help determine the likelihood of giving birth to a retarded child before the child is conceived or while it is in the womb, and tests that can be done on the newborn that pinpoint possible physical ailments that could eventually lead to retardation.

As a result of these new approaches and diagnostic techniques, more and more success stories like Roger's are happening every day. And as more money is spent on helping the educably retarded move into society as productive individuals, the benefits to that society increase.

According to Health, Education and Welfare economist Ronald W. Conley, for every dollar that is spent on educating and training the retarded adult male, $14 is returned during that individual's working lifetime.

The picture, while improving, is far from rosy, Conley and others point out.

The retarded, because of deeply ingrained societal prejudices, are still the last hired and the first fired. Those same prejudices are magnified even more for the adult retarded woman, who is exposed to sexual bias as well, and as a result has a considerably lower earning capacity.

Many of the improvements in the lot of the mentally handicapped had to be won in court battles from state and federal agencies still reluctant to spend money in the field. In the past, the courts themselves rarely acted to protect the civil rights of the retarded and frequently allowed the state to become the mentally slow individual's guardian without his or her consent.

In the 1970's, however, a series of successful lawsuits in Pennsylvania, Tennessee, New York and elsewhere established the fact that the retarded have the same civil rights as other citizens, rights that the states and federal government agencies were obligated to honor through the establishment of programs to aid them.

The group most active in arguing for the rights of the retarded was formed in Minneapolis in 1950 at the time my father and mother were taking Roger from specialist to specialist in their frustrating struggle to find help.

Calling themselves the National Association for Retarded Children (NARC), the 22 charter members grandly set as their goal the prevention and amelioration of mental retardation.

In a nation where medical research was taking leaps and bounds, they discovered that there was no scientific work devoted to the study of mental retardation. Partly to correct that lack, they launched a two-year "Pennies for Research" drive that netted them $78,000, a paltry figure compared to the millions the March of Dimes was collecting at the same time. With that money they helped publish in 1955, "Mental Subnormality," the first standard reference in the field.

The election of John F. Kennedy as President in 1960 "got the ball rolling," Menolascino said, because Kennedy publicly acknowledged affection for his retarded sister, Rosemary. It was an act that helped remove some of the stigma often associated with retardation, he said.

The next year, Kennedy established the President's Panel on Retardation and boosted federal spending in the field to about $300 million, a figure that represented an all time high.

Today the federal government spends more than $2.7 billion in the field, and state and local governments this year budgeted more than $3.3 billion, according to Fred J. Krause, executive director of the President's Committee on Mental Retardation (the name was changed in 1966).

Increased money was helpful, but groups such as NARC still felt frustrated by official attitudes towards the retarded, which was either to warehouse them in inadequate public institutions, or ignore them.

Changes were occurring elsewhere, however. In the late 1950s and early 1960s a new concept in the field was being developed by researchers in Scandinavia, and popularized in this country by Wolf Wolfensberger, now a professor of special education at Syracuse (N.Y.) University.

Known as "normalization," the main tenet of the theory is that "if the individual is given supports and services, he can overcome some of his difficulties and live in ways that are typical of society in general," according to Steve Nevin, an associate of Wolfensberger at Syracuse.

Wolfensberger wrote a book on the subject, and coupled with his work on the President's Committee on Retardation, as well as his teaching classes in Nebraska, Toronto, and now Syracuse, knowledge of the concept spread. The counselors who work with Roger and Virginia, who is also retarded, said "normalization" is the basis of their practice.

Since the concept of normalization holds that the retarded should be out in the community as much as possible, advocates of normalization are as a rule opposed to the large institutions which for so many years in his country were the only alternative to living at home for the retarded.

In part because of the acceptance of normalization by state and federal administrators, the number of persons housed in large institutions has declined from 200,000 in 1972 to 175,000 today, and is expected to drop to 130,000 by 1980.

At the same time, "hundreds" of half-way houses in the community are currently being developed in which six or 12 retarded people live under supervision—just as did Roger—and where they are exposed to normalization-inspired educational experiences. Many eventually are able to move into the community on their own.

Other diagnostic and counseling services designed to help integrate the retarded into the community are available through state and local agencies.

The idea of seeing the retarded as persons with special needs rather than objects of pity, guilt, frustration or resentment also applies to the parents and friends of the retarded themselves.

"Your parents had a tendency to 'baby' Roger, to do things like shopping for him, and not let him get out on his own," said Bill Stein, the counselor who worked most closely with Roger.

"He always wanted to get out of that institution, to do things on his own, but after talking with them about it he'd have doubts, and wouldn't be so sure of himself. They would plant the doubts in his mind," he said.

Virginia H. Meyers, Roger's wife, complained that "my momma always buys my clothes for me, and I want to pick them out for myself. But she says 'I'm doing this for you,' but I want to do it myself," she said.

The Rev. Ed Svendsen, the staff chaplain at the residential facility where both Roger and Virginia lived, said, "We tend to put our fears into the retarded. They know what they can do, but we're not sure, and because they trust us and respect our opinions, they get confused," he said.

"We are in a whole new ballgame," said Dr. Menolascino, head of NARC, which now boasts 275,000 members in 1,900 local organizations.

"With the money and technology we now have, we can deal not only with the prevention and amelioration of mental retardation, but with its cure right now, we now have enormous knowledge about brain cells, chemicals, and remedial therapies. We've taken the ——— of rejection long erough. It's time for our rights, too," he said, reflecting the growing militancy of the movement.

Virginia H. Meyers, my sister-in-law whose mental handicap stems from an injury at birth caused by a physician's forceps, put it this way: 'How is it with us? It's no different than it is with anyone else, except that we're slower."

IT STRUCK ME . . . MENTAL SLOWNESS IS NOT THE SUM OF HIS EXCELLENCE

Recently I was asked by someone who did not know my family what my brother Roger did for a living, and I started to reply that he was retarded. Suddenly it struck me, for the first time in the 28 years of our relationship, that mental slowness is not the sum of his existence.

He is also a person who is married, holds down a part-time job, and has learned how to limit the amount of information he receives so that he is not overwhelmed.

What he does for a living, in fact, is not to act retarded, but to work in a fast-food shop.

I replied that my brother was in the restaurant business.

"It's inevitable that a retarded person will have a significant impact on his family," said Michael J. Begab, head of the Mental Retardation Research Centers branch of the National Institute of Health.

"What that impact is depends on the family, and how well it handles stress. . . . It can enrich lives, or confuse them, but it is too significant an event not to have an impact at all," he said.

Roger and I took trips together, went to the movies together, played together, and always I slowed my own responses so that I would not outdistance him in appreciation.

I came home from sandlot baseball games early, often for no other reason than just to be around in case my parents, especially my mother needed "help" with him. I think that "help" was simply my presence, reassuring them that their world was not totally filled with intelligence testing and reading difficulties.

There was a tremendous burden on me not to raise hell, not to disturb their already disturbed lives. I have never felt resentment towards my brother, but often when I wanted to yell at my parents for slights—real or imagined—I kept my anger to myself.

What made matters worse was that my father called me his "good right arm," my mother said I was "like a second father" to Roger, and Roger himself often called me "Dad" before he switched titles in mid-breath and called me "Bobby." All of this was a heavy load for someone entering early manhood.

My parents realized the dual roles I was in, and tried to compensate. They moved from one neighborhood to another so I could attend a better public high school. They paid for my five summers in a Vermont summer camp, and then they paid a fee that allowed me to apprentice at a summer stock theater.

Worried about my ways as a loner in high school, my mother insisted I invite all the "better" sort of kids from high school to our apartment, as a way of getting me into a more active social life. I went ahead with the idea because I was a dutiful son. At the party I was the only one without a date.

I wasn't a bad student in school, but I probably held myself back, so as not to embarrass Roger by my academic success. That awful phrase, "could do better," was always checked by teachers making academic evaluations.

I was particularly embarrassed when Roger started writing poetry, something he told me recently that he did in imitation of me. I was embarrassed because I didn't want him to fail at a craft in which I didn't think he could succeed. But what he has managed to do, with that incredible effort he brought to other aspects of his life, is to carve out for himself a vital form of expression.

In the early days his poetry wasn't very good, but it improved because he worked at it.

I am five years older than Roger, and when we were both teen-agers I always had the sneaking suspicion that our parents did not want to see me grow up. My maturity would have emphasized to them the growing gap between his chronological age and intellectual abilities. It would have raised the question to which they then had no answer: what would happen to Roger when I was grown and they were dead.

There is no objective proof for this belief of mine, and my parents have repeatedly denied that this was their intention. But in the subtle matter of human dynamics, where inflections, sighs, and looks can speak volumes, these were the words I read.

In fact, the changing social attitudes towards the retarded, the availability of state and federal money and support, and most importantly Roger's fierce desire to lead an independent life, have given them the reassurance they sought.

As a result, they have been able to look at each of us with less desperation, with more appreciation of us as individuals. No longer do they see our four-member family as being composed of three equal partners supporting the fourth person.

When my marriage was legally ended two years ago, the support I received from my mother and father was greater than the support I have ever received from them during any other period of my life. Feeling much less burdened by Roger and what once seemed an insurmountable, insoluble problem, they were able to respond to me as an independent person.

Which is to say the past is prologue, and we can learn from the mistakes. My brother is a man of remarkable dignity, and a great sense of self-worth. He is no more an emotional patsy than I am. In fact, I now recall that when we were teen-agers, he sometimes thought I had pushed him too far, and he responded with a decidedly unbrotherly left cross to the shoulder. His handicaps are serious, as he said during our interviews, for this series, but they are not insurmountable.

His new wife, Virginia H. Meyers, herself retarded, also understands her limitations and potential, and uses that knowledge to help others. Her sister, Carol MacIntyre, said that Virginia used to be a particularly sympathetic baby sitter with her young son, Scott, who has cerebral palsy.

"She told me not to worry, that Scottie would learn things, although it would just take him a bit longer, as it did with her," MacIntyre said.

The old response patterns die hard, however. Both our parents worry excessively about Roger. My mother can still become so tense after a visit to his apartment that she is unable to eat for hours. My father can still rant and rave against the quality of counseling Roger and Virginia receive (though Roger and Virginia do not complain).

There are some new experiences for them, however, some rosier clouds on the horizon. My mother absolutely glowed after receiving a telephone call from her daughter-in-law of one week who began by saying, "Hi, mom."

My father was speechless when I told him Roger and Virginia, who needed to get a wedding ring tightened during their honeymoon, took it to a jeweler located near their hotel, learned on their own which buses they had to take to pick it up in a week's time. And then picked it up. He was overwhelmed when I told him they had actually returned and picked it up.

And I have learned that my brother and I share certain problems in maintaining an adequate cash flow level. Shortly before returing to Washington after the wedding, I asked my father if I could borrow some money. It turned out Roger had made the same request of him the week before.

"Now both my sons owe me twenty dollars," the old man sighed proudly, forking it over.

A DWINDLING NAVY

Mr. THURMOND. Mr. President, there appeared in the Charleston Evening Post, September 6, 1977, an editorial entitled "A Dwindling Navy." This editorial pointed out the declining numbers of U.S. warships, a subject of considerable study in the Congress during the past few years.

The editorial took particular note of our Nation's declining capability to produce warships in a rapid and efficient manner.

Through my work on the Senate Armed Services Committee I have supported efforts to address this serious subject and I am pleased that its importance was recognized in this editorial by a leading newspaper in my own State.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD.

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

A DWINDLING NAVY

Rep. Les Aspin, a Wisconsin Democrat not known as a particular friend of the Navy, has issued a report which shows the number of naval vessels in commission declining even more than earlier predicted.

In March of this year, the Navy believed it would have 470 ships in commission at the end of the fiscal year, Sept. 30. It now appears that it will actually have only 464, and a year from now the figure will fall to 455. Less than a decade ago, the fleet had a strength of more than 1,000 ships.

Rep. Aspin blames the failure to stem the Navy's decline on delays in deliveries of new ships ordered to replace those retired because of age and obsolescence. Deliveries, he said, are "one year late 43 per cent of the time." New ship construction has been hampered by strikes, equipment delivery delays, mismanagement and "frequent design and specification changes ordered by the Navy."

There are now only a very few shipyards left in our country that build Navy ships. Only one—the Newport News Shipbuilding and Drydock Co.—is capable of building an aircraft carrier. Yards doing work for the Navy claim they frequently lose money, and appear less than eager to bid for new contracts.

All of this is puzzling and worrisome. This is a country, isn't it, that was the "arsenal of democracy" a little more than a generation ago? The country that launched tens of thousands of ships in an incredibly short span of time to fight and win a great two-ocean war at sea?

What is happening to us?

S. 2042—A BILL TO AMEND THE REHABILITATION ACT

Mr. WILLIAMS. Mr. President, on August 5, I joined with Senators JAVITS, KENNEDY, HAYAKAWA, REIGLE, and SCHWEIKER in introducing S. 2042, a bill to amend the Rehabilitation Act of 1973 to improve the formula for State allotments under part B of the act.

In reviewing this distribution formula over the years, it is quite clear that this formula is inequitable. As my colleague from New York (Mr. JAVITS) has already pointed out, the 25 States receiving the lowest allotments per capita for vocational rehabilitation services contain 75 percent of the Nation's population. Thus, the larger States are expected to provide services to more persons with less financial support. The question here is not a small versus larger State issue, nor a Northern State versus Southern State issue. The question is how can we best provide rehabilitation services to all disabled Americans.

The formula which we have proposed under S. 2042 would change the current Hill-Burton type formula to formula allocation based solely on population. It would do this over a period of 5 years, thus phasing in the new formula. For the fiscal year 1979, States would receive 20 percent of their funding under a formula allocation based on population and 80 percent of their funding under the current formula. The percentage based on population would gradually increase until fiscal year 1983 at which time States would receive all their funding under a formula allocation based solely on population.

Mr. President, I believe that we must now give serious consideration to S. 2042. The Congress has mandated full civil rights protection for disabled Americans under title V of this act and we have also taken on a substantial Federal partnership in the area of education of handicapped children. It is highly important that we make adequate services available to all of our States—and assure that disabled persons, no matter where they live, have the opportunity for services which will enable them to be independent. And, I must say that we have no data which would suggest that the disabled population is limited to only a few States or concentrated in certain areas. If anything, this population can be found concentrated in our highly urban areas—the ones most often disadvantaged by the current formula.

I am hopeful that we can soon focus more directly on this problem within the subcommittee on the Handicapped and address the problem dealt with by S. 2042.

Mr. President, I ask unanimous consent that two tables showing the per person allocation under the current for-

mula and allocation per State under S. 2042, be printed in the RECORD.

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

TABLE I.—STATE DATA UNDER CURRENT FORMULA

	Population ages 18 to 64 (as of July 1, 1976)	Vocational rehabilitation appropriation (fiscal year 1978)	Fiscal year appropriation per person, 18 to 64
Alabama	2,113,000	$18,103,094	$8.57
Alaska	231,000	2,000,000	8.66
Arizona	1,295,000	8,526,789	6.58
Arkansas	1,181,000	10,472,837	8.87
California	13,106,000	57,035,827	4.35
Colorado	1,568,000	8,295,388	5.29
Connecticut	1,885,000	7,017,813	3.72
Delaware	351,000	2,000,000	5.70
District of Columbia	437,000	5,427,250	12.42
Florida	4,748,000	29,138,423	6.14
Georgia	2,920,000	21,133,655	7.24
Guam			
Hawaii	544,000	2,310,785	4.25
Idaho	472,000	$3,344,923	$7.09
Illinois	6,616,000	27,499,339	4.16
Indiana	3,092,000	19,066,756	6.17
Iowa	1,630,000	9,036,986	5.54
Kansas	1,349,000	7,200,397	5.34
Kentucky	1,987,000	15,919,071	8.01
Louisiana	2,177,000	18,074,413	8.30
Maine	611,000	4,967,235	8.13
Maryland	2,534,000	11,455,890	4.52
Massachusetts	3,453,000	18,212,747	5.27
Michigan	5,359,000	26,886,001	5.02
Minnesota	2,278,000	13,303,546	5.84
Mississippi	1,281,000	13,402,867	10.46
Missouri	2,760,000	18,198,853	6.60
Montana	435,000	2,886,498	6.64
Nebraska	884,000	5,032,964	5.69
Nevada	372,000	2,000,000	5.38
New Hampshire	478,000	3,282,747	6.87
New Jersey	4,388,000	18,376,436	4.19
New Mexico	666,000	5,647,884	8.48
New York	10,814,000	47,714,258	4.41
North Carolina	3,277,000	24,464,797	7.47
North Dakota	364,000	2,472,049	6.79
Ohio	6,309,000	$36,617,086	$5.80
Oklahoma	1,609,000	11,529,952	7.17
Oregon	1,382,000	8,109,804	5.87
Pennsylvania	7,072,000	39,945,506	5.65
Puerto Rico (1973 total population)	2,951,000	22,368,458	7.58
Rhode Island	545,000	3,264,733	5.99
South Carolina	1,677,000	13,905,312	8.29
South Dakota	383,000	2,799,957	7.31
Tennessee	2,489,000	19,262,813	7.74
Texas	7,279,000	46,756,113	6.42
Utah	680,000	5,559,165	8.18
Vermont	274,000	2,123,949	7.75
Virgin Islands			
Virginia	3,075,000	17,499,157	5.69
Washington	2,159,000	11,079,348	5.13
West Virginia	1,063,000	8,538,262	8.03
Wisconsin	2,653,000	16,785,908	6.33
Wyoming	232,000	2,000,000	8.62
Total United States	129,488,000	758,054,041	5.854

TABLE II.—APPROXIMATE ALLOCATIONS (DOLLARS PER PERSON) FISCAL YEAR 1979 THROUGH FISCAL YEAR 1983 FOR GRADUAL PHASE-IN OF POPULATION FORMULA

State	Fiscal year— 1978	1979	1980	1981	1982	1983
Alabama	4.94	4.94	4.94	4.94	4.94	4.94
Alaska	5.24	5.24	5.50	5.76	6.02	6.28
Arizona	3.76	3.92	4.03	4.12	4.19	4.25
Arkansas	4.97	4.97	4.97	4.97	4.97	4.97
California	2.65	2.97	3.28	3.60	3.92	4.25
Colorado	3.21	3.46	3.66	3.86	4.06	4.25
Connecticut	2.25	2.62	3.00	3.40	3.82	4.25
Delaware	3.44	3.44	3.61	3.78	3.95	4.25
District of Columbia	7.73	7.73	7.73	7.73	7.73	7.73
Florida	3.46	3.63	3.80	3.96	4.11	4.25
Georgia	4.25	4.30	4.32	4.32	4.30	4.25
Hawaii	2.61	2.95	3.27	3.59	3.92	4.25
Idaho	4.03	4.13	4.19	4.23	4.25	4.25
Illinois	2.45	2.78	3.13	3.50	3.87	4.25
Indiana	3.60	3.72	3.87	4.00	4.13	4.25
Iowa	3.15	3.35	3.58	3.80	4.03	4.25
Kansas	3.13	3.37	3.60	3.82	4.04	4.25
Kentucky	4.64	4.64	4.64	4.64	4.64	4.64
Louisiana	4.71	4.71	4.71	4.71	4.71	4.71
Maine	4.64	4.64	4.64	4.64	4.64	4.64
Maryland	2.76	3.06	3.35	3.64	3.95	4.25
Massachusetts	3.14	3.33	3.56	3.79	4.02	4.25
Michigan	2.95	3.17	3.44	3.71	3.98	4.25
Minnesota	3.36	3.55	3.73	3.91	4.09	4.25
Mississippi	5.69	5.69	5.69	5.69	5.69	5.69
Missouri	3.81	3.91	4.02	4.11	4.19	4.25
Montana	3.83	3.94	4.04	4.13	4.20	4.22
Nebraska	3.24	3.44	3.65	3.85	4.05	4.25
Nevada	3.28	3.28	3.44	3.61	3.89	4.25
New Hampshire	3.99	4.07	4.14	4.20	4.23	4.25
New Jersey	2.50	2.82	3.16	3.52	3.88	4.25
New Mexico	4.84	4.84	4.84	4.84	4.84	4.84
New York	2.64	2.92	3.24	3.57	3.91	4.25
North Carolina	4.47	4.47	4.74	4.47	4.47	4.47
North Dakota	3.84	3.84	3.84	3.84	4.01	4.25
Ohio	3.43	3.56	3.74	3.92	4.09	4.25
Oklahoma	4.17	4.27	4.30	4.30	4.29	4.25
Oregon	3.48	3.68	3.84	3.98	4.12	4.25
Pennsylvania	3.37	3.54	3.73	3.91	4.08	4.25
Puerto Rico	7.58	7.58	7.58	7.58	7.58	7.58
Rhode Island	3.52	3.66	3.82	3.97	4.12	4.25
South Carolina	4.88	4.88	4.88	4.88	4.88	4.88
South Dakota	4.08	4.14	4.20	4.24	4.25	4.25
Tennessee	4.57	4.57	4.57	4.57	4.57	4.57
Texas	3.74	3.91	4.02	4.11	4.19	4.25
Utah	4.53	4.57	4.53	4.53	4.53	4.53
Vermont	4.46	4.49	4.47	4.62	4.83	5.04
Virginia	3.48	3.66	3.82	3.97	4.12	4.25
Washington	3.07	3.33	3.56	3.79	4.02	4.25
West Virginia	4.69	4.69	4.69	4.69	4.69	4.69
Wisconsin	3.64	3.76	3.90	4.03	4.15	4.25
Wyoming	5.13	5.13	5.38	5.64	5.90	6.15

Fiscal year 1979: Hypothetical $800,000,000 appropriation; 80 percent current formula; 20 percent population formula.
Fiscal year 1980: Hypothetical $840,000,000 appropriation; 60 percent current formula; 40 percent population formula.
Fiscal year 1981: Hypothetical $880,000,000 appropriation; 40 percent current formula; 60 percent population formula.
Fiscal year 1982: Hypothetical $920,000,000 appropriation; 20 percent current formula; 80 percent population formula.
Fiscal year 1983: Hypothetical $960,000,000 appropriation; 100 percent population formula.
Assumptions: All appropriations are reduced by a constant percentage for grants to territories other than Puerto Rico.
Hold Harmless: Fiscal year 1978 allocation.
Minimum: 0.25 percent of total appropriation.
Warning: All estimates based on 1973–75 per capita income and 1976 population data.

REFORM OF THE FEDERAL JUDICIAL SYSTEM

Mr. DECONCINI. Mr. President, the commitment of the Carter administration to work constructively with the Congress to make meaningful reform of the Federal judicial system a reality is tremendously gratifying to me personally and to all those Members of Congress who have been anxious to tackle this critically important problem in American society. The work that Attorney General Griffin Bell has done is nothing short of superb. As chairman of the Senate subcommittee most closely associated with Judge Bell's efforts and those of the Office of Judicial Improvements, I have nothing but the highest praise.

However, the commitment of the administration does not end with Judge Bell. Both the President and the Vice President have repeatedly shown that they understand the problems facing the Federal court system and that they will do everything possible to strengthen the quality of justice in America.

As an example of that feeling, I ask unanimous consent to print in the RECORD a copy of a speech delivered by the Vice President to the Second Judicial Circuit Conference on September 10. In this eloquent statement, Vice President MONDALE examines the difficulties that have arisen over the years and outlines a legislative program which is both sound and realistic. It is my hope, Mr. President, that during the next few years the Congress will demonstrate that it is as determined as the administration to make the third branch of Government as responsive to citizen needs as the executive and legislative.

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

ADDRESS BY VICE PRESIDENT WALTER F. MONDALE

BUCK HILL FALLS, PA., September 10.—Following is the text of an address prepared for delivery by Vice President Walter F. Mondale to the annual meeting of the Second Judicial Circuit Conference, held at the Buck Hill Inn here.

Our meeting tonight, and this conference, mean many things. It is a gathering of distinguished American jurists. It is an important contribution to the national debate on judicial reform. But perhaps, most importantly, this conference represents the triumph of an idea.

When our nation was founded, the belief that government exists to protect the rights of citizens and to establish justice was a revolutionary idea. It remains so today.

Alexander Hamilton put it plainly in the Federalist Papers:

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it can be obtained, or until liberty be lost in the pursuit."

We have survived for over 200 years as a free society, because, whatever our failings, the pursuit of justice of which Hamilton spoke has never ended. We have never allowed ourselves to become frozen into any permanent caste or class in America. We have never accepted the notion that there are two standards of Justice for Americans. Despite the injustices suffered by many, the promise of justice has remained alive.

As federal judges, you have been on the cutting edge of the fight for social justice in our nation. In recent decades, your courtrooms have become the arena where black Americans and other minorities, the poor, women, and all those denied the full promise of America have come to claim their rightful place. These citizens and millions more continue to look to your courts for justice today.

That is why this conference on guaranteeing access to justice is so important. As federal judges, you understand perhaps better than anyone that the judicial crisis we face today is much more than an administrative problem.

The problems of overcrowded dockets, rising legal costs, and mounting delays are not just a headache for judges. They threaten to close the courtroom door on the very people who need judicial relief the most—the poor and the weak, middle income citizens, minorities and the powerless. The procedural logjam clogging our courts excludes millions of citizens for whom justice in the courts is the only hope of overcoming generations of prejudice and neglect. The inability to obtain legal services leaves millions more with no access to justice at all.

The challenge we face could not be more urgent. The task we face could not be more clear. That great jurist Learned Hand could well have been addressing this conference when he wrote:

"If we are to keep our democracy there must be one commandment: Thou shalt not ration justice."

The dimensions of the problem we face are familiar to every judge in this room. In the last 15 years, alone, the number of cases filed in federal district courts has nearly doubled. Those taken to courts of appeals has quadrupled. Delays of two, three and four years are not uncommon.

There are no villains in this story. Neither the Congress, the Executive or the Judicial Branch can be blamed for the crisis in our courts today.

Instead, the problems we face remind me of the predicament of the man in one of Griffin Bell's favorite stories who was taken before the court on charges of drunkenness and setting his bed on fire. The judge asked the man how he pleaded. The man replied, "Your honor, I'm guilty of the first charge. I was drunk. But I'm innocent of the second. The bed was on fire when I got into it."

At bottom, the problem is simply that history has caught up with us. We operate under a judicial structure largely unchanged from the one designed 200 years ago for a handful of new Americans in 13 small states on the eastern seaboard. We expect the same system, today, to meet the needs of 210 million very different kinds of people spread over 53 separate jurisdictions in the most modern and complex society ever seen on the face of the globe.

There's nothing to be gained by searching for scapegoats we must search for solutions.

This conference is an important step in the right direction. We must go on to tackle what Judge Kaufman calls the "twin demons" of cost and delay. We must reduce court congestion and overcrowded dockets.

But in all these efforts, it is important to keep in mind that our final goal is not simply to reduce caseloads or merely make our courts run more smoothly. Our goal is, and must be, to provide access to justice for all our people. Judicial reform—if it is to deserve our support—must preserve the courts, particularly the federal judiciary, as the forum where fundamental rights will be protected and the promise of equal justice under law will be redeemed.

The ABA Task Force on the administration of justice, which Griffin Bell chaired, stated that goal well:

"Neither efficiency for the sake of efficiency, nor speed of adjudication for its own sake are the ends which underlie our concern. . . . The ultimate goal is to provide the fullest measure of justice for all."

We are fortunate that today the author of those words is the Attorney General of the United States. As a distinguished federal judge, Griffin Bell was one of the most respected leaders in our nation for progressive judicial reform. Today he has a few more resources at his command to continue the job. He has the full support of the President of the United States—and this entire Administration—to launch a far-reaching national effort to improve and upgrade our entire system of justice.

As one of his first acts, Judge Bell created a new Office for Improvements in the Administration of Justice—the first of its kind in the Justice Department. This office has a broad mandate to work with the federal judiciary, the Congress, the organized bar and the public. We want and need your ideas and support.

Under Judge Bell's leadership, this Administration is already moving forward on a wide variety of fronts.

To cut costs and delays and relieve overcrowded courtrooms.

To create new, imaginative alternatives for settling disputes.

To open up our judicial system to those denied an effective voice.

And to give the poor and the disadvantaged the resources to protect their fundamental rights.

As a first step, we're backing a series of reforms to provide quicker and less expensive ways to settle many of the disputes that have been languishing in our courts for years.

One new piece of legislation backed by our Administration would authorize federal magistrates to decide civil cases and try misdemeanors if the court and the parties agreed. This reform—which has already passed the Senate—could reduce the yearly caseload in District Courts by as many as 16,000 cases.

We are developing new legislation to allow experiments in District Court with compulsory, non-binding arbitration in certain civil cases. In one state where arbitration is currently used, 95 percent of the cases have been settled before they have gone to trial.

Finally, we are making a long overdue effort to tackle the problem of diversity jurisdiction. Giving a citizen the right to sue someone from another state in federal court made sense at a time when rivalry between states and regions was sharp. Today it is the judicial equivalent of a dinosaur—a relic of a bygone age.

In 1976, nearly one in four federal cases was a diversity matter. That just doesn't make sense when so many burning public issues demand the court's attention The Justice Department is backing a proposal to prohibit a plaintiff from filing a diversity suit in the state where he or she lives. If enacted, it could reduce the number of diversity cases before the federal courts today by as much as half.

Secondly, we are looking beyond the courts to find new, alternative forums to deliver simple justice.

Shortly before the American revolution, Edmund Burke noted that more copies of Blackstone's Commentaries on The Law had been sold in the 13 colonies than in all of England. He concluded that Americans were a peculiarly litigious lot.

I'm a resident of Washington, D.C., the lawyer capital of the world. So I can't dispute that claim. If you want to hold a bar association meeting in Washington all you have to do is to stop the first hundred people you see on the street and go find yourself a tent.

But despite our reliance on lawyers and law in this country, the fact remains that courtrooms aren't necessarily the best place to settle disputes.

To many Americans, a court of law is still an awesome, strange, and, often frightening place. Family squabbles, friction between neighbors, minor commercial disagreements usually wind up in court—if they're settled at all—because there is no other place for them to go.

As our society gets larger, and more complex, and more and more bureaucratic, we sometimes forget that people need personal community forums where they can settle differences simply, directly, and even, sometimes part as friends. One of the most exciting experiments in alternatives to the courtroom are Neighborhood Justice Centers supported by the Justice Department. These Centers will be run in, and by, the communities they serve. Neighborhood residents will be trained to mediate disputes, arbitrate differences, and reconcile parties. Only if the dispute can not be settled will the parties be referred to a court or government agency.

We expect to fund three Neighborhood Justice Centers for trial periods in Los Angeles, Atlanta and Kansas City. We are hopeful they will become models for the nation of a new kind of justice in action.

Each of the reforms I have mentioned will cut back on the caseload in federal courts. They will provide quicker, less expensive ways, to settle many disputes. Most important of all, those proposals will free the time and resources of federal judges for the awesome responsibility the founders of our nation placed in your hands as the ultimate guardians of constitutional rights.

But clearing court dockets and freeing judges' time is only half the battle. We must make sure that those in need of justice receive their day in court. For many citizens today, technical barriers increasingly bar the federal courthouse door. Millions of poor and middle income Americans simply can not afford to go inside.

Access to federal court is often the only way the individual consumer, the taxpayer and the ordinary citizen can effectively challenge, the massive power of a modern corporation or the far-reaching power of government itself. Closing the courthouse door leaves them no other place to go.

President Carter and this administration are committed to opening up the judicial system to those in need of its support. In his recent consumer message the President asked the Congress to give citizens broader standing to sue government agencies to give the federal courts more authority to reimburse legal fees and to expand opportunities for filing class action suits.

Nothing is more destructive to a sense of justice than the widespread belief that it is much more risky for an ordinary citizen to take $5 from one person at the point of a gun than it is for a corporation to take $5 each from a million customers at the point of a pen. Consumer class actions are one of the few ways a nation of individual consumers can defend itself against fraud and deceit in the marketplace today.

The Justice Department is working closely with the Office of Consumer Affairs to develop workable procedures to insure that class actions will be used responsibly. But we believe giving citizens access to justice must include this important tool.

Finally, this administration is committed to the principle that no American should suffer injustice because the price of justice is too high.

For all too many impoverished Americans, the promise of justice remains just that a promise. For the 16 million poor citizens who have no access to federal legal services, it is a promise waiting to be fulfilled.

The justice these Americans are seeking is rarely the stuff of which headlines are made it will not often be carved in stone on our courtroom walls.

It is the justice sought by

—a 13-year-old girl in Maine whose teeth were so poor she could not eat who was denied treatment she deserved under Medicaid.

—a 16-year-old mentally retarded child living with her disabled grandmother who was illegally denied entrance to school.

—an elderly New York couple living on Social Security charged four times the going rate by a fraudulant home improvement scheme.

—or a 64-year-old Mexican-American from California given a legal runaround for four years by a lumber company which hoped he would die before they had to pay him his pension.

For these and thousands of other clients of the Legal Services Corporation access to counsel has meant more than a vindication of their legal rights. It has meant a vindication of their humanity, a vindication of their dignity and a vindication of their right to be something more than a victim, the fate too often reserved for the poor.

I was a sponsor of the original legal services program in the Senate. Like many of you, I fought for the establishment of the Legal Services Corporation. President Carter and I are deeply committed to this vital program. We supported a major increase of $50 million for legal services this year. With the additional support of the Congress, and the help of state and local bars, the Legal Services Corporation is well on its way toward reaching its goal of guaranteeing some access to legal help for every impoverished American by 1979.

Much more remains to be done to ensure access to justice, not only for the poor, but for millions of middle income and working families for whom an extended legal battle is an expense they cannot bear.

All of us in the Bar, in the executive, the Judiciary, and the Congress must continue to search for ways to deliver justice to all Americans at a price all Americans will be able to afford.

The reforms I have mentioned tonight are important steps forward. But they alone will not do the job. As Justice Cardozo has written:

"The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms. Today, as in the past, it calls for the bravest and the best."

We can reform our judicial system, and we must. But in the end, the success or failure of our efforts will depend not on a system, but on the men and women who uphold it. It will deepnd, more than anything else on you.

For millions of Americans in recent years a courageous federal judiciary has been their last, best hope for justice. You remain their last, best hope today.

In the years to come, we pledge our commitment and our support for your efforts. I am confident that working together, the promise of justice in America will continue to be redeemed.

ADDRESS OF SENATOR DICK STONE OF FLORIDA BEFORE THE NATIONAL CONVENTION OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. THURMOND. Mr. President, our colleague and distinguished member of the Senate Veterans' Affairs Committee, Senator DICK STONE of Florida, addressed the National Convention of the Veterans of Foreign Wars in Minneapolis on August 23.

In his speech, Senator STONE addressed the most pressing concerns of the veterans population. Among these important issues were the proposals to dismantle the Veterans' Administration, the recommendations of the report of the National Academy of Science, the proposal to include veterans pension and compensation programs within welfare, unionization of the military, recognition of Cuba, the energy crises, and the proposed Panama Canal Treaty.

Senator STONE's timely remarks were well received by the VFW National Convention and I commend his address to my colleagues for their reading.

Mr. President, in order to share our colleague's incisive views on these crucial issues with which we are all concerned, I ask unanimous consent that this address be printed in the RECORD.

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

ADDRESS BY SENATOR RICHARD "DICK" STONE BEFORE THE 78TH NATIONAL CONVENTION

National Commander-in-Chief, "Bulldog" Smith, Past National Commanders-in-Chief, National and State officers, distinguished delegates, ladies and gentlemen, it is indeed a great honor for me to address this 78th National Convention of the Veterans of Foreign Wars. This is my first opportunity as Chairman of the Senate Veterans' Affairs Subcommittee on Housing, Insurance and Cemeteries and as an active member of the Senate Veterans' Affairs Committee to appear before the V.F.W., an organization which has devoted itself to improving veterans benefits and services. The V.F.W. forcefully and constructively presents its views on all matters of importance to veterans. It is pledged to the men and women who served our nation in time of war and also to the protection of this country in times of peace.

But, I am not here to tell you what the V.F.W. is—you all know that—I am here today to tell you what Senator Dick Stone believes.

I believe that the V.F.W. was instrumental in the effort to prevent the elimination of the Senate Veterans' Affairs Committee.

When this proposal was announced early this year supposedly to help as part of a plan to simplify the cumbersome Senate committee system, I immediately spoke out against it. Eliminating the Senate Veterans' Affairs Committee would have endangered the $19 billion dollars committed to the Veterans Administration. It would have removed the Senate from having effective oversight and control of the VA programs that are established for veterans and their survivors—the veterans' health care system, the G.I. Bill, veterans' pensions, cemeteries, housing, disability and survivor benefits.

Many members of the V.F.W.—both from the National Headquarters in Washington and from state Posts in Florida—came to my office to oppose this plan. There was a flood of mail from veterans everywhere opposing the elimination of the committee. The V.F.W. didn't need to contact me—because I was with you—but I greatly appreciated your support and advice, and I know first-hand that your protests helped me to convince many of my colleagues.

Already in this session of Congress, the Senate Veterans' Affairs Committee has approved legislation increasing veterans' pensions and compensation, providing additional funding for state veterans' nursing homes, increasing and improving the G.I. Bill education program, continuing the VA physicians and dentists pay comparability, and enhancing the specially-adapted housing and automobile programs for disabled veterans.

Hand-in-hand with the V.F.W., the Senate committee has continued to fight for increased employment opportunities for veterans. As you well know, the unemployment rate among Vietnam-Era veterans is a national tragedy. But with strong efforts from the V.F.W. and its many members, from the newly confirmed Deputy Assistant Secretary of Labor for Veterans' Employment, and from Congress, we can help put these veterans to work.

So, we won that early battle, and the Senate Veterans' Affairs Committee continues to carefully preserve the quality of all our veterans' programs.

But that was not the last attack on veterans' programs. I believe there are struggles ahead against the dismantling of the Veterans Administration and the destruction of the VA health care system.

Apparently, there are some who oppose the fulfillment of the Nation's continuing obligation to care for those who have borne the battle. The V.F.W. must continue to speak out against this on behalf of all veterans.

I believe that those who would fragment the delivery of services to veterans by breaking up the Veterans Administration are not acting in the interest of veterans. I agree that there is a need for greater efficiency in the delivery of all federal programs—from the Postal Service on down. But this efficiency will not be achieved by fragmenting the agency whose sole charge is to serve the Nation's veterans, and combining it with HEW—a huge bureaucracy already too big to be efficient.

I believe that the VA health care system should exist to provide the best possible health care for veterans. I oppose the recommendations by the National Academy of Sciences that the VA health care system should be destroyed and phased into a general national health system.

I believe that veterans' compensation is a payment made by a grateful nation to those injured while in service for America. It is not welfare and I oppose the inclusion of this program and the VA pension program in any plan for welfare reform.

We know that during times of peace there is a tendency to forget the sacrifices and discipline that are required in war.

I believe that unionization of the military would have disastrous consequences if we are called to fight again. When an individual serves in the Armed Forces, he can march to the beat of only one drummer—his commanding officer. When lives are at stake and the defense of the Nation rests on obedience to orders, we cannot afford anything other than strict military discipline. That's why I am a co-sponsor of a bill introduced by my distinguished colleague, Senator Thurmond, to prohibit members of the Armed Forces from joining unions.

The Administration and Congress face other critical issues that have serious implications on American security.

I oppose and will continue to oppose the unilateral relaxation of the United States trade embargo on Communist Cuba which is a threat to peace in the Western Hemisphere. Last year, Havana sent Cuban troops supplied with Russian equipment, to Angola.

Since then, the Cuban presence has increased in Africa—and Castro continues to export terrorism throughout the world. Why should the United States want to do business with the Castro regime? Making unilateral concessions to Cuba, such as lifting the embargo, would only hurt our efforts to stop Cuban military intervention around the world.

I support the Administration's efforts to improve relations with other Latin American countries. Strengthening these ties is likely to diminish Castro's influence around the world.

Another threat to our security is our continuing dependence on imported oil from Arab OPEC nations. Today, the United States is even more dependent on OPEC than at the time of the 1973 boycott. It's time we stood up against OPEC's high prices and developed greater reliance on our own abundant energy resources.

Next month, Congress hopes to finish work on a sweeping new national energy plan. I hope that when legislation is eventually adopted, our national security—and our economic well-being—will be under our control, not subject to decisions made beyond our shores.

In closing, I want to thank the V.F.W. for your excellent work and for inviting me here today. And, to especially commend the very active and informed V.F.W. members from Florida. The V.F.W. organization has always been a great help to me. I thank you for your interest—which I share—and for expressing your concerns about our veterans so well. You know that my door is always open to you. Your patriotism is not old-fashioned—it's well-fashioned.

Additional Remarks by Senator Richard Stone on Panama Canal Treaty

Deviating from the prepared text of his speech Sen. Richard Stone, of Florida, a member of the Senate Veterans' Affairs Committee, added his voice to the opposition to the newly-negotiated Panama Canal treaty.

Stone spoke to the V.F.W. National Convention on Tuesday, August 23, moments after the delegates voted unanimously to pass a resolution opposing the treaty and urging that the Canal Zone send a delegate to Congress as do the Virgin Islands, Puerto Rico and the District of Columbia.

"I have been traveling around Florida and the people of Florida in their great numbers oppose this treaty. I signed the Thurmond recommendation against it. It will take a lot of convincing to convince a senator like me that the national interest is served by this treaty."

Sen. Stone also supported the V.F.W. position against diplomatic relations with Communist China and Cuba, which taken in two resolutions also adopted unanimously today.

"Which serves the United States more—recognition of Communist China and $300 million in trade or keeping our traditional ally and $5 billion in trade with Taiwan?" he said. Respect for America is better served by keeping our treaties with our allies than by buddying up to our adversaries and retreat."

INVESTMENT IN SMALL COMPANIES PERMISSIBLE UNDER ERISA'S PRUDENT MAN RULE

Mr. WILLIAMS. Mr. President, I have been concerned for some time about reports some institutional money managers have been limiting their investments of pension and welfare plan assets to only "blue chip" stocks and bonds issued by large and prominent companies and that they have been hesitant to invest in securities issued by newer or smaller, lesser known companies—all because they are uncertain about what kinds of investments are permitted under the prudent man rule of the Employee Retirement Income Security Act of 1974 (ERISA).

My concern has been more than academic. As one of ERISA's chief sponsors, I remember well how its prudent man rule came to be formulated, and what it was supposed to accomplish. The Congress never intended that the prudent man rule should become a vehicle by which employee benefit plan investments in securities would be restricted to those issued by large, long-established companies, listed on the New York Stock Exchange, and enjoying the very highest ratings.

To some extent, my concern has been allayed by a letter I have received from the Labor Department, which has responsibility for interpretation and enforcement of ERISA's fiduciary responsibility requirements, stating officially and emphatically that ERISA does not require investment of employee benefit plan assets to be limited to only blue chip securities. Of course, employee benefit plan investments in blue chip securities are generally perfectly appropriate under ERISA's prudent man rule—the important point made in the Labor Department's letter is that investment in a small company also may be entirely proper.

The Department also points out in its letter that numerous factors must be considered by a pension plan fidiciary in evaluating proposed investments under ERISA's prudent man rule. Further, the Department states:

Although a small company may be a riskier investment than a "blue chip" company, the investment in such a company may be entirely proper under the prudence standard if the risk, volatility, and liquidity of the resultant pension plan portfolio would be appropriate to the functions and funding requiremeints of the plan. However, an investment in a high risk company, whether large or small, new or old, clearly would not be appropriate if the investing pension plan's portfolio consisted entirely of a few risky securities and if the plan were obligated to pay out substantial retirement benefits during the next few years.

Mr. President, I recognize the strong desire of ERISA fiduciaries for certainty in the rules that govern the investment and other actions they take on behalf of the millions of employees whose retirement security depends heavily on those actions. The money managers who invest employee benefit plan funds bear a heavy burden of responsibility, and they are entitled to as much certainty as can safely be provided by the Labor Department. At the same time, ERISA's prudent man rule states what is perhaps the quintessential "facts and circumstances" test. Indeed, it was placed in the statute precisely because it provides a standard that contains sufficient flexibility to serve well as a guideline for conduct in all the various kinds of transactions to which it may be applied.

So while I concur wholeheartedly in the Labor Department's position that it cannot possibly rule on the prudence of every specific investment, I am also pleased that the Department has been able to provide clarifying guidance on this more general issue of investment standards under ERISA. I hope that this interpretation by the Labor Department, which I believe should be incorporated quickly into the Department's regulations, will provide the certainty that institutional asset managers need to guide them in investment decisions.

Mr. President, I ask unanimous consent that the Labor Department letter and its enclosure be printed in the RECORD.

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

U.S. Department of Labor,
Office of the Assistant Secretary,
Washington, D.C., August 26, 1977.

Hon. Harrison A. Williams, Jr.,
Chairman, Committee on Human Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: In recent months there has been increasing concern about the effect which the prudent man standard under the Employee Retirement Income Security Act of 1974 (ERISA) is said to have had on investments in small or new companies by employee benefit plans, most prominently pension plans.

There continues to be considerable discussion of this issue in the pension industry and in the trade press, and this seems an appropriate time to respond further to the inquiry you made in November of last year whether ERISA limits employee benefit plan investments to so called "blue-chip" securities. This matter was also raised in Congressional testimony which Assistant Secretary of the Treasury Laurence Woodworth and I gave before Senator Lloyd Bentsen on his bill S. 285, which is now pending in the Finance Committee.

The Department of Labor generally will not issue an opinion relating to the prudence of a specific investment or type of investment (ERISA Proc. 76–1, section 5.02(a), 41 FR 36281, August 27, 1976). This is because a determination as to the prudence of any particular investment can be made only on the basis of an evaluation of all the relevant facts and circumstances. To even attempt to make such evaluations would impose impossible administrative burdens on the Department.

However, the following information may be helpful. Section 404(a)(1)(B) of ERISA provides that a fiduciary shall discharge his duties with respect to a plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

In our view, the practice followed by some jurisdictions at common law of judging the prudence of a single investment without regard to the role that investment plays within the overall investment portfolio is generally improper for evaluating the prudence of an investment under ERISA. It is the position of the Department of Labor that the prudence of any investment by an employee benefit plan should be judged in the context of the role that investment plays in the plan's total investment portfolio in light of the factors discussed below.

Specifically, to meet the prudence requirement in section 404, a fiduciary of a pension plan should consider the role the proposed investment is to play in the portfolio. Among the factors which should be considered are the following:

(1) The composition of the whole pension portfolio with regard to diversification of risk;

(2) The volatility of the whole pension portfolio with regard to general movements in stock prices;

(3) The liquidity of the whole pension portfolio relative to the projected payment schedule for retirement benefits;

(4) The projected return of the whole pension portfolio relative to the funding objectives of the pension plan; and

(5) The prevailing and projected economic conditions of the entity in which the plan proposes to invest.

While this list may not be exclusive, it should make clear that an investment in a new or small company is not necessarily a violation of the prudent man rule and that pension investments are not necessarily limited to "blue-chip" companies. The prudence of a pension plan investment in a small company usually cannot be ascertained by examining that investment in isolation; rather, the prudence of such an investment normally depends upon its relation to the whole portfolio, which in turn must be appropriate in light of the types of considerations listed above. Thus, although a small company may be a riskier investment than a "blue-chip" company, the investment in such a company may be entirely proper under the prudence standard if the risk, volatility, and liquidity of the resultant pension plan portfolio would be appropriate to the functions and funding requirements of the plan. However, an investment in a high risk company, whether large or small, new or old, clearly would not be appropriate if the investing pension plan's portfolio consisted entirely of a few risky securities and if the plan were obligated to pay out substantial retirement benefits during the next few years.

The Department believes that the evaluation of all pension plan investments in the context of the overall investment posture of the pension plan and the factors discussed above is supported by the legislative history of ERISA and sound policy considerations. The legislative history of ERISA indicates that the common law rules of trusts, including the common law focus on the performance of the individual security, should not be mechanically applied to pension plans. The debate on the "prudent man" rule took place in 1970, when essentially the present form of section 404(a)(1)(B) of ERISA was first introduced in H.R. 16462.

At that time, there was considerable discussion as to whether the prudent man rule in H.R. 16462 was preferable to the common law prudent man rule. Testifying in support of the prudent man rule in H.R. 16462, then Secretary of Labor Schultz characterized this rule as providing a standard "which recognizes the vast diversity and other characteristics of private pension and welfare plans."[1] Those who supported the language in H.R. 16462 maintained that the common law rule of prudence, developed for personal trusts, was in certain regards inappropriate for employee benefit plans because their objectives were quite different from those of typical common law trusts.[2] Later, in the Conference Report on ERISA, Congress directed that the fiduciary standards of section 404 be interpreted "bearing in mind the special nature and purpose of employee benefit plans."[3]

The common law method of evaluating the prudence of an investment arose, in large part, from the need to resolve the basic conflict between the interests of the income beneficiary and the remainderman of a common law trust. The common law resolution consisted of giving greater weight to the interest of the remainderman; the safety of corpus was deemed more important than the generation of income. The conflict between the investment goals of the income beneficiary and the remainderman is not present in employee benefit plans. Thus, the primary rationale for judging the prudence of an investment alone, without regard to its role in the total portfolio, does not exist under ERISA.[4]

In sum, while the Department cannot give its opinion on a particular investment by a particular pension plan, it takes the position that pension investments in small or new companies are not per se violations of the prudent man rule under ERISA.

Enclosed for your information is a copy of a speech delivered by Ian Lanoff, Administrator of the Pension and Welfare Benefit Programs, before the American Bar Association. His speech outlines in further detail the Department's view.

Sincerely,

FRANCIS X. BURKHARDT,
Assistant Secretary of Labor.

CURRENT PROBLEMS UNDER ERISA

As Administrator of the Pension and Welfare Benefit Programs in the Labor Department, I oversee some of the largest financial institutions in America. The assets of private pension plans total about $200 billion, of which about $150 billion are invested in the stock market. The participants in private pension plans total about 30 million—one of the largest groups of individual stockholders.

The source of this regulatory authority over pension investments is the 1974 Pension Reform Act, known as ERISA. This law requires the Labor Department to go beyond its historic mission of providing jobs and protecting workplace standards. It requires the Department to enter an area outside of its regulatory tradition, but one so critical to the American economy.

The basic fiduciary standards in ERISA, it is important to keep in mind, are administered and enforced exclusively by the Labor Department. This is one where we do not share "dual jurisdiction" with the Internal Revenue Service. And state laws are preempted entirely by ERISA.

Within ERISA, the key provision on pension investments is Section 404. Section 404(a)(1)(B) states that a pension manager must act as "a prudent man acting in a like capacity and familiar with such matters." Section 404(a)(1)(B) also requires pension managers to diversify the investments of the plan "so as to minimize the risk of large losses."

My speech today has been drafted to respond to one of these new issues presented to the Department of Labor—the claims made by certain ERISA critics that ERISA has increased pension investments in "blue-chip" stocks and thereby deprived the nation's small companies of needed capital. It is said that because of ERISA pension investments are being concentrated in fewer and fewer stocks, while small companies are facing more and more difficulties in attracting equity investments. In response to these complaints, several Senators have proposed bills that would amend section 404 to encourage pension investments in small companies. Senators Bentsen, Nelson and McIntyre recently concluded hearings on their bills, S. 285 and S. 1745, that would partially exempt pension investments in small companies from the prudence standards in section 404 of ERISA.

I oppose these attempts to amend ERISA. Foremost amongst my reasons is the fact that the Department is strongly opposed to any legislation which weakens ERISA fiduciary standards or creates special exemptions in the law for one group or another. I oppose S. 285 and S. 1745 for two additional reasons. First, the available studies do not support these allegations about the adverse impact of ERISA on pension investments. Second, the current section 404 is sufficiently flexible to allow pension investments in small companies as part of an overall investment strategy.

1. *Factual Allegations*—I initially wish to take a brief look at the allegation that ERISA has led to more pension investments in "blue-chip" stocks and less pension investments in small companies. We have statistics on the number of different stocks held by pension plans before and after 1974—the year Congress enacted ERISA. Fortunately, a magazine called *Pension World* publishes such annual statistics for pension funds managed by banks, which manage the majority of assets held by private pension funds.

These statistics do reveal that pension investments are relatively concentrated in a few stocks. However, these statistics clearly show that the concentration of pension investments began *before* ERISA. In 1973, one year before the passage of ERISA, Senator Bentsen held hearings about the impact of institutional investors in the stock markets. There were the same complaints against concentrated investments by pension funds which are heard today with regard to ERISA.

What happened since ERISA? Between 1974 and 1975, pension investments continued to be relatively concentrated. But then, between 1975 and 1976, there appears to have been a significant move toward diversification of pension investments. In 1975, 45% of stock investments by pension plans were composed of the "Favorite Fifty" stocks. In 1976, by contrast, only 17% of stock investments by pension plans were composed of the "Favorite Fifty" stocks.

The lack of a casual connection between ERISA and pension investments in the Favorite Fifty is further demonstrated by a comparison with the investments of municipal pension funds, which are *not* regulated by ERISA. Like private funds, municipal pension funds have invested heavily in "blue-chip" stocks over the last decade. Like private pension funds, municipal pension funds reduced their stock holdings in the Favorite Fifty between 1975 and 1976.

I think it is fair to conclude that the concentration of pension investments in "blue-chip" stocks has not been caused by ERISA. The concentration of pension investments derives from a complex set of factors. These include the financial constraints on money managers, the funding objectives of pension plans, and the general conditions in the stock and bond markets. Because of changes in some of these factors, all pension funds have recently moved away from investments in the Favorite Fifty stocks.

One of the causes behind the spread of the myth about the impact of ERISA on small company investments is a survey reported by the International Foundation of Employee Benefit Plans. According to that group, 64% of surveyed pension trustees reported that as a result of ERISA, they are "less willing to invest in anything other than blue chip investments." I asked the staff to analyze the

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[1] Committee on Education and Labor, General Subcommittee on Labor, Hearings on H.R. 1045, H.R. 1046 and H.R. 16462 (1st and 2nd Sess., 1969, 1970) at 477 (hereinafter referred to as Hearings).

[2] Hearings, Richard A. Van Deuren at 159, 163–64; H. R. Lumb at 292–93, 299–300; Robert C. Tyson at 833; American Retail Foundation at 902; N.Y.S. Bar Association Tax Section at 936; American Cyanamid Co. at 302.

[3] H.R. Rep. No. 93–1280, 93d Cong., 2d Sess. 302 (1974).

[4] Note, "Fiduciary Standards and the Prudent Man Rule under the Employee Retirement Income Security Act of 1974," 88 Harv. L. Rev. 960, 967–68 (1975).

Foundation's survey. What they discovered was that the 64% figure was based on survey responses given by only 264 persons, and that not all of those were pension plan trustees. Those who were not trustees were giving their opinion on what they thought were the opinions of trustees. Also, the survey was a rather informal affair taken amongst persons attending the Foundation's regional seminars, and the Foundation has not issued any information about the amount of assets managed or the number of pension funds represented by the 264 persons. In any event, our information reveals that whatever pension managers were *saying* about the impact of ERISA, they were actually investing less in "blue-chip" stocks.

2. *Legal Analysis*—My second point covers the correct interpretation of the legal standards in section 404.

a. *Critique of Focus on Individual Security*—The supporters of the proposed amendments have argued that the prudent man standard in section 404 effectively prohibits pension investments in small companies. This argument is based on one critical assumption—that courts under section 404, like courts under the common law of trusts, will evaluate the performance of *each* security in the pension portfolio. Since small companies are riskier ventures than "blue-chip" companies, so the argument goes, pension managers will not invest in a small company that might perform poorly.

This argument is unpersuasive, however, because its critical assumption is invalid. The common law may have focused on the performance of each security in the portfolio. But section 404 is not the same as the prudent man rule of trust law. The prudent man rule of trust law requires that a trustee act as prudently as he would in his personal affairs. By contrast, section 404 requires that pension managers act as "a prudent man acting *in a like capacity and familiar with such affairs*." Under the common law of some important jurisdictions, trustees did not have the duty to diversify investments. Under section 404 of ERISA, pension managers are obligated to diversify investments so as to minimize the risk of large loss.

Similarly, the legislative history of ERISA indicates that the common law of trusts should not be mechanically applied to pension plans. The debate on the "prudent man rule" took place in 1970, when essentially the present form of section 404 was first introduced. At that time, there was considerable discussion about whether this precursor to section 404 was preferable to the prudent man rule of common law. The supporters of what became section 404 maintained that the prudent man rule of common law, developed for personal trust, was inappropriate for pension plans where objectives were quite different from those of personal trusts. Later in the Conference Report on ERISA, Congress directed that the fiduciary standards of section 404 be interpreted "bearing in mind the special nature and purpose of employee benefit plans."

The common law focus on the performance of the individual security derived largely from the need to resolve the basic conflict between the interest of the income beneficiary and the remainderman in personal trusts. The common law resolved this conflict by giving greater weight to the interest of the remainderman; it deemed the safety of the trust corpus to be more important than the generation of current gain. But this conflict between the investment goals of the income beneficiary and the remainderman is not present in pension plans. In short, the primary rationale for judging the prudence of each investment in a portfolio does not exist under ERISA.

b. *The Case for the Whole Portfolio*—It is my position, and the position of the Labor Department, that under section 404 of ERISA the prudence of any investment for a pension plan should be judged in relation to the role which the proposed investment is to play in the portfolio. Specifically, to meet the prudence requirement, in section 404, I believe that a fiduciary should consider whether a proposed investment of a pension plan is appropriate in light of:

(1) The composition of the whole pension portfolio with regard to diversification of risk;

(2) The volatility of the whole pension portfolio with regard to general movements in stock prices;

(3) The liquidity of the whole pension portfolio relative to the payment schedule for retirement benefits;

(4) The projected return of the whole pension portfolio relative to the funding objectives of the pension plan; and

(5) The prevailing and projected economic conditions of the entity in which the plan proposes to invest.

This focus on the whole pension portfolio is grounded in the language of section 404 and sound policy considerations. Again, section 404 requires every pension manager to follow the investment practices of "a prudent man acting in a like capacity and familiar with such matters." Generally, most professional money managers try to maximize the return and minimize the risk of the whole portfolio. The selection of a particular stock must fit into the investment strategy for the whole portfolio. The measurement of managerial skill must be made with reference to the investment objectives of the plan and the performance of plans having similar objectives.

Section 404 also requires that pension managers diversify their investments so as to minimize the risk of large losses. To fulfill this statutory mandate, pension managers must consider the impact of each investment on the whole pension portfolio. To reduce the overall risk of the pension portfolio, many pension managers invest in a large number of securities from different industries and regions. While some calamity might befall one industry or one region, the losses from these few securities will be offset to some degree by the gains from the remaining securities in the pension portfolio.

c. *Conclusions for Small Companies*—Once the whole portfolio is accepted as the proper focus for legal analysis, it is easy to see that pension investments in small companies are not prohibited by section 404 of ERISA. Of course, an investment in a small company may be somewhat riskier than an investment in a "blue-chip" company. But the existence of this extra risk does not necessarily lead to the conclusion that pension investment in small companies are banned by section 404. The critical question is what is the risk of an investment relative to its return. Polaroid stock was a riskier investment than General Motors stock in 1940, but Polaroid stock had a higher return over the next 30 years than General Motors stock.

The prudence of any investment by a pension fund can be determined in its relation to the overall structure of the pension portfolio and the functions and funding requirements of the pension plan. *These* are the factors to examine in determining the prudence of an investment in a small company.

For example, an investment in a small company may be appropriate for a pension plan that holds a large number of securities from different sectors of the American economy and that projects a total return sufficient to meet payment schedules over the next few years. In such a pension plan, the riskiness of the small company would be counterbalanced to a significant extent by the stability of the rest of the pension portfolio. On the other hand, an investment in a new company with a greater degree of risk may be inappropriate if the entire pension portfolio consists of a few speculative stocks and the pension plan is obligated to pay out substantial retirement benefits in the near future. In that case, the riskiness of the whole portfolio would be too high relative to the funding requirements of the pension plan.

3. *Conclusions*—In summary, the advocates of small companies have not put forward a persuasive case for amending section 404 of ERISA. The empirical data does *not* support the factual allegations that ERISA has caused a concentration of pension investments in "blue-chip" companies. A legal analysis of section 404 does *not* lead to the conclusion that ERISA prohibits pension investments in small companies. In fact, when viewed against the whole portfolio, an investment in a small company may be perfectly appropriate and proper.

ANNOUNCEMENT OF POSITION

Mr. RIEGLE. Mr. President, due to a previous and long standing commitment, I was necessarily absent Tuesday night when the final two votes of the day were taken. I wish now to state for the RECORD that had I been present, I would have voted in support of Senator METZENBAUM's motion to table the Hansen amendment. I supported the Senator from Ohio's position concerning the acquisition and use of nearby coal during the debate of the clean air amendments and continue to agree with the wisdom of the legislation then adopted by the Senate.

Further, I would have voted for passage of the Energy Conservation Act. S. 2057, which is an excellent bill and I compliment the Energy Committee and particularly Senator JOHNSTON upon their efforts.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

William L. Brown, of Wisconsin, to be U.S. marshal for the eastern district of Wisconsin for the term of 4 years vice Raymond J Howard.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Thursday, September 22, 1977, any representations or objections they may wish to present concerning the above nomination with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary:

Edward L. Shaheen, of Louisiana, to be U.S. attorney for the western district of Louisiana for the term of 4 years vice Donald E. Walter, resigned.

M. Karl Shurtliff, of Idaho, to be U.S. attorney for the district of Idaho for the term of 4 years vice Sidney E. Smith, resigned.

Anton T. Skoro, of Idaho, to be U.S. marshal for the district of Idaho for the term of 4 years vice Rex Walters, resigned.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Thursday, September 22, 1977, any representations or objections they may wish to present concerning the above nominations with a further statement whether it is their intention to appear at any hearing which may be scheduled.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there morning business? If there is no morning business, morning business is closed.

AUTHORIZATION FOR COMMITTEE ON ENERGY AND NATURAL RESOURCES TO HAVE UNTIL MIDNIGHT TO FILE A REPORT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources may have until midnight tonight to file a report.

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

TIME-LIMITATION AGREEMENT—S. 262

Mr. ROBERT C. BYRD. Mr. President, at such time as the bill S. 262, a bill to amend the Omnibus Crime Control and Safe Streets Act to authorize group life insurance programs for public safety officers, is before the Senate, there be a time limitation on that bill as follows: 2 hours on the bill, to be equally divided between Mr. EASTLAND and Mr. THURMOND; provided further that there be a time limitation on any amendment of 1 hour; a time limitation on any amendment to an amendent of 30 minutes; a time limitation on any debatable motion, appeal, or point of order, if such is submitted to the Senate for its discussion, of 20 minutes; and that the agreement be in the usual form.

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

ORDER FOR RECOGNITION OF SENATOR CLARK TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after Mr. ALLEN is recognized on tomorrow under the order previously entered, Mr. CLARK be recognized for not to exceed 15 minutes.

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

ORDER FOR RECESS UNTIL 8:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 8:45 a.m. tomorrow.

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

ORDER TO RESUME CONSIDERATION OF S. 995 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the two orders for the recognition of Senators have been completed tomorrow, the Senate resume consideration of the sex discrimination bill, S. 995.

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

COMMITTEE MEETINGS TOMORROW AND MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Committee on Finance be authorized to meet during the sessions of the Senate on tomorrow and on Monday.

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

TIME FOR ROLLCALL VOTES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be no rollcall votes prior to 12 o'clock noon tomorrow, with the exception of any vote which might be necessary to secure the establishment of a quorum, and I do not anticipate that.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that if any rollcall votes are ordered prior to 12 o'clock noon tomorrow, they occur at 12 noon tomorrow and in the sequence in which they are ordered.

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

ORDER OF BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, under the order as it now stands, on the disposition of the sex discrimination bill tomorrow, would not the legal services bill come back up automatically?

The PRESIDING OFFICER. There is no order to that effect. The order was to take up the legal services bill at the disposition of the saccharine bill.

Mr. ROBERT C. BYRD. Yes, but we then superseded that order with a request to take up the sex discrimination bill. Once that is disposed of, will not the other order come back into effect, or will it have been vitiated?

The PRESIDING OFFICER. Will the majority leader indulge the Chair just a moment?

Mr. ROBERT C. BYRD. Inasmuch as the situation tomorrow cannot be clearly ascertained at this point because of the hearings conducted by the Governmental Affairs Committee which are going on, and because certain members of that committee are involved in one or the other of the two bills I shall mention, I ask unanimous consent that upon the disposition of the sex discrimination bill tomorrow, the majority leader be authorized to proceed either to the nonunionization of the military bill or the legal services bill, whichever at that time, in the joint opinion of the distinguished minority leader and the majority leader, would appear to be the better approach and the more feasible approach, in accordance with the circumstances then obtaining.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—I think that is a good arrangement. I am perfectly willing to subscribe to it and join the majority leader in that request.

I might add, however, that after our day-long discussions on how we might proceed to the consideration of the legal services bill, I think there would be a distinct preference on this side to proceed to the legal services bill after the sex discrimination bill, only because I believe the Senators who will handle it on this side will be prepared to do that tomorrow.

I do not insist on that, by any means, but I advise the majority leader that that would appear to be more in keeping with the predictions I have made on our side for today.

Mr. ROBERT C. BYRD. Mr. President, I appreciate the statement by the distinguished minority leader and his advice, and I think his advice is something which I would need to follow to conform to the wishes of my side of the aisle. But if he will not object to this request, as he has indicated he will not, I believe that will probably be the approach that we will take on tomorrow.

Mr. BAKER. I thank the majority leader.

The PRESIDING OFFICER. Without objection, the unanimous-consent request of the Senator from West Virginia is agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. There is nothing pending before the Senate at this time.

PROHIBITION OF SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume consideration now of the sex discrimination bill.

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

The legislative clerk read as follows:

A bill (S. 995) to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

The Senate continued with the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no time be charged against that bill during the remainder of the day.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 8:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate I move, in accordance with the previous order, that the Senate stand in recess until the hour of 8:45 a.m. tomorrow.

The motion was agreed to; and at 7:13 p.m. the Senate recessed until Friday, September 16, 1977, at 8:45 a.m.

NOMINATION

Executive nomination received by the Senate September 15, 1977:

DEPARTMENT OF JUSTICE

Rafael E. Juarez, of Colorado, to be U.S. marshal for the district of Colorado for the term of 4 years, vice Doyle W. James.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 15, 1977:

NATIONAL ENDOWMENT FOR THE HUMANITIES

Joseph D. Duffey, of the District of Columbia, to be Chairman of the National Endowment for the Humanities for a term of 4 years.

DEPARTMENT OF STATE

Lowell Bruce Laingen, of Minnesota, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malta.

John Richard Burke, of Wisconsin, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Cooperative Republic of Guyana.

Marshall Darrow Shulman, of Connecticut, for the rank of Ambassador during the tenure of his service as Special Adviser to the Secretary of State for Soviet Affairs.

Edward Marks, of California, a Foreign Service officer of class 3, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea-Bissau.

Edward Marks, of California, a Foreign Service officer of class 3, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cape Verde.

Maurice Darrow Bean, of California, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Socialist Republic of the Union of Burma.

Mari-Luci Jaramillo, of New Mexico, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Honduras.

William B. Schwartz, Jr., of Georgia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to The Commonwealth of The Bahamas.

Raul H. Castro, of Arizona, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Frank H. Perez, of Virginia, for the rank of Minister during the tenure of his assignment as the State Department SALT Representative at Geneva, Switzerland.

Paul H. Boeker, of Ohio, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Bolivia.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

William P. Dixon, of Virginia, to be U.S. Alternate Executive Director of the International Bank for Reconstruciton and Development for a term of 2 years.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Charles N. Van Doren, of the District of Columbia, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

DEPARTMENT OF THE INTERIOR

Forrest J. Gerard, of Maryland, to be an Assistant Secretary of the Interior.

ACTION AGENCY

Mary Frances Cahill Leyland, of New York, to be an Assistant Director of the ACTION Agency.

Irene Tinker, of Maryland, to be an Assistant Director of the ACTION Agency.

DEPARTMENT OF JUSTICE

John H. Shenefield, of Virginia, to be an Assistant Attorney General.

Jose Antonio Canales, of Texas, to be U.S. attorney for the southern district of Texas for the term of 4 years.

Hubert H. Bryant, of Oklahoma, to be U.S. attorney for the northern district of Oklahoma for the term of 4 years.

Bernal D. Cantwell, of Kansas, to be U.S. marshal for the district of Kansas for the term of 4 years.

Carl W. Gardner, of Oklahoma, to be U.S. marshal for the northern district of Oklahoma for the term of 4 years.

COMMUNITY SERVICES ADMINISTRATION

Frank Jones, of Virginia, to be an Assistant Director of the Community Services Administration.

DEPARTMENT OF JUSTICE

James W. Moorman, of California, to be an Assistant Attorney General.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

THE JUDICIARY

Procter R. Hug, Jr., of Nevada, to be U.S. circuit judge for the ninth circuit.

HOUSE OF REPRESENTATIVES—*Thursday, September 15, 1977*

The House met at 10 o'clock a.m.

The Reverend E. Robert Jordan, pastor, Calvary Baptist Church, Lansdale, Pa., offered the following prayer:

Trust in the Lord with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge Him, and He shall direct thy paths.—Proverbs 3: 5, 6.

Our Father, we bring before Thee today our President, our Vice President, our Speaker, and Members of Congress. Help them, I pray, to love America above their lives, and to hold truth and honor above self and expediency. We ask, O Lord, in all their duties that You would direct their ways and their choices. That You would guide their lives in such a way that they would truly know Thee as Saviour and Lord, and, depending upon Thee for wisdom and strength, might make decisions and choices that would keep our country in peace until Jesus comes. In whose name we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Marks, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and a joint resolution of the House of the following titles:

On August 4, 1977:

H.R. 6884. An act to amend the Foreign Assistance Act of 1961 to authorize international security assistance programs for fiscal year 1978, to amend the Arms Export Control Act to make certain changes in the authorities of that Act, and for other purposes.

On August 5, 1977:

H.R. 6138. An act to provide employment and training opportunities for youth, and to provide for other improvements in employment and training programs; and

H.R. 7932. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1978, and for other purposes.

On August 7, 1977:

H.R. 6161. An act to amend the Clean Air Act, and for other purposes; and

H.R. 7553. An act making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1978, and for other purposes.

On August 12, 1977:

H.R. 7558. An act making appropriations for Agriculture and related agencies programs for the fiscal year ending September 30, 1978, and for other purposes.

On August 15, 1977:

H.J. Res. 372. Joint resolution to authorize the President to issue a proclamation designating the week beginning on November 20, 1977, as "National Family Week";

H.R. 1952. An act to amend the corporate name of AMVETS (American Veterans of World War II), and for other purposes;

H.R. 2563. An act for the relief of Velzora Carr;

H.R. 4991. An act to authorize appropriations for activities of the National Science Foundation, and for other purposes; and

H.R. 7589. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1978, and for other purposes.

On August 17, 1977:

H.R. 6179. An act to amend the Arms Control and Disarmament Act to authorize appropriations for fiscal year 1978, and for other purposes;

H.R. 6370. An act to authorize appropriations to the U.S. International Trade Commission, to provide for greater efficiency in the administration of the Commission, and for other purposes; and