By Mr. DELANEY (for himself, Mr. CORNELL, Mr. BIAGGI, Mr. FITHIAN, Mr. TRAXLER, Mr. OTTINGER, Mr. HANLEY, Mr. AKAKA, Mr. LAGOMARSINO, Mr. FARY, Mr. ROUSSELOT, Mr. BADHAM, Mr. CLEVELAND, Mr. DORNAN, Mr. EILBERG, Mr. MURPHY of New York, Mr. CAPUTO, Mr. GOLDWATER, Mr. RUDD, Mr. LENT, Mr. YATRON, Mr. KILDEE, Mr. MOFFETT, Mr. LUKEN, and Mr. WALGREN):

H.R. 9494. A bill to amend the Internal Revenue Code of 1954 to allow a taxpayer to deduct, or to claim a credit for, amounts paid as tuition to provide an education for himself, for his spouse, or for his dependents; to the Committee on Ways and Means.

By Mr. ERTEL (for himself, Mr. ROBERTS, Mr. FLOOD, Mr. BEILENSON, Mr. KEMP, Mr. EILBERG, Mr. LUNDINE, Mr. WALGREN, Mr. JENRETTE, Mr. MARKS, Mrs. SPELLMAN, Mr. MURTHA, Mr. GEPHARDT, Mr. EDGAR, Mr. BALDUS, Mr. CONTE, Mr. HUCKABY, Mr. EDWARDS of Oklahoma, Mr. ROE, Mr. HEFTEL, Mr. AKAKA, and Mr. FRENZEL):

H.R. 9495. A bill to amend the Flood Control Act of 1970 to provide that, in determining the need for a local flood protection project, the Secretary of the Army shall consider the impact on the economy and social well-being of the local area and certain surrounding areas if flood protection is not provided, to specify the factors to be evaluated in considering such impact, and for other purposes; to the Committee on Public Works and Transportation.

By Mrs. FENWICK (for herself, Mr. SKELTON, Mr. ROE, Mrs. SPELLMAN, Mr. DUNCAN of Oregon, and Mr. LEGGETT):

H.R. 9496. A bill to provide equitable comprehensive, and exclusive benefits to (a) persons who are disabled as a result of employment-related diseases caused by the inhalation or ingestion of asbestos, and/or the inhalation of asbestos coupled with the inhalation of cigarette tobacco smoke, (b) members of such person's household, and (c) the surviving dependents of such persons whose death was due to such disease; to the Committee on Education and Labor.

By Mr. FISHER:

H.R. 9497. A bill to amend the Internal Revenue Code to provide an exception to the recapture provisions under the investment tax credit; to the Committee on Ways and Means.

By Mr. JEFFORDS:

H.R. 9498. A bill to amend the Internal Revenue Code of 1954 with respect to the time by which employers are required to pay social security taxes and withheld income taxes; to the Committee on Ways and Means.

By Mr. JEFFORDS (for himself and Mr. LUNDINE):

H.R. 9499. A bill to provide for the timely and safe disposal of radioactive ores, minerals, and mill tailings as well as physical facilities and material wastes of all types which are produced as a result of the use of nuclear energy; jointly, to the Committees on Armed Services, Interior and Insular Affairs, International Relations, and Interstate and Foreign Commerce.

By Mr. KREBS (for himself, Mrs. LLOYD of Tennessee, Mr. WALKER, Mr. STEERS, Mr. DAN DANIEL, Mr. GILMAN, Mr. HANNAFORD, Mr. HUGHES, Mr. PRITCHARD, Mr. BEDELL, Mr. OTTINGER, Mr. BURGENER, Mr. GRASSLEY, Mr. MURPHY of Pennsylvania, Mr. MOTTL, Mr. CHARLES WILSON of Texas, Mrs. SPELLMAN, Mr. ENGLISH, and Mr. GEPHARDT):

H.R. 9500. A bill to amend the Immigration and Nationality Act to provide that before an alien who is likely to become a public charge may be admitted into the United States, such alien must have an immigration sponsor post a $5,000 bond on such immigrant's behalf, and for other purposes; to the Committee on the Judiciary.

By Mr. BAUCUS:

H.J. Res. 619. Joint resolution to express the sense of the Senate and House jointly with regard to establishment of a National Water Resources Management Policy; to the Committee on Interior and Insular Affairs.

By Mr. DICKS (for himself and Mr. BONKER):

H. Res. 823. Resolution disapproving the proposed deferral of budget authority for acquisition, construction and improvements by the U.S. Coast Guard, Department of Transportation; to the Committee on Appropriations.

By Mr. FINDLEY (for himself, Mr. MCDONALD, and Mr. TREEN):

H. Res. 824. Resolution to maximize local nighttime radio service; to the Committee on Interstate and Foreign Commerce.

By Mr. THOMPSON:

H. Res. 825. Resolution dismissing the election contest against W. Wyche Fowler, Jr.; to the Committee on House Administration.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BRODHEAD:

H.R. 9501. A bill for the relief of Bogdan Bereznicki; to the Committee on the Judiciary.

By Mr. FISHER:

H.R. 9502. A bill for the relief of Casimir Jan Kray; to the Committee on the Judiciary.

H.R. 9503. A bill for the relief of Erich Jakob, Berlin, West Germany; to the Committee on the Judiciary.

H.R. 9504. A bill for the relief of Edgar G. Anzueto, Roger M. Brooks, John M. Derrick, Louis J. Rose, Henry Hartwick, Richard T. Moore, Desmond D. Richelson, Gary H. Kirkpatrick, John H. Basemore, Dale E. Startzell, Joseph M. Wittig, and Francis D. Raley; to the Committee on the Judiciary.

## MEMORIALS

Under clause 4 of rule XXII,

277. The SPEAKER presented a memorial of the Senate of the Commonwealth of Massachusetts, relative to enforcement of the 200-mile fishing limit; to the Committee on Merchant Marine and Fisheries.

# SENATE—*Tuesday, October 11, 1977*

The Senate met at 10 a.m. and was called to order by Hon. DALE BUMPERS, a Senator from the State of Arkansas.

### PRAYER

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

Let us pray.

Lord of all power and might, the Author and Giver of all good things, graft in our hearts the love of Thy name, increase in us true religion, nourish us with all goodness that we may fitly serve Thee in this place.

May Thy spirit equip and guide the President, the Vice President, the Members of Congress, and all others who are responsible for the welfare, health, and security of the Nation. Impart to all such a sense of duty and honor which no selfish motive or moral ambiguity can corrupt or destroy.

Show us clearly what our duty is. Help us to be faithful in doing it and in the end give us hearts at peace with Thee.

We pray in the Redeemer's name. 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, D.C., October 11, 1977.*

*To the Senate:*

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DALE BUMPERS, a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
*President pro tempore.*

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

### RECOGNITION OF LEADERSHIP

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

### THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of yesterday, Monday, October 10, 1977, be dispensed with.

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

### ORDER FOR CONSIDERATION OF SENATE CONCURRENT RESOLUTION 31—AUTOMOBILE CRASH PROTECTION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the legal services legislation, the Senate proceed to the consideration of Calendar Order 446, Senate Concurrent Resolution 31, automobile crash protection.

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

### COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Trans-

portation Subcommittee of the Environment and Public Works Committee be authorized to meet during the sessions of the Senate on October 11 and 12 to conduct oversight hearings.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Nuclear Regulation Subcommittee of the Environment and Public Works Committee be authorized to meet during the session of the Senate on October 13 to conduct oversight hearings.

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

## ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I do not have any further need for my time.

Mr. BAKER. Mr. President, I have no requirement for my time under the standing order and I yield it back.

## LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1977

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1303, which the clerk will state by title.

The legislative clerk read as follows:

A bill (S. 1303) to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes.

The Senate resumed the consideration of the bill.

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

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

Mr. HELMS. Mr. President, a fundamental aspect of any free society is the ability of its citizens to defend or assert their rights before an independent and impartial judiciary.

The phrase "equal justice under the law" has a very hollow ring indeed if substantial numbers of our fellow citizens can for any reason be denied their day in court because of an inability to afford an attorney.

For some time Government and the legal profession have recognized an obligation to provide legal services to defendants in criminal proceedings who would otherwise not be able to afford a legal defense.

During the past few years many in Government have recognized a need to provide similar legal counsel in civil matters to those who otherwise would be denied many of the benefits and the protections of the American judicial process.

Since entering the Senate, I have supported, Mr. President, the principle that Government provide a means by which those who cannot afford legal counsel can indeed have their day in court.

One of the first legislative proposals I introduced, as a matter of fact, as a freshman Senator was a bill to provide legal services in civil matters for the poor. So the debate in this Chamber today and in the ensuing days, as far as the Senator from North Carolina is concerned, is not one between those who seek to assist the poor of this country in obtaining equal justice under the law and those who seek to deny them that right. I do not think, Mr. President, any Senator wants to deny that right.

The debate today is of a very different character. Mr. President, most of my career, such as it is, has been in the news business. I began as a cub reporter longer ago than I like to acknowledge. One of my first assignments was the routine one of covering city court in Raleigh, N.C. I remember the kindly old judge who presided over that court—at least I thought he was old at that time, and he was probably the ripe old age of 40—and I remember Alfonzo Lloyd, the prosecutor in that court, and I remember many conversations with the judge and with Mr. Lloyd about the whole host of defendants who would appear on Monday morning charged with various offenses growing out of celebrations over the weekend.

These defendants had no attorneys. But in the circumstances that existed in that little court, Mr. President, they really did not need an attorney because the judge and the prosecutor were not out for blood. Maybe they did not follow the judicial process all that closely, but they meted out justice. Many of the defendants went free because there was no point in convicting them and sentencing them to jail terms. Certainly there was no point in fining them because most of the defendants did not have the money to pay for the fines.

But I recall as a very young man, as a cub reporter, thinking that there ought to be a better system than this. I remember thinking what if we had a judge who was inclined to prosecute these defendants?

So this attitude, Mr. President, of wanting to see every citizen, no matter how humble, no matter how impoverished, have the assistance of legal counsel when in court has been with me for a long time.

I think most Senators feel precisely as I do—none more strongly, but perhaps equally.

In any event, the principles of equal justice under law and the right of any person to a fair and impartial determination of his claims in a court of law is strongly embraced by the vast majority of Americans.

I suspect there are very few Americans who so misunderstand the history and the purpose of this country that they would destroy these fundamentals of our heritage.

Yet, the history of the Federal Government's involvement with the delivery of legal services, first through the Office of Economic Opportunity and now through the so-called Legal Services Corporation, has been fraught with much bitterness and controversy. The reason for this controversy is very simple. Rather than limiting their activity to providing assistance with the personal and individual legal problems of the poor, the employees of the legal services program—and I would emphasize these are what we call Federal bureaucrats living at the Federal trough—these employees of the legal services program have assumed the role, and they have assumed it arrogantly, Mr. President, the role of conspicuous federally-financed advocates of political and social causes.

All across this country, under the guise of serving the poor, these taxpayer-funded social engineers have promoted militant extremism. They have promoted graduated State income tax. They have promoted student protests. They have promoted racial quotas in employment and education. They have promoted increased government welfare programs. They have promoted Indian land claims. They have promoted homosexual demands, rent strikes, and boycotts of private business.

In other words, Mr. President, these people whose salaries and expenses are paid by the American taxpayers are the intended, deliberate architects of chaos wherever they can promote it.

They have used taxpayers' money for lobbying efforts. They have used taxpayers' money for organizing special interest and pressure groups. And they have engaged, Mr. President, in class action suit after class action suit, not on behalf of the poor but to promote their own view of social "reform."

Mr. President, the demands of special interest groups regarding quotas in employment and education, abortion, the legalization of marihuana, homosexual demands, and unrestrained pornography may be protected under the first amendment, but they have no right being lobbied and promoted by taxpayer funded lawyers, who in doing so ignore the legal problems of the poor whom they are paid to represent.

There is the problem, Mr. President, another Federal program with a fancy label, but with a different potion in the bottle. Maybe some will want to challenge me on what I am saying and I will meet the challenge head on.

I have talked with members of the board of directors of the Legal Services Corporation. One of them is from my home State.

Mr. President, if Senators could hear what I have heard they would be aghast. Of course, Senators are not here and I suppose that it is assumed that this bill before us will be approved almost pro forma. But we are going to discuss it, Mr. President. We may discuss it for many days because this program with its fancy label and with all the good intentions spread out before us when it was brought into being, is a fraud. It is a fraud on the taxpayers and it is a fraud on the concept of equal justice under the law. Senators may not listen in the days to come, but it is going to be made a matter of record what this program really is and how the taxpayers' money is being wasted.

The American public resents this abuse of their hard-earned tax dollars and it is entirely proper that they do.

Mr. President, although much of the legal services activity has been concerned

with personal legal problems in such areas as housing, bankruptcy, debtor-creditor relations and family relations, a substantial amount of time and money has been spent in so-called legal activism promoting the social goals of special interest groups.

This activity under the guise of legal activism or law reform is simple, political advocacy in absolute unrestrained form. It may be carried on in the guise of litigation, but its purpose—and let us make no mistake about it—its purpose and its impact are to change and, in effect, to make law.

This activity of the legal services program amounts to nothing less than legislative activity. It is making law. It is politics in its fullest sense; and in a democracy, it is politics in its lowest sense. It is political activity even when disguised as litigation. The judicial system should be subject to the traditional checks and balances of the free political system.

It is undemocratic to give power to narrow political factions and at the same time insulate the use of this power from the restraints of free government. It is just as simple as that.

A central issue regarding this issue before us is whether the efforts for social action and social change by a narrow minority should be financed with Government money, that is to say the taxpayers' money?

There is no such thing as free money from Washington, Mr. President. It does not grow on trees here. So when we talk about Federal funds, we are not talking about any magic currency that grows on trees. We are talking about money extracted from the hard-working people of this country, who could make far better use of those funds than the Federal bureaucracy.

But that is what is happening. Using money from the taxpayers to advance the cause of one section of the population over another creates a system of new injustice. The proper forum for political questions is the political process—the constitutionally established system of checks and balances in our national and State legislatures. But the use of the judicial system and the administrative process to effect social reform makes a mockery of justice, because it makes an end run around the constitutional system of our country.

Ultimately, this practice destroys the popular consensus and support necessary for long-term reform, and indeed democratic government itself.

Mr. President, this is why, during 1973, my first year in the Senate, I strongly supported amendments to the original Legal Services Corporation bill. These amendments, which were finally adopted by Congress, sought to restrain legal services attorneys from pressuring courts to legislate rather than to adjudicate. But even if the present legal services program could be reformed to prevent these political abuses, the present approach to providing these services is deeply flawed. Essentially, the present legal services program, as is the case with so many Federal welfare programs, treats the poor clients with a patronizing approach which denies those clients the same position as the normal consumer of legal services. It thus instills an attitude of second-class citizenship.

First, the poor person seeking assistance from the legal services program does not have the freedom to choose his own attorney, as does his self-sufficient counterpart. Under the present approach, the poor client must accept whatever attorney is provided by the legal services program.

Second, the poor person seeking legal services assistance enters an attorney-client relationship which is very different from the normal relationship between attorney and client. Since the attorney and the poor client understand that the client does not control the attorney's fee, and has nowhere else to go for help, the legal services attorney tends to gain dominance in his relationship with the client. Because the attorney's fee is paid by someone other than the client, the attorney is continually faced with a potential conflict of interest situation.

Third, lawyers with a federally assured income are free to spend their time on appeals of test cases to promote issues in which they are interested. They are free to promote the national goals of special interest groups, rather than spend their time on effective representation for the poor client.

I know that we will hear pious denials of this. But any Senator who has studied this program, who has looked down beneath the veneer, is in a bad way to defend the program and these attorneys.

All right, Mr. President; some Senators may say, "What is the answer? What is the alternative?"

There is an alternative to the present system. There is an alternative which would be free of political abuses. There is an alternative which would place the poor client on the same level as any other client obtaining legal services from a private attorney. In a moment, I am going to submit a legislative proposal to create just such a new means of delivering legal services. This proposal will be in the form of an amendment. It will be, actually, a proposed substitute for the pending Legal Services Corporation bill.

This amendment would establish a small congressionally chartered corporation which would operate as both a funding and a compliance mechanism. The new corporation would transfer appropriated moneys to qualified State governments; and a State government would qualify by adopting one of three procedures which I shall discuss momentarily.

Mr. President, we talk about centralization of power in the Federal Government. I am sure there is not a Member of this body who does not go home and proclaim that he is opposed to all of the mushrooming bureaucracy. We talk about State's rights and how much better the folks back home can administer various programs if we would just take the Federal bureaucracy out of it.

That is what the people back home want to hear, and they are right. That is what they ought to have. We ought to decentralize this Federal Government. We ought to return this power now, before it completely throttles and stifles the Federal system. We have responsible State governments, and we have responsible local governments. They are more than capable of establishing and administering a responsive, efficient program for the delivery of legal services. It is time we return this ability to them.

Mr. President, under the proposal which I shall offer presently, a State government would participate in the legal services program by adopting one of the following three procedures:

First, a State could empower an existing or new State agency to disburse funds to individual attorneys representing eligible clients;

Second, it could transmit funds to the bar association with overall jurisdiction in the State, if the bar association has established a method to disburse funds to attorneys representing eligible clients, as for example, under the judicare approach; and

Third, a State could establish a method of direct payment to eligible clients or their attorneys based upon a voucher system of proof.

Within this framework, the States would have full freedom to design their own program to suit local conditions, so long as clients retain the right to obtain the individual attorney of their choice. This legislation also contains appropriate restrictions on lobbying and political activity by attorneys while engaged in activities funded by the program.

Further, this proposal includes an equitable geographic distribution of appropriated funds based upon the proportion of eligible clients in each State. The standard of eligibility set by this legislation is the same standard as that of the medicaid formula, a standard already endorsed by Congress, State legislatures, and welfare groups.

This proposal restores freedom of choice to poor people in retaining legal assistance.

Why should poor clients be denied the right to choose an attorney? Why should they be required to accept an attorney who may be more interested in a class action suit on behalf of homosexuals than he is in representing a poor client? This amendment in the nature of a substitute is client-oriented rather than attorney-oriented. And it is the poor client, the citizen without the money to hire an attorney, whose interest we presumably are trying to protect—not that of the lawyer on a Government payroll.

This amendment in the nature of a substitute provides for greater and more active participation by local bar associations. I do not know about the bar associations in the States of other Senators, but I am immensely proud of the North Carolina Bar Association. For years, the North Carolina Bar Association has taken the lead in trying to assure adequate legal representation for citizens unable to pay for it themselves. And I think that Congress will be unable to pay for it themselves. And I think that Congress will be missing a fine opportunity if we do not do everything possible to encourage even further participation by the bar association and by

the responsible attorneys in North Carolina and the other 49 States.

We should seek to involve local attorneys more intimately in the problems of the poor community, not relegate the poor to Government-paid attorneys. This amendment in the nature of a substitute will set up a sound basis for a stable, ethical attorney-client relationship.

Finally, and just as importantly, this proposal allows the peoples' representatives in the State legislatures to play a proper role in designing and implementing the program in each State.

Mr. President, the present legal services delivery system is grossly deficient and the widespread controversy surrounding it is a valid indication of that deficiency. I submit, Mr. President, that the present legal services delivery system has distorted the attorney-client relationship and has been subject to numerous political abuses in promoting the objectives of special interest groups with taxpayers' money.

The present legal services delivery system has sought, time and time again, to thrust the burden of politics upon our courts. The amendment that I shall submit momentarily will, Mr. President, go far in reforming these abuses while increasing the delivery of personal legal assistance to the poor.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President.

Mr. HELMS. Mr. President, I think I have the floor.

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

Mr. HELMS. Mr. President, without losing my right to the floor, I should like, before presenting my amendment, to yield to the distinguished Senator from California.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered. The Senator from California is recognized.

Mr. HAYAKAWA. I thank the distinguished Senator from North Carolina. I should like to make a statement on the legal services legislation before us.

Mr. President, this bill is supposed to secure rights of the poor to have legal counsel. But, actually, it threatens the right of the Congress to control the expenditure of Federal funds, the right of the taxpayers to keep public officials accountable to them, and the right of the poor to have decent, competent, responsive representation in legal matters.

When the Congress created the Legal Services Corporations in 1973, a bargain was struck, for better or worse. The Corporation came into existence but its activities were restricted in certain areas so that its grantees could not use public moneys to undermine public policy. But this bill as reported out of the Human Resources Committee of which I am a member, attempts to undo the compromises of 1973. It would lift virtually all the restrictions then imposed upon the Corporation.

The committee has knitted into this legislation more loopholes than there are in the Internal Revenue Code. And so, its handiwork will be a tissue of trouble.

Let us look at some specifics. Present law forbids the Legal Services Corporation to use Federal funds to assist clients who are poor only because they have refused to take a job. The committee has removed that stipulation altogether. This legislation would force the workers of America to pay for attorneys for persons who would rather not work. At a time when everyone is talking about welfare reform, work-fare, and job requirements for public assistance the Senate should not decide that laziness is sufficient requirement for legal aid.

Furthermore current law forbids the Legal Services Corporation and its grantees to use Federal funds in cases involving desegregation of elementary and secondary schools or to provide legal aid to dependent children under the age of 18 without parental consent or the request of a court, unless the case involves child abuse or custody proceedings, or does not involve the child's parent or guardian as a defendant. This provision was designed to keep legal services attorneys from becoming home-wreckers, turning children against their parents and overturning the authority of the family. The committee has quietly killed that provision of existing law. And, unless we reverse its decision here on the floor of the Senate, most Americans will find out about this radical threat to the integrity of the family only after it is too late to stop it.

Present law requires that a majority of the 11 Board members of the Legal Services Corporation be attorneys, and that 60 percent of the members of the boards of recipient organizations, which use Corporation funds, also be attorneys, with at least one member of each of those boards being a person eligible to receive free legal aid. The committee has changed all that too. It wants to require that the poor be represented by a poor person on the national Board of the Legal Services Corporation and that at least one-third of the local boards be composed of poor people.

I wonder how many Members of the Senate would entrust their own legal affairs to a corporation whose board was largely comprised of poor persons. No, we Senators would not want those inexperienced people running our own legal affairs. But we think they should manage the legal affairs of other poor people. Well, what is good enough for the Senate ought to be good enough for the poor; and vice versa.

If the poor had the administrative, judgmental, and professional skills necessary to administer a legal services organization, they would not be poor. It is as simple as that. They would have careers of their own in public affairs. So how can we explain the perverse insistence by the committee that at least one-third of the local legal services boards should be certifiably poor people? Does the committee not trust professional attorneys to run legal services corporations?

The answer to those questions Mr President, is not pretty. The ugly truth is that certain vested interests have a personal stake in manipulating the poor and in controlling legal services organizations. And the easiest way to exercise that control is to stack the local legal services board with poor people who lack the sophisticated training of complicated issues to understand the decisions foisted upon them by left-wing activist lawyers.

That brings us, Mr. President, to the deplorable heart of this matter: to what is the fundamental failing of this legislation.

It is not a poor people's bill. It is a lawyer's bill. It authorizes $225 million for fiscal 1978. Now, how much of that money is going to reach the poor? Why, not a cent of it! It is supposed to purchase for the poor $225 million worth of legal advice. And in the process, it will pay the salaries of thousands and thousands of lawyers and paralegal professional aides.

Nice work if you can get it, and you can get it—to paraphase the old song—if you lobby the Congress to double the Legal Services authorization. That is what this bill does. It increases the Corporation's funding from $125 million this year to $225 million next year.

At last we know what the law schools are going to do with all their surplus graduates. It is said around this town that young attorneys are a dime a dozen. But if the Senate accepts this bill, their price will rise considerably.

Of course, I have no objections to efforts by the Federal Government to stimulate the economy in order to create jobs, as long as that is done by an across-the-board tax cut for the overtaxed American worker. But if we are going to foster jobs, we should not be in the business of creating comfortably paid jobs for paper-pushing professionals. And we certainly should not attempt to camouflage the dreadful deed by pretending we are helping the poor.

Mr. NELSON. Will the Senator yield for a question?

Mr. HAYAKAWA. Certainly.

Mr. NELSON. I was listening to the Senator's language referring to comfortable paying jobs.

Mr. HAYAKAWA. Paper-pushing jobs.

Mr. NELSON. Paper-pushing jobs at comfortable salaries, was that it?

Mr. HAYAKAWA. Yes.

Mr. NELSON. Does the Senator know what the average salary is of the lawyer in the legal services program of the local staff attorney?

Mr. HAYAKAWA. I do not.

Mr. NELSON. There are clerical workers all over this building getting more money than these dedicated young men and women who went all the way through law school—clerical workers—and there are people on elevators getting almost as much.

The average salary, for the benefit of the Senator from California, of the local staff attorney is $13,248.

Mr. HAYAKAWA. That is their full salary?

Mr. NELSON. Yes. That is the average.

There is no profession in any State government, in any college, any high school, any institution in America, getting $13,248 that I have heard of.

So to suggest it is a pencil pushing, cushy job is sheer nonsense.

Mr. HAYAKAWA. I thank the Senator from Wisconsin for the correction.

Mr. HELMS. Will the Senator yield?

Mr. HAYAKAWA. Yes.

Mr. HELMS. I ask the Senator from Wisconsin, what is the salary of lawyers coming out of law school, what do they get on the average?

The Senator is talking about how low $13,000 is, what does the average lawyer upon graduating from law school receive?

Mr. NELSON. I do not know what the average is.

Mr. HELMS. I know. That figure of $13,000 is approximately the national average.

Mr. NELSON. But the lawyers checked in the city of Washington today are starting out at $24,000 and $25,000, the day they pick up their diploma.

In the Federal Government they are starting at $25,000, $26,000, $27,000, $28,000, the day they get out of law school.

Mr. HELMS. That shows how senseless the Federal Government is.

Mr. NELSON. I am talking about——

Mr. HELMS. The Senator said the Federal Government.

Mr. NELSON. How many people does the Senator have on his staff who are professionals getting $13,248?

I would like to see that.

Mr. HELMS. I do not have any just out of law school.

Mr. JAVITS. Will the Senator yield to me?

Mr. HELMS. Certainly.

Mr. JAVITS. We just took on a bright girl out of law school. She is not even admitted. We are paying her $19,000, and that is competitive with opening salaries.

Mr. HELMS. Senator is using an isolated instance, involving I am sure, a brilliant young lady.

Mr. JAVITS. Yes.

Mr. HELMS. The Senator says she is from North Carolina's law school?

Mr. JAVITS. No. She came from New York University.

Mr. HELMS. I thought the Senator said "your law school."

Mr. JAVITS. No.

Mr. HELMS. I must say that graduates from our law school are a cut above. [Laughter.]

Mr. JAVITS. I cannot accept that.

Mr. HELMS. I did not say above what. [Laughter.]

I am sure there are exceptions, but I say to the Senator that my information is that for the young people just emerging from law school. $13,000 is about it.

Mr. JAVITS. However the Senator from North Carolina feels about this, however I feel about it, I must respectfully disagree. The salary of someone emerging from law school, I would say, even in low-cost-of-living places, would be, rock bottom, a minimum of $13,000.

My impression was, without comparing it to New York or other big cities, that it would range between $15,000 and $18,000, where they are admitted to the bar.

Mr. HELMS. I admit that everything costs more in New York. That is what frightens me about going there. Garbage collectors are paid $19,000 a year.

Mr. BUMPERS. I have a son who is a third-year law student, and he costs me about $12,000 a year to keep in school. So I certainly hope he makes more than that when he gets out; otherwise, I will have to continue to subsidize him. [Laughter.]

Mr. JAVITS. I have the same situation.

Mr. HELMS. I thank the Senator from California for yielding.

Mr. HAYAKAWA. Congress is a house of law; but it is also, alas, an assembly of lawyers. Most of its Members are from the legal profession. Even so, there are a few of us who are not attorneys and who, despite that grievous handicap, have found our way here. And we therefore have a special responsibility to present a balanced view of the role of lawyers in our society. I respectfully ask my colleague to heed this assessment of the way most professionals advance their own interests through the legislative process:

> The same with lawyers. They really take care of their clients, but when those lawyers organize, get a lobbyist, those lobbyists don't care anything about clients.

Those are not my words. They were spoken by Jimmy Carter 1 year ago, at a party at Warren Beatty's house in California. Now, with the Legal Services Corporation in mind, in light of its determined efforts to expand its funding and create more jobs for more lawyers, let us carefully consider Mr. Carter's warning:

> The same with lawyers. They really take care of their clients, but when those lawyers organize, get a lobbyist, those lobbyists don't care anything about clients.

Some may contend that, without the Legal Services Corporation, the poor will have no access to our judicial system, except as helpless defendants. Nonsense! There are effective, efficient ways to provide legal aid to the poor without grossly overextending Federal agencies. But this bill does not even advert to possible alternatives. It instead would bind the hands of Congress for a full 5 years, making it almost impossible for us to improve our methods of insuring the legal rights of the needy.

At this time, above all, we should not be sinking into concrete any of the many governmental institutions designed to provide in-kind aid to the poor. Surely, every Member of the Senate is aware that the President has submitted a massive proposal to restructure welfare radically. Part of his proposal is to abolish the food stamp program, using its funding instead to provide larger cash grants to the needy. The idea behind that plan is to do away with expensive, overlapping, and duplicative programs of public assistance; to replace them with simple cash grants; and thereby to give the poor the wherewithal to attend to their own needs.

I support that general concept of replacing the maze of categorical programs with a single cash grant. I realize that my position is not the same as that of the distinguished Members of the Senate with whom I usually find myself in agreement. But I have found the welfare mess to be a hopeless tangle, providing fewer opportunities to the poor than to the well-paid professionals who live well by fighting over people's poverty with other people's money.

That includes the Legal Services Corporation. It was a disappointment to me—and I think it is a serious flaw in President Carter's welfare plan—that he has not included the Legal Services Corporation in his proposals. Let us lift the poor out of poverty—or, rather, let them lift themselves out of poverty—by giving them the cash they need to do it. And then let us get rid of all the do-gooder programs and projects that treat the poor like children.

While Congress is considering far-reaching changes in welfare, I find it incomprehensible that the Human Resources Committee would nonetheless insist upon extending the Legal Services Corporation for 5 more years. That conflicts with the administration's desire to streamline welfare. It conflicts with the public's desire to get government out of our lives. It conflicts with the desire of poor people to make their own decisions, rather than have government functionaries—yes, that means Members of Congress—running their lives for them.

This bill is designed not only to expand the legal services bureaucracy but also to entrench it so deeply that, welfare reform or no welfare reform, the administration and Congress will be unable to ever redirect that $225 million directly to the poor. Instead of guaranteeing an income for the poor, this bill guarantees the incomes of lawyers for the poor.

Perhaps Congress does not perceive a difference there, but I assure my colleagues that the poor and the taxpayers do understand it. It is the difference between a helping hand and a hustle.

Mr. President, not being a lawyer, I have to apologize for being so long-winded about this matter. But I feel very strongly that, if the Senate accepts a 5-year extension of the Legal Services Corporation, we will be like a man who has one foot in quicksand but who is too proud to admit his mistake. So he plants the other foot squarely beside his sinking limb. But in our case, it is the poor and the general public who will pay the price of our obduracy.

I therefore recommend to my colleagues that they reject the committee's bill. Let us, instead, give careful consideration to alternate means of providing legal advice to the poor; and in the process, let us remember that our solemn obligation is to help the needy, not to run their lives.

The PRESIDING OFFICER. Under the previous agreement, the Senator from North Carolina is again recognized.

Mr. HELMS. Mr. President, my remarks earlier were preliminary to the submission of an amendment in the nature of a substitute; and with the Chair's permission, I should like to defer calling up this amendment and yield to my able colleague from New York, after which I will call up my amendment.

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

Mr. JAVITS. Mr. President, I ask unanimous consent that Tim Smith, of Senator STAFFORD's staff, have the privilege of the floor during the debate on this matter.

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

Mr. JAVITS. Mr. President, as the ranking minority member of the full Committee on Human Resources, and of the Subcommittee on Employment and Poverty—which has the authorizing responsibility for the Legal Services Corporation Act and which has reported S. 1303 on behalf of the full committee—I join the Senator from Wisconsin (Mr. NELSON), our subcommittee chairman, in urging our colleagues on both sides of the aisle to approve the Legal Services Corporation Act Amendments of 1977, without amendment.

Mr. President, I have long been a strong advocate of the legal services program for the poor. In 1966, I strongly supported the addition to the Economic Opportunity Act of 1964 of section 222 (a), which required the Director to provide the poor "legal advice and representation to further the cause of justice among persons living in poverty." On May 15, 1973, I was joined by Senators NELSON, TAFT, SCHWEIKER, and BEALL, in introducing the original Legal Services Corporation Act.

The reason for my long personal identification with and advocacy of this program is that I have always believed it will help us end, in many cases, the syndrome of the poor; the wrenching, demeaning, and delibilitating cycle of poverty amid affluence that has, as one of its fundamental causes, a failure of most of the 29 million poor themselves to understand and cope with the processes of our social and economic system. Without a program of free legal services for the poor, our system of law and justice for the resolution of public or private disputes would be denied those individuals who cannot afford the legal counsel necessary to determine their rights and responsibilities.

Since then, I have advocated our legal services program as it went through and survived the storms of sometimes acrimonious debate and political controversy, finally to arrive at the point today where the U.S. Senate can demonstrate broad bipartisan support for this bill. A prodigious amount of work on the part of many dedicated individuals in recent years has resulted in many salutary developments. We have made the necessary changes; we have put professionals in charge; so that now we have a legal services program which has the enthusiastic backing of the American Bar Association and of State bar associations throughout the country.

In 1970, the President's Advisory Commission on Executive Organization indicated that the program would continue to be a subject of partisan political controversy so long as it was in the executive branch and expressed its strong belief that its retention in the Executive Office of the President was inappropriate. It was in response to those recommendations that Congress passed the Legal Services Corporation Act of 1974.

That statute created an independent corporation, outside the executive branch of Government and directly accountable to the Congress. It is governed by an 11-person Board of Directors appointed by the President and confirmed by the Senate. The Chairman is Roger Cramton, distinguished dean of the Cornell University School of Law in New York. The President of the Corporation is Thomas Ehrlich, the former dean of the Stanford Law School. The Corporation has been in existence for 2 years, and has already demonstrated the wisdom of the legislative scheme creating it. In the past 2 years, the legal services program has been stabilized and significantly improved. The Corporation provides close and careful monitoring of local programs, effective enforcement of the act and the regulations, and essential support and assistance necessary to maintain the highest quality of legal services. It does so with impressive efficiency, operating with a Washington administrative budget of less than 3 percent of the total amount appropriated by the Congress.

And, in respect of the types of cases taken by legal services lawyers, it is important to emphasize that the vast majority of cases are the unsensational civil matters encountered every day by the poor: 30 percent are family relations, 14 percent are consumer problems, 17 percent are housing complaints, and 20 percent are concerned with administrative benefits, such as social security, AFDC, SSI, and veterans benefits. Furthermore, about 85 percent of the cases are handled outside of the courts.

Some felt that we had a problem in the past with class action suits initiated by legal services lawyers. But now there are constraints on the kinds of suits which were objected to, so that class actions can be undertaken only under procedures defined in the act and according to policies established by the Board of Directors of the local program. Today class actions will be initiated, but only to make more effective use of limited resources, such as when a program is faced with repetitive litigation on behalf of individual clients and it is more efficient to bring one action on behalf of those clients.

But, Mr. President, today is not a day for recrimination—for dredging up the controversies of the past; it is a day for looking forward sanguinely to what remains to be done in the way of providing legal services for the poor of our country. While it is true we have made much progress in making meaningful for the poor the words that are etched in stone beneath the pediment of the U.S. Supreme Court building—"Equal Justice Under the Law"—some 15 million poor persons still do not have access to legal assistance.

The Legal Services Corporation has set for itself a short-term goal of providing "minimum access" to legal services—defined as two lawyers for every 10,000 poor persons—for the 29 million poor people of our country. On this basis, less than half the poor now have "minimum access" to legal services.

Put another way, we might say that the present program provides legal services to the poor at the rate of one lawyer for every 10,000 persons, which is in stark contrast to the rate for the population as a whole, to wit: 11.2 lawyers per 10,000 persons.

The inadequacy of our present efforts in this regard is further demonstrated by the fact that reliable estimates are that 23 percent of each 10,000 poor, or 2,300 persons will have need of the services of a lawyer during a given year. Is it any wonder, then, that last year the 3,000 Legal Services Corporation lawyers handled 1,250,000 cases, for an incredible average of over 400 cases per lawyer?

The Legal Services Corporation Act Amendments of 1977—S. 1303—will help us to continue our progress toward the goal of providing "Equal Justice Under the Law" for all Americans by making several much-needed modifications in existing law.

Senator NELSON has already explained each of the provisions in the bill and I do not wish to be redundant, but I would like to underscore several points.

First, the bill before us provides a $225 million authorization of appropriations to the Legal Services Corporation for fiscal year 1978 and such sums as may be necessary for each of the 4 succeeding fiscal years. The Senate has already accepted the conference report on the State, Justice, Commerce, and Judiciary appropriations bill for fiscal year 1978, which provides an appropriation of $205 million for the Corporation. On June 24 of this year, two amendments to reduce appropriations for the Corporation were rejected by a wide margin.

The purpose of the $225 million authorization is to provide the funds necessary to permit the Corporation to continue its efforts to expand legal services to areas of the country where there are none now, and to give all existing programs the capacity to offer at least a minimal level of assistance—the equivalent of 2 attorneys for 10,000 clients—to the poor people who live in their service areas. In addition, the authorization would enable the Corporation to begin to address the problems of salary comparability and additional costs of service in rural areas—problems that go beyond the minimum access plan.

Beyond fiscal year 1978, the Human Resources Committee has opted for such sums as may be necessary for the succeeding years of the authorization. It seems reasonable to expect that for fis-

cal year 1979, to complete expansion of minimum access to all areas of the country and to comply with congressional instructions dealing with salary comparability and variable costs in rural areas, an appropriation in the neighborhood of $300 million may be necessary. But the Corporation is only now beginning to make the adjustments we have requested for fiscal year 1978, and it seems premature to settle on a precise figure for 1979 until we have had an opportunity to fully assess the impact of those adjustments. Beyond 1979, it becomes much more difficult to project what kinds of increases will be necessary. Use of a "such sums" figure is not an open-ended invitation to the Corporation to come in with any numbers they like. It is a prudent approach that says that rather than fix numbers now that may be too high or too low, we want to look at a full budget justification for the succeeding fiscal years. My colleagues in the Senate should know that the Human Resources Committee, as part of its oversight functions, will be looking closely at those plans and justifications, and I am certain that our counterparts on the Appropriations Committee will be giving them even more careful scrutiny.

A 5-year authorization of the Legal Services Corporation gives the program the stability necessary for planning purposes while at the same time assuring congressional review within a reasonable period of time. When we set up the Corporation in 1974, it was reasonable to limit the authorization to 3 years. We were not certain how the Corporation would work. Its Board of Directors had not been appointed. The Corporation has been in operation now for 2 years and we have had an opportunity to measure its effectiveness. They deserve the full confidence a 5-year authorization will provide.

The second provision of S. 1303 I would like to underscore is that which requires that three of the members of the Board of Directors be eligible clients. This is an important provision and will insure that the Board be accountable and sensitive to the eligible population of poor people. Many enlightened private corporations in the United States for some time have included on their boards representatives of consumers, the public at large and, in some instances, even workers. I think this is a healthy development for our country and one that should be followed by the Legal Services Corporation. Moreover, one of the best ways I can think of for preventing the legal services program from embroiling itself in what some call the "frivolous" or "exotic" cases, is to have poor people themselves participating in the decisionmaking concerning legal services' activities. They can make significant contributions in many areas of this program.

Second, the bill before us allows the Legal Services Corporation to undertake directly, or by grant or contract, various research, training, and technical assistance activities. These provisions would make it possible to reestablish the so-called backup or support centers which were prohibited under the 1974 act. Our colleagues will recall that the so-called "Green Amendment" was a provision added on the House floor in 1973. The House and Senate conferees agreed unanimously to drop the provision. It ended up in the bill only because the President intervened, after the conference report had been filed, and insisted it be included as a condition of his signature on the bill. A lot has changed since the summer of 1974, including the fact that the House has voted overwhelmingly on three separate occasions to eliminate the restrictions imposed by the Green Amendment. If that body, the original source of the provision, is ready to eliminate it, then certainly the Senate can agree. The majority of these centers would concentrate in just one area of substantive law, such as consumer law, landlord-tenant law, or social security law, and thus provide an important source of expertise on complex legal issues. The support centers will give the Corporation the flexibility it needs, indeed is entitled to—as is any other Federal agency—to make contracts with outside groups for independent study or technical assistance.

Third, and I believe this is of the most profound significance, S. 1303 repeals the unfortunate language of section 1007(b)(7) of the 1974 act, which states that no funds may be used "to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system." I realize that this is an emotional issue for many of my colleagues, and the Senate has taken what is, in my view, some unwise positions in recent weeks. Let us be clear here, however, about what we are discussing. The prohibition in the existing statute is not restricted to busing cases. It prevents any representation on issues related to school desegregation. Even if an outside organization brings a school desegregation suit in a local community and a group of parents comes to the legal services program to ask that their interests be protected, the program may not provide representation. If parents come to a legal services program to challenge a discriminatory school policy on discipline or on special education, and that issue is tied to a pending school desegregation case, the current law might be interpreted to prevent representation. If parents come to a legal services program seeking action to improve the quality of the education their children receive, and the best solution involves desegregation, the program may not provide representation even though the remedy sought may be no more than the closing of a single school or the relocation of a planned new school.

Mr. President, the full Human Resources Committee considered this action very carefully. During our markup, I moved the amendment to repeal this section, and my amendment was accepted on a vote of 10 to 3. The arguments in favor of my amendment are most compelling, and I urge the full Senate to uphold them today.

School segregation is, at one and the same time, a means of perpetuating existing class distinctions and preventing the poor from participating in the upward mobility that supposedly is the hallmark of our social system. If poor minorities are to be expected to upgrade themselves without undue governmental involvement, the route of high-quality equal education must be open to them. Indeed, the U.S. Supreme Court has so ruled. But in many places in our land, equal access to quality education remains but an empty promise. Clearly, the poor have a constitutional right peaceably and through our system of law to undertake to change these unfortunate circumstances. The provision of existing law denies parents access to the legal system to remedy that situation. It flies in the face of the stated intent of the law and should be removed. S. 1303 would remove the obstacle that now prevents this avenue of redress.

In testimony before our subcommittee, the American Bar Association expressed its unequivocal opposition to the existing prohibition on taking desegregation cases. Llewelyn Pritchard of the ABA testified on April 25 that the prohibition on taking desegregation cases, like other prohibitions, "are a clear example of the imposition of political considerations on the practice of law * * *" He emphasized that the real issue involved here is "whether citizens who are deeply affected will have the opportunity to seek resolution through our court system."

Mr. President, information that has been received from the NAACP legal defense fund and from the Mexican-American defense fund indicates that requests for representation in school desegregation cases far exceed the number of privately funded civil rights lawyers available to provide it. And prior to the enactment of the 1974 prohibition, legal services programs had been involved in approximately 50 school desegregation cases. So the need is manifest.

I hope my colleagues in the Senate will see the wisdom of repealing this egregious prohibition and, in so doing, give poor minorities the opportunity peacefully to resolve this profoundly important issue of equal access under the law.

The final point I would like to stress, Mr. President, concerns the provisions in section 9(c) respecting organizing activities of legal services lawyers. The purpose of legal services is not the direct organization of groups, important as that objective may be. When we added that restriction to the law in 1974, we specified that it should not be interpreted so as to prohibit advice and legal assistance to eligible clients. Unfortunately, however, the language of the existing law, which prohibits efforts "to encourage" or "to assist" the organization of any group, seems to contradict that exception. Thus, we have attempted to clarify the law by eliminating the language that is causing confusion and citing specific examples in the committee report of activities considered acceptable as well as those deemed inappropriate. In general, while S. 1303 would not permit lawyers "to initiate the formation of" organizations and associations, it would

permit advice and legal assistance to eligible clients who request assistance. This is, in my opinion, a perfectly permissible first amendment right.

Mr. President, Senator NELSON has already explained at some length the other provisions in the bill we have before us. So I will conclude at this point by urging my colleagues on both sides of the aisle to support the Legal Services Corporation Amendments Act of 1977. Let us go forward from today, fully confident that the heated controversies of a bygone day are safely behind us; yet fully cognizant that obstacles remain in the road before us which impede our ability to guarantee to the poor one of the principles of our American democracy: Equal justice under the law.

Mr. President, I ask unanimous consent to have printed in the RECORD, several recent newspaper editorials on the legal services bill.

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

[From the New York Times, June 9, 1977]

LAW THAT WORKS FOR THE POOR

The Federal program of legal help for the poor has come of age. After a long and turbulent fight in Congress the program was removed from Executive control in 1974 and established as a sheltered, independent corporation. Now, three years later, there is general agreement that the experiment has worked.

The mission of the Legal Services Corporation is to provide at least minimal service to the nation's 29 million poor in their contacts with civil law. Most of the aid is undramatic and uncontroversial, affecting domestic relations, housing problems, bankruptcies and public benefit programs. When first proposed, the idea was resisted with vetoes and filibusters. Now, in tribute to the corporation's strong leadership and program, there has been no opposition to authorizing legislation in a House committee, and the American Bar Association is supporting revisions to make the program more flexible.

The bill now before the House would preserve the corporation's independence, extend its life for two more years and increase its funding from $125 million to $238 million. At present, only a small portion of the needs of the poor for legal services are thus met; most of the requested increase would go toward the goal of providing the equivalent to two full-time lawyers for every 10,000 poor people by fiscal 1979. It is a modest goal; now that we have discovered the means of achieving it, Congress should supply the authority and the funds to do so.

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[From the Washington Post, July 7, 1977]

LEGAL AID FOR THE POOR

The Legal Services Corporation, created three years ago out of the remains of the "war on poverty," is turning out to be remarkably healthy. A congressional conference committee voted last week to increase its budget by more than 60 per cent next year—surely a sign that it is doing something right. And the House, after an extensive debate, agreed to remove some of the restrictions that have limited its work. But the corporation is still restrained by other troubling limitations and the Senate ought to delete them when it gets the opportunity later this month.

The corporation, you may recall, grew out of a series of compromises. Those who believed that the government ought to make it possible for poor people to get the kind of legal services that others can buy accepted a long series of limitations on what the free services would be in order to get the bill out of Congress and past a threatened presidential veto. Several of those limitations were dropped this year by the House Judiciary Committee, but two of them were restored on the House floor and a new one added. These three, which seem particularly obnoxious to us, bar the corporation's lawyers from providing legal aid to poor people in matters concerning school desegregation, Indian rights and homosexual rights.

Underlying these restrictions is an obvious distaste of members of Congress for the substance of the right that some candidates for the corporation's assistance might want to assert. But that, it seems to us, is a strange test for Congress to apply. It is a test that says to the poor that, although they have the same rights as everyone else, they can exercise only those that Congress happens to believe in. As a matter of principle, lawyers who handle problems of the poor ought to be able to give them the same kind of help that they would give to paying clients; they ought not to be forced to say that they cannot handle a particular matter because Congress won't let them. That was the principle—despite the compromises—that lay behind the creation of the corporation three years ago, and it is one that deserves to be given its full dimensions now.

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[From the Philadelphia Inquirer, July 7, 1977]

AN IDEA THAT IS WORKING

When the House of Representatives voted recently to extend the life of the federally-funded Legal Services Corporation for another two years, the intensity of the debate was a far cry from four years ago when the quasi-public agency was approved.

Then conservative congressmen, fueled by the rhetoric of Vice President Spiro Agnew, tried to abort the independent poverty program and, failing that, attempted to cripple it with restrictive amendments.

This time around, however, the debate was bipartisan, almost serene. Restrictive amendments, for the most part, were beaten back before the bill was approved by a 2–1 margin. It now goes to the Senate, where the only controversy is whether to extend the program for two or five years.

The lowering of the decibels is a tribute to the success of the Legal Services Corporation. During the past three years, it has proven that it can provide essential legal services to the nation's poor without unduly intruding on political decisions or having political decisions unduly intrude upon it.

Nevertheless, the corporation still has far to go before it meets its mission of providing at least "minimal" legal services to the country's 29 million poor in areas such as housing, health, domestic relations and welfare.

At the present time, 16 million poor persons live in areas where no free legal services program exists. With the expected increase in funding from Congress, the corporation can expand to provide help for another six million, including 232,000 in Pennsylvania. Even this improvement must be viewed in the proper perspective. To the corporation "minimal" legal services means two lawyers for every 10,000 persons. The general population has 14 lawyers per 10,000.

In short, the corporation's goal is modest. It is, however, an important one that deserves continued support of the Congress.

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[From the Washington Star, June 22, 1977]

NO LEGAL ASSISTANCE, NO JUSTICE FOR POOR

(By Carl T. Rowan)

Why in the name of heaven should the federal government spend $217 million a year to help poor people clutter up the courts?

That's the kind of question you'll hear these days from slum landlords who don't want any barriers to evicting tenants who don't speedily cough up rent money; or merchants who don't want complications when they try to repossess the car or TV set of someone who has lost his job; or social workers who don't want government-paid lawyers meddling in their decisions as to what medical, welfare or other benefits some poor family can get.

This issue of the government providing legal assistance for the poor in civil matters will become hotter, for the Congress is in the process of deciding whether to renew the mandate of the Legal Services Corp., which expires at September's end, and whether to give it the $217 million requested.

By all the normal measurements of clout in this society, the Legal Services Corp. is an underdog. Landlords and merchants pack a far bigger wallop among our lawmakers than do the poor. And, after all, the legal services program barely survived the Nixon administration days when partisan politicking virtually froze its funding and sharply curtailed its activities. The corporation also must contend with the current "balance the budget" cries.

But someone had better realize that the Legal Services Corp. is as much a "law and order" group as the Justice Department's Law Enforcement Assistance Administration or your local sheriff's office.

You can't ask poor people, who are so tragically a part of the crime scene, to live by the law if in their days of crisis they are denied the use of the law. And we must realize that it is a crisis to be evicted and left without shelter, to lose a job because the used car you bought last week won't run, to have no money for meals because the Social Security check or the welfare payment is delayed by bureaucratic blundering.

It was some 70 years ago that the famous legal scholar Roscoe Pound declared that "justice is to be done equally to rich and to poor." We never came close to that goal until 1974 when Congress created and funded the Legal Services Corp. as a private, nonprofit successor to the Office of Legal Services which began as part of the Office of Economic Opportunity.

If we are to maintain respect for the law, Congress must continue the Corporation and give it the piddling budget it requests. That will provide only two lawyers or para-professionals for every 10,000 poor persons in America (there are 14 attorneys per 10,000 persons in the general population).

A recent study by the Bureau of Social Science Research found that 23 per cent, or about 7 million of the nation's 29 million poor persons, face civil legal problems each year. Our government legal services programs can handle only about a million cases a year.

For the other 6 million, says Thomas Ehrlich, president of the Legal Services Corp., "justice is beyond reach."

This increasingly enlightened society long ago accepted the obligation to provide a decent education for all its citizens. The Congress has set a goal of decent housing for all Americans, and is sure to say that we are all entitled to reasonable medical care.

Ehrlich now asks you and me to agree that "decent legal care is an inherent right of every American." I do agree with Ehrlich that, unless the poorest Americans can use the law, then the rights we boast about become a sham.

And, as Ehrlich says, we cannot tolerate such a sham "without betraying our principles of government and threatening the order of our society."

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[From the Los Angeles Times, June 8, 1977]

POVERTY LAW: UNSHACKLING AN AGENCY

Opportunities to improve and enlarge government-funded legal services for the poor

will occur this week in Washington as well as in Sacramento.

The most crucial votes will come in the House of Representatives, where there will be decisions concerning legislation to extend the Legal Services Corp., for two more years, to increase the corporation's funding and to eliminate a number of the unwelcome restrictions placed on its work when it was established in 1974.

We have already expressed our support for legislation coming to a vote Thursday in the Senate Finance Committe of the California Legislature. SB 997 would provide for the first time sorely needed state money to add to the federal funds for poverty-law services in the state. The bill would authorize $6.5 million.

The Legal Services Corp. in Washington, established as an independent, federally funded agency in 1974, has proved its effectiveness in its first two years of operation. It has also proved that the need if far greater than anticipated, and that more money is required.

Legislation coming to the floor of the House would extend the corporation for an additional two years while increasing its appropriation from the present level of $125 million a year to $217.1 million for the fiscal year commencing in October.

The increased support is, we believe, justified. So are the reforms embodied in the new authorization bill.

Most of the reforms would, as a spokesman for the American Bar Assn. said, "unshackle" the corporation from unreasonable and unnecessary restrictions imposed by opponents of poverty law when the original law was adopted.

Among the significant changes would be the authorization for the first time for poverty-law agencies to accept desegregation cases, broadened authority to intervene in juvenile-law cases, the elimination of restrictions on how the law agencies may use private funds, and the authority to handle cases related to military service—a change made urgent by the problems created for many poor persons by their military discharges. The new law would also do away with restrictions on the use of existing back-up poverty-law centers for research, training and technical assistance.

But the new authorization bill respects the fundamentals of the original bill. It would prohibit the use of the funds for adult criminal cases. It would limit the role that poverty-law agencies can play in organizing communities or special-interest groups.

The new legislation is better than the 1974 legislation, the funding level more appropriate to the need. The bills deserve support.

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[From the Miami News, June 23, 1977]

LEGAL AID FOR POOR

With the U.S. Supreme Court ripping at poor people through unwise abortion and welfare decisions, it can be hoped that lawmakers will not further add to their plight by sabotaging the independence and funding of the 3-year-old Legal Services Corp.

Equal justice under the law is more slogan than reality to too many Americans now. And lessening of the corporation's independent status, subjecting it to partisan political considerations, would mean even less effective legal attention for the poor who desperately need help with problems involving evictions, bankruptcies, job discrimination, housing and other civil matters. Even at the proposed funding level, $217 million, the corporation can meet only 15 per cent of the legal needs of the poor.

To Americans in middle and high income brackets, a legal problem is usually nothing more than an inconvenience. But to a poor person, any legal problem quickly can reach crisis proportions. Consider a government foul-up with administrative benefits—a poor family could be put at the instance mercy of a slum landlord. The poor are particularly vulnerable to consumer fraud. The repossession of an automobile can mean no transportation, and consequently no job or food for the table.

On any priority list in Washington, the Legal Services Corp. and the good work it is doing must rank high. To respect the law, Americans must have the opportunity to be served by it. Congress ought to be eager to extend the corporation's life, protect its structure and increase its budget.

Mr. JAVITS. Mr. President, it is my profound belief, based upon 11 years of experience, that of all the antipoverty programs we have developed, the one which helps most in respect of an effort to redeem the poor from that psychology which is called the poverty syndrome is the legal services effort, now incorporated in the highly professional Legal Services Corporation.

Mr. President, the amount of effort which has gone into the fashioning of this program is unusual for a program its size but well worthy of it, because of the effect which it has had in the field.

I am sure these figures have been given before, Mr. President, but I emphasize that 3,000 lawyers in the program are in 300 local programs which are essentially bar association programs, now strictly professional.

The lawyers have handled 1,250,000 cases, which are 400 cases per lawyer, with 81 percent routine civil matters; 39 percent family relations; 14 percent consumers; 17 percent housing; and 20 percent various types of governmental problems, the aged and the other, AFDC mothers, and so on; and 85 percent of the cases handled outside of court through negotiations and consultations.

Mr. President, as a practicing lawyer myself for many years, this is a most extraordinary program, and an unbelievable caseload of 400 ongoing cases per lawyer, with one lawyer for every 10,000 in the poverty classification.

I emphasize the poverty classification in this case is the true poor, that is, those who might be working and also might be working poor and, after all, that is what we want to encourage not discourage. As a matter of fact, it is the working poor for whom this program is uniquely apportioned to help them move out of the poverty cycle—and I use that in a different sense and a different word than "syndrome."

One of the things which have now been found in respect to poverty is that people can move and do in very large numbers move into and out of poverty under economic conditions and different personal conditions, and the legal services program, therefore, maintains their relationship to the social order in which they best fit in a very unique way, notwithstanding that upon occasion they have to enter into welfare payments or other aspects of the poverty cycle. So, Mr. President, I deeply believe this is the way to proceed.

Only one other question I would like to deal with, and that is the length of time of the statute.

We felt by now enough experience had been gained in the operation of the Legal Services Corporation so that we could give it a life which would encourage young lawyers, who work for very little, as Senator NELSON has just pointed out, to embrace it as an early career with some assurance it will not be in jeopardy every short period of time, as it has been before.

So we believe this represents a recognition that the program has come of age and, of course, we control the appropriations every year so that it is by no means beyond the control of Congress.

In addition, this is a program which can engender controversy we all understand that—they are litigated cases involving the rights of people, and all the more reason for settling, at least, the proposition that people shall have a right to get into court, whatever the court may do with their cases once they are before the body which can do justice.

For all of these reasons, we, in the Committee on Human Resources, consider the 5-year extension now under the circumstances, and now having had very considerable experience both with the program and the method of its administration, to be the appropriate time and, hence, incorporated that in the bill.

I thank my colleague for yielding.

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

Mr. JAVITS. Yes, happily. Does the Senator wish the floor? I am ready to yield.

The PRESIDING OFFICER. The Chair would have no objection except to remind the Senator that Senator HELMS still has the right to the floor.

Mr. JAVITS. I ask unanimous consent that I may yield the floor and other Senators may be recognized.

Mr. HATCH. I will yield to Senator HELMS if he wishes.

The PRESIDING OFFICER. The Senator from Utah.

UP AMENDMENT NO. 915

Mr. HATCH. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 915.

Mr. HATCH. 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, line 11, strike all through line 14 and insert in lieu thereof the following:

"(b) Whenever a member of Congress makes a written request for documents in the possession or subject to the control of the Corporation, the Corporation shall, within 10 days after the date of receipt of such request, submit such document (or copies thereof) to such member of Congress. If the Corporation does not have any such documents in its possession, or the Corporation (for good cause) cannot make the requested documents available within the 10 day period, it shall so notify such member of

Congress within such 10 day period. Any such notice shall state the anticipated date by which such documents will be obtained and submitted to such member of Congress, or a statement as to the reasons why such such documents are not in the possession of the Corporation, and information as to where such documents are located. This paragraph shall not be deemed to restrict any other authority of either House of Congress, or any committee or subcommittee thereof, to obtain documents from any Federal agency, department, or entity. For purposes of this paragraph, the term "document" means any book, paper, correspondence, memorandum, or other record, including a copy of any of the foregoing."

Mr. HATCH. Briefly, my amendment does two things: First, it would strike the language in S. 1303, the Legal Services Corporation Act amendments, which would allow Government-funded legal service centers to use private funds to engage in proscribed activities and second, it would provide for greater accountability by the Corporation to Members of Congress.

Currently, Government-funded centers may not spend money for union-oriented advocacy, elementary and secondary school desegregation litigation, or abortion cases. As it now stands, S. 1303 without my amendment would allow these centers to spend freely for these purposes, so long as their expenditures did not exceed the amount of private contributions.

The system would work like this: Assume that a hypothetical Government legal services center received $500,000 in Federal funds and $500,000 from private foundations. Assume, further, that it required its full $1 million funding for its existing level consumer-oriented activities. Under S. 1303, if the Federal Government contributed an extra $500,000 to that center, it would be free to take that money and use it for proabortion litigation, among other things, or, in other words, proscribed litigation.

When challenged that its activities were in violation of the intent of Congress as expressed in section 1007(b)(8) of the Legal Services Act, the center could simply reply that it was the private funds, rather than the Government appropriations, which were being used to fund the abortion litigation. In effect, the Government would have displaced private money for the very purposes which we have prohibited.

If we wish the Federal Government to spend enormous amounts of money in order to defeat the Hyde amendment abortion language—if we wish Federal funds to be used for training programs for the purpose of advocating or encouraging strikes, boycotts, and picketing—if we wish the use of large amounts of Federal funds for the purpose of school busing cases—then we should make our intention manifest to the American people through an up-or-down vote on those issues. I feel it is unfair to the American people to allow their funds to be used surreptitiously for the very purposes which we have assured them are not fundable under the provisions of the act.

Mr. President, this part of my amendment was accepted without objection by the House. I hope the Senate committee will be willing to accept this amendment also.

The second part of my amendment provides for greater accountability by the Corporation to legitimate requests of the Congress.

It has come to my attention that several Senators have had difficulty getting information from the Corporation which I must stress is only by law accountable to the Congress. If we are to keep adequate tabs on the "goings-on" of the Corporation—which is essential, because of the lack of Human Resources oversight—we must have a responsive Corporation willing and able to do what it can to answer the legitimate inquiries of the Congress. What I am suggesting here is not new or novel—in fact it tracts some of the concepts this body has previously agreed to in several reorganization bills.

This portion of my amendment will in large measure insure that the Corporation will be called to task to answer any congressional matter which will shed greater light on its activities in behalf of the public interest.

In other words, what I am asking here is that the Corporation be proscribed, even with the use of private funds, from doing that which it is proscribed from doing with the use of public funds, and that it be responsive to Members of Congress.

There have been indications by colleagues to me that they have made requests of the Corporation and these requests have not been fulfilled, requests for information, that is. I think that is abominable, because it is our responsibility as Members of the Senate and of the Congress to oversee and make sure that this particular organization, among others, is not acting outside the scope of its legislative priorities.

I think that these are very reasonable requests. I think the amendment is a reasonable amendment. If the minority and majority floor leaders are unwilling to take the amendment then I would ask for the yeas and nays.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am delighted to yield.

Mr. NELSON. We had raised this question about requests for information by Members of Congress, and the Corporation says they respond any time there is a request.

Does the Senator have a specific example of a request that he has made to the Corporation for information that they declined to respond to?

Mr. HATCH. I have only examples of colleagues. Senator MCCLURE indicated such.

Mr. NELSON. I did not hear that. What was his request that was not responded to?

Mr. HATCH. I am not sure what it was. But he claimed he was not responded to. And there may be others. I am not sure of them.

I want to make sure, regardless of whether that is so or not, that they are responsive and that we get reasonably immediate answers to any request that we make that has to do with the oversight privileges of Congress.

Mr. NELSON. But that part puzzles me about this. In our management of this legislation I do not recall any documentation of requests from Congress that the Corporation refused to respond to. That does not mean there were not some because there are 435 Members of the House of Representatives and we have not queried them, and there may be Members here who have made such requests. The Corporation's position is that they respond to the requests they get.

Mr. HATCH. I understand. What I want to do is make sure that they do. As the Senator knows, we have not exercised oversight over this Legal Services Corporation nor have we held committee hearings to hear of complaints and other problems, some of which are not raised by this amendment, of course. But I think it is just a reasonable request, especially since really they are only responsible to Congress under the terms of the act. So I would think that that is reasonable. I also think the first part of that amendment is reasonable, because why should we allow them to do with private funds that which they cannot do with public funds. I think we should, it seems to me, proscribe what this Congress has proscribed in the past even for private funds so that we do not have a manipulation with Federal funds or with public funds.

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

Mr. HATCH. I am delighted to yield.

Mr. JAVITS. I will certainly consider the Senator's effort to strike. Frankly, I do not know why the Senator complicated the effort to strike with this insertion. The striking has nothing to do with this insertion whatever. I would strongly suggest that the two matters be separated. I think they are separable anyhow.

But what I wish to ask the Senator is this about this particular amendment. This is generic. It could apply and should apply, if that is the way we are going to go, to every agency of Government. There is no reason why we have to pick the Legal Services Corporation, because we only do something like this in response to some kind of a complaint. Though we have not had, directly and currently with the consideration of this legislation, oversight hearings on the Legal Services Corporation, all of us are in the complaint receiving business. And I agree with Senator NELSON. I have heard absolutely nothing that makes it appropriate to pick out the Legal Services Corporation and impose this requirement respecting them as compared with every other agency of Government.

It seems to me to be completely discriminatory. Therefore, I oppose it because I see no reason for setting this agency up as an object of some kind of mandate which we impose on no other agency. This is very rarely a problem anyhow. I mean, Government agencies generally do not withhold from Members of Congress requests for information. I see no reason for picking out the Legal Services Corporation, especially in view of their assertion that they are very

responsive. If we incorporate this in the statute, there is no reason why we should not incorporate it for every agency of Government.

Mr. HATCH. To answer the comments of the distinguished Senator from New York, and they are appropriate and very good comments as usual, both of the floor leaders are men for whom I have inestimable respect.

I might mention that another complaint that was received was from Senator HARRY BYRD, the distinguished Senator from Virginia, who requested information from the Corporation and it was not provided.

It is not difficult for me to see why the distinguished members of the Human Resources Committee upon which I sit have not received or do not know about complaints about failure to receive information from the Legal Services Corporation, because we have not held any oversight hearings. We have not provided an opportunity for complaints to be heard by the Human Resources Committee or the Subcommittee on Employment.

Until we do I do not think we are going to find all of the complaints that people have concerning the Legal Services Corporation in this country. I might also add, although I personally feel there is much good that can be done by Legal Services Corporation and personally do not have any desire to see it destroyed or emasculated, on the other hand, I do think that it has been wrong that we have not held oversight hearings, that we have not listened to the complaints against the Corporation so that we can correct any inequities or any improprieties or any valid complaint that may be had.

I might mention, also, in that regard and with regard to the other point that the Senator raised, it is not unusual for the Senate and certainly Congress to require what we have requested here and that is responsibility to Congress.

Let me just give the Senator three perfect illustrations: The regulative reform bills for the Civil Aeronautics Board, the Federal Trade Commission, and the Federal Aviation Agency, all have similar provisions in them that require those agencies to be responsive to Members of Congress.

I think that it is the very least that we should require of the Legal Services Corporation, especially in the light of the notoriety and the controversy that has surrounded it, maybe unfortunately so, because as a result of a number of specific problems which probably make up very little in the overall scope and work of the Legal Services Corporation.

We have had a lot of fuss raised and probably had we held oversight hearings, had we had responsiveness to the Members of Congress, had we known what was going on, and had we been able to make suggestions and corrections to the legislation pertaining to the Legal Services Corporation we would not be in the position we are in today where in the Chamber I have to file an amendment that will give us those rights.

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

Mr. HATCH. I am delighted to yield.

Mr. JAVITS. I cannot agree with the Senator less when he says that oversight hearings are necessary to discover the complaint. We get legions of complaints every day which we run down and investigate, and I have not had a single one and I do not think any other Member has, as far as I know. I wonder whether the Senator himself has had any.

Mr. HATCH. Yes, I have.

Mr. JAVITS. The Senator speaks of Senator HARRY BYRD. We will ask Senator BYRD what is his complaint and whether or not information has been withheld. Remember one thing. These are lawyers and even though they are poor, they are dealing with clients and another thing that would concern me about this amendment is the client's privilege.

A Congressman in a local area might very well want to find out something very personal about an individual poor constituent. It is a very, very serious question to me as to whether the poor person thereby gives up the privilege between himself and any lawyer, because he is poor.

So this is by no means just to be swallowed whole, and I would want to examine these precedents that the Senator mentioned with respect to the CAB and this other agency compared to the legion of agencies which we have in the Federal Government.

As I say, I think this is a very separate question, especially involving the question of privilege.

Will the Senator tell me whether he intends this amendment to include privileged information between lawyer and client if it is requested by a Congressman?

(Mr. GLENN assumed the chair as Presiding Officer.)

Mr. HATCH. I will be happy to answer that question. I do not see anything in this amendment that would require a confidential communication between attorney and client to be divulged to any Member of Congress. I think that would be beyond the scope of the requirement. The Legal Services Corporation is bound by the same code of ethics as any member of the bar, any member of the American Bar Association. In fact, I would affirm very strongly that this amendment has no bearing upon confidential communications and privileged communications between the attorney and the client, albeit the attorney is sponsored and paid for by Legal Services Corporation, as well as in some cases private money.

The point I am making is, I can tell you exactly what Senator BYRD reported to me his complaint was. He asked for a copy of the clearinghouse review materials, and they were denied to him, as far as I know. It would have been very simple for them to have provided them. It did not have anything to do with privileged or confidential communications. But they were denied.

I do not know what the complaints of Senator MCCLURE are, but I have heard that he has made similar requests and has not received the courtesy of answers.

Mr. JAVITS. Have you investigated those requests?

Mr. HATCH. No.

Mr. JAVITS. Well, I think that is certainly a very elementary thing to do.

Mr. HATCH. I would like to do so, as a member of the Employment Subcommittee. By having oversight hearings, and by having Senators come in and making those complaints known, I think we could improve the legislation. As the Senator knows, we are all very busy here in the Senate, and I do not have time to spend going around investigating complaints by individual Senators. These two I have only heard of this morning. I am sure there are probably others that can be brought forward.

I believe this measure would be vastly improved by providing that this corporation, which is funded as a result of legislation passed by this body, would have to be communicative with this body, and be required to respond to requests.

Mr. JAVITS. This is like any other legislation voted by this august body; there is no reason for picking them out of the hat and implying they are not responsive. The Senator did not even ask them about these particular matters that came to his attention. That seems to me to be pretty elementary.

Mr. HATCH. I heard about them this morning.

Mr. JAVITS. Well, then, let us ask and find out from the Legal Services Corporation.

Mr. HATCH. I will be very happy if the Senate will recommit this measure and go back and hold oversight hearings. I would be very happy; I would suggest we do that. In fact, I would also say that since this particular bill involves pure law, the practice of law, the ethics of law, legal cases, litigation, and in fact we would all be hard pressed to say that it does not involve just law across the board, I would suggest that we refer it to the Committee on the Judiciary for oversight, so that we can look at it from the auspices of that very special committee. I would like to see both committees look at it.

Mr. NELSON. Mr. President, may I comment at that point?

Mr. HATCH. I would be delighted.

Mr. JAVITS. I was just going to say in response, Mr. President, that this is the first time I have heard the Senator ask for oversight hearings. I am the ranking Republican member and did not hear about it before this program expired a week ago. This is a pretty late date to refer it back to the original committee which reported out the bill, to say nothing of the Judiciary Committee.

Mr. HATCH. Mr. President, I would just add that it is in my minority views, and I do not know of any way that I can better raise the objection than by taking the time to write minority views which are supposed be read by every member of the committee and every Senator on this floor. I have already requested it, and that request has not been complied with. Maybe we will find that this interests only 10 percent of the people. That may be so, but there is nothing wrong in us requiring oversight, and requiring the Legal Services Corporation to be responsive to Members of Congress. I think it is essential to do so, especially in an area where we have had serious criticisms,

such as the one I raised yesterday on the floor of the Senate.

I know that the Senator from New York is one of the busier Senators, and it is not difficult for me to understand why he might have missed that minority statement, because he is extremely busy and does a tremendous job in the Senate. But I am very upset about it; I think we ought to have the right for other Senators to come in, in oversight hearings, and make any comments along with anyone else in our society who is responsible; and I do not think we have had that here.

If we do it, I think we will come up with better legislation, stifle future controversy, and maybe allow the Legal Services Corporation to do that for which it was originally constituted, and for which the Senator from New York fought, and I respect him for it.

Mr. JAVITS. Mr. President, there are 3,000 lawyers handling this situation now. We cannot hang up this whole program simply on that account, in my judgment. I can understand the Senator wanting it, but he does not want action on the bill. I cannot understand our going that route when this bill is pending before us on the Senate floor.

Mr. HATCH. Mr. President, if I may say this, then I will be delighted to yield to the distinguished Senator from Wisconsin: I think that when you have 3,000 lawyers in a society that have come in and asked for an appropriations increase of almost double what it was last year, based upon an inflated number of poor people in our society—29 million poor—when you and I and everyone else knows when you take transfer payments into consideration the number is not nearly that large.

Mr. JAVITS. I thoroughly disagree with you. There are 29 million poor people in this country.

Mr. HATCH. Then you are disagreeing with the Congressional Budget Office.

Mr. JAVITS. That may well be, but nevertheless I disagree.

Mr. HATCH. Of course, we may have reasonable disagreements here on the floor of the Senate, for which we respect each other. I respect the Senator and I know he respects me. I appreciate the courtesies the Senator has extended to me, as ranking minority member of the Committee on Human Resources, and the great leadership he provides.

But that still does not say we could not have a couple weeks of hearings, so that those who have serious questions about the Legal Services Corporation could bring them forth, we could get them out of the way, and make this a better piece of legislation.

I am glad to yield now to the Senator from Wisconsin.

Mr. JAVITS. We had hearings on this bill. We put them in the RECORD. We had a couple of days of hearings.

Well, go ahead.

Mr. HATCH. You had people testify for the bill. I remember Mr. Erlichman.

Mr. JAVITS. And against it.

Mr. HATCH. They were already against the bill before they came in.

Mr. NELSON. May I respond to that?

Mr. HATCH. I am trying to yield to the Senator from Wisconsin.

Mr. NELSON. As to the Senator's criticisms concerning inadequate oversight, the responsibility falls mostly on my shoulders, in that I am chairman of the Subcommittee on Employment, Poverty, and Migratory Labor, although some responsibility falls on the ranking minority member as well.

Just so the record will be clear, when the distinguished Senator from Utah refers to Members of Congress not having an opportunity to testify, I am sure the Senator knows that any Member of Congress is welcome to appear before a committee to testify on all subjects. I have never heard of any Member of Congress ever being denied the opportunity to testify before a committee on a pending issue in all my 14 years here in the Senate.

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

Mr. NELSON. Yes.

Mr. HATCH. What about my request of the minority leader that we want oversight hearings? What about my request to the Committee on the Judiciary, and the request of the distinguished chairman of the Judiciary Committee, Mr. EASTLAND, that this matter be referred to the Judiciary Committee?

Mr. NELSON. Let us respond to those one at a time.

No. 1, the jurisdiction over the Legal Services Act has been in the Human Resources Committee from the day the act was created. Some Members challenged the committee's jurisdiction over the Legal Services Corporation.

Mr. HATCH. I challenged it.

Mr. NELSON. It was challenged, and the challenge was defeated.

Then furthermore, I would like to point out to the Senator that in the Reorganization Act approved by the Senate earlier this year—Senate Resolution 4—the jurisdiction over the Legal Services Corporation was placed in the Human Resources Committee.

That is where the jurisdiction is, so there is not much point in referring it to the Judiciary Committee, because it would not have jurisdiction. As to the third point——

Mr. HATCH. Will the Senator yield on that?

Mr. NELSON. Yes.

Mr. HATCH. In the House, as the Senator knows, the jurisdiction is in the Committee on the Judiciary, where it rightly belongs. I contend, since it has to do with the practice of law and all things that relate thereto, it should be referred to the Committee on the Judiciary. I understand that it is presently lodged in the Committee on Human Resources, and I think it is improper for it to be there.

Mr. NELSON. I understand the Senator's viewpoint. What I am saying is that in the Senate, when the Legal Services Act was created, jurisdiction was given to the Committee on Labor and Public Welfare, now the Committee on Human Resources. It has been there for 10 years.

This year, when the Senate acted again in the Reorganization Act, jurisdiction was maintained in the Committee on Human Resources. I understand that the Senator believes it ought to be elsewhere. But that is irrelevant in terms of what we are dealing with now. It is not there.

When it becomes, if it ever does, the jurisdiction of the Committee on the Judiciary, that is another matter.

Mr. HATCH. Will the Senator yield on that?

Mr. NELSON. Yes.

Mr. HATCH. As the Senator knows, this is my first year in the U.S. Senate and I just arrived here on January 4, so I have not been able to make the request before now, but this legislation involves an authorization for 5 years into the future, without oversight hearings, as I understand it.

Mr. NELSON. I missed that. I am sorry.

Mr. HATCH. This legislation—I am saying that I was not here until this year. This is the first opportunity I have had to raise the issue. It is my suggestion that the Judiciary Committee, at the very least, have joint responsibility for the Legal Services Corporation so we can have oversight hearings, not just from the legal standpoint, not just from the human resources standpoint, especially where we have legislation that will authorize the national Legal Services Corporation to act for an additional 5 years. Without oversight hearings, I think that is terrible.

Mr. NELSON. Let me say to the distinguished Senator from Utah that it may very well be that it could be suggested that there have been inadequate oversight hearings, even though such oversight is my responsibility as chairman of the Employment Subcommittee, and has been since 1969.

Mr. HATCH. If the Senator will yield on that, I do not want to have this appear as though I am speaking harshly toward the distinguished chairman of this subcommittee, the Senator from Wisconsin. All I am saying is that, until this year, maybe it has not been raised, but I have raised it. Perhaps it has not been brought to the Senator's attention.

I do realize that the Senator certainly tries to fulfill his responsibilities as the chairman of that subcommittee. But I am suggesting here that it would have been much better, and it would be much better right now, if we would have oversight hearing that will enable people to come in and voice their complaints to these responsible people, and fellow Senators, and go into the complaints that have been made about the Legal Services Corporation, not only by the Committee on the Judiciary—I would say primarily by Judiciary.

Mr. NELSON. Let me respond by saying that I do not quarrel with what I understand to be the suggestion, if not the flat assertion, of the Senator from Utah that the subcommittee's oversight hearings on legal services have not been adequate. I, in fact, do not think they have been. Let me tell the Senator what the problem is.

If the Senator from Utah would like to have a meeting of the Subcommittee on Employment, Poverty, and Migratory Labor and assure the presence of all the Republicans, and I assure the presence of all the Democrats, and further let us

divide up the United States, let us see how many are willing to commit themselves to 6 or 7 days of field hearings out in the countryside to get the kind of information the Senator would like to have. I think he will find that kind of thing is very difficult. I understand that.

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

Mr. NELSON. Yes.

Mr. HATCH. I should be more than happy, since I am making this suggestion, to be one of those who would put forth an extra effort to attend those hearings if the Senator will join with me in recommitting this to the committee and, in committing it, at the very least, give joint responsibility to the Judiciary Committee for hearings. The Senator has admitted that we have not had proper oversight hearings.

Mr. NELSON. I do not like the implication of the suggestion that they might have been improper. All I say is that I have never served on any committee in which I would be able to stand up and flatly assert that adequate or ideal, or what have you, oversight hearings have been conducted on any program. I have conducted them for years on the poverty program. I have gone out into the States; I have gone to Texas; I have gone to California; I have gone to my State; I have sent people around the country. I still feel that they are not adequate. We do not have the resources to do that.

Mr. HATCH. If the Senator will yield.

Mr. NELSON. Let me finish on this.

The Senator has suggested and stated that Members of Congress have not been heard from. Notice of the hearings—and there were 2 days of hearings—was in the CONGRESSIONAL RECORD. All 535 Members of Congress could have appeared and, in past years, in fact, we have had testimony from Members of the House and Members of the Senate. This year, so far as I know, not a single Member asked to appear, to make suggestions or complaints.

I suggest to the Senator that a likely reason for this is that, now that we have a Legal Services Corporation in place and operating, it is doing very well and the complaints that used to be made against the legal services operation are not occurring with either the intensity or the numbers they used to because the legal services program has been vastly improved.

But, as to the oversight, we scoured the countryside to find out who come in to complain about the program. We found one. We sought them out—the American Farm Bureau.

We asked them to appear, because they are critical of the program. So we invited them to appear to testify. But they refused to come and testify. Rather, they submitted a statement for the hearing record. The National Clients Council, the National Legal Aid and Defender Association, the Legal Services Corporation, and the American Bar Association all testified. In addition, testimony was received for the record from the California legal assistance program. No Members of Congress appeared.

After all, the program has been around for over 10 years. It has been criticized. Many of the criticisms are legitimate. It has been attacked. President Nixon wanted to destroy it. Amendments have been offered. It has been refined. It has been debated back and forth. The reason we did not hear many complaints this year, I suggest to the Senator, is that there were not very many complaints to be made.

Now, I have a whole series of hearings that I must try to get conducted after we get out of session, so I do not want to make a specific commitment unless I have an opening sometime about December 24. I shall be glad to have the Senator come as a witness that day.

Mr. HATCH. I should be happy to be there.

Mr. NELSON. I have some hearings on a whole series of questions in the Small Business Committee, the Finance Committee, and the Human Resources Committee that I am attempting to get done this year. One of them involves Human Resources Committee hearings on welfare reform. One of them involves Social Security Subcommittee hearings on bringing Federal, State, and local employees within the social security program, and another concerns the social security disability insurance program. I am also intending to hold Human Resources Committee hearings on the Community Services Administration.

I am perfectly willing to set up some further oversight hearings, because I think they are always valuable. I say to the Senator, we shall pick a date and if I cannot do it because of time constraints on the number of hearings I have in November and December, plus commitments in my own State, I think we ought to be able to do it in January or February. I should like to see the best critics of the program. That is important, because it is from the critics who have constructive suggestions and thoughtful criticisms that we are going to be able to make improvements in the programs.

Let me say to the Senator that I believe his suggestions are serious, I know he is serious about them. So am I. I think the legal services program is a very fine program—not perfect, but a very fine program—which is delivering some services to the poor which are very badly needed by the poor in this country, services which are not available to enough of the poor. But I want to make the program, as I know do the Senator from Utah and the Senator from New York, as a fine a program as it can be made, and improve it as much as we can improve it.

I say to the Senator that I am happy to tackle that exact question of oversight hearings on the complaints against this program and suggestions for improvement. I am certain that I can find a day or two to do it in January or February. I shall make that commitment to the Senator from Utah.

Mr. HATCH. I am very pleased with that commitment. I know what it means because I know the Senator is an extremely busy Senator, as is the distinguished minority leader, and to ask this of the Senator is not only important, but his graciousness in being willing to do this, I think, is a good indication of the great service he is willing to extend in the Senate.

May I ask, if we have not heard the criticisms against this particular bill, and it is my understanding that since this bill was formulated that the committee has received a number of criticisms of the bill and a number of requests to testify, how can we go ahead and pass a bill that has 5 years into the future before we can do much about it, what value would hearings have?

Would the Senator be willing to recommit this until those hearings? If so, after holding the hearings, assuming nothing serious would come out of them, I would be happy to help cosponsor this bill the next time around.

Mr. NELSON. The authorization for the legislation expires at the end of this month. We need to pass a new authorization for the Legal Services Corporation.

Mr. HATCH. Do we have to pass it for 5 years until we hold the hearings?

I certainly agree with some approaches to keep the Legal Services Corporation going, but which do not extend this authorization for 5 years.

As the Senator knows, in the future, it becomes even more in excess of $200 million provided for by this authorization, it becomes as may be necessary.

Mr. NELSON. That is correct.

Mr. HATCH. I think what we ought to do is limit this in time until we have these hearings and, if they do not come to anything, then let it again come up after the first of the year and decide how many years into the future we should go. I certainly do not think it should be 5 years.

Mr. NELSON. I do not see the necessity for any hearings to extend the legislation. I do not want to be misunderstood. I think it is a superb program. I think it is providing a fine service for poor people who need it.

I think the Legal Services Corporation can be improved and I am prepared to have oversight hearings to hear criticisms to further improve the program, but not legislative hearings on the question of extending the program or for the purpose of recommitting the bill to committee

Mr. HATCH. Could we fail to extend the program for 5 years? Could we reduce it down to, say, 2 years so we have a reasonable time in which to look into it and receive the criticisms, receive the testimony, assuming there will be testimony, and I assume that there will, and exercise congressional oversight?

Mr. JAVITS. Will the Senator yield on that?

Mr. HATCH. I am more than happy to.

Mr. JAVITS. What assurance can the Senator give us this bill will not be filibustered? Can we have a time agreement if we agree on a period of years?

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

The PRESIDING OFFICER (Mr. ZORINSKY). The clerk will call the roll.

The second 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.

Mr. KENNEDY. Mr. President, I ask unanimous consent that Mr. McNamara be granted privilege of the floor during consideration of this measure.

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

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 12:10 p.m. the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 12:13 p.m., when called to order by the Presiding Officer (Mr. ZORINSKY).

UP AMENDMENT NO. 916

Mr. NELSON. Mr. President, I send to the desk a technical amendment on behalf of the Committee on Human Resources, and I ask for its immediate consideration. This amendment is strictly technical.

The PRESIDING OFFICER. An amendment is pending.

Mr. NELSON. I ask unanimous consent that it be temporarily laid aside, so that this technical amendment may be considered.

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

Mr. NELSON. Mr. President, this amendment is strictly technical in nature. This amendment corrects a mistake in the printing of S. 1303. On page 17, line 9, the language of the bill would be corrected by striking the "(a)" and inserting in lieu thereof "(4)".

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. NELSON) proposes an unprinted amendment numbered 916:

On page 17, line 9, insert the following:

Strike the "(a)" and insert in lieu thereof "(4)".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 917

Mr. HELMS. Mr. President, earlier today, I made remarks preliminary to the submission of an amendment in the nature of a substitute. I have not yet called up that amendment. I ask unanimous consent—with the consent of the distinguished Senator from Utah—that his amendment be set aside for the time being, so that I may call up my amendment, and I ask that it be stated.

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

The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 917.

Mr. HELMS. 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:

Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE; PURPOSE

SECTION 1. (a) This Act may be cited as the "Federal Legal Aid Corporation Act of 1977".

(b) Where fundamental rights are to be protected and justice attained, it is essential that the institutions of government be accessible to all. In a nation where justice is dispensed by the courts it is inherent that they be available to all regardless of race, religion, sex, national origin, or personal wealth.

DEFINITIONS

SEC. 2. (a) The word "State" shall include each of the several States of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(b) An "eligible client" shall be an individual in need of professional legal services who meets certain criteria as established in section 4, subsection (k)(4) of this Act.

(c) A "State instrumentality" shall be an agency of a State government established solely to carry out the purposes of this Act, or an existing State agency which shall have assigned to it by the State the responsibility to carry out the purposes of this Act.

ESTABLISHMENT AND GOVERNANCE

SEC. 3. (a) There is authorized to be established in the Federal city a nonmembership nonprofit corporation chartered by the Congress of the United States of America which shall be known as the Federal Legal Aid Corporation (hereinafter referred to as the "Corporation").

(b) The Corporation shall be brought into being by a board of directors (hereinafter "Board") consisting of seven members who shall be appointed by the President of the United States of America, to take office upon confirmation by the United States Senate.

(c) Of the initial members of the Board, one each shall be chosen for fixed terms of seven, six, five, four, three, two, and one year(s), respectively. Succeeding appointments to fill terms which have expired, will be for seven years each. Each person duly appointed by the President and confirmed by the Senate, to fill a vacancy, shall serve for the balance of the term to which he was appointed. No member shall be appointed for more than seven years.

(d) No more than four members of the Board shall be members of the same political party. A majority of the members of the Board shall be members of the bar of the highest court of a State and none shall be full-time employees of the United States.

(e) No fewer than four members of the Board may be present to conduct the business of the Corporation. Should there, at any time after the Corporation has come into being, be fewer than four members, as a result of the failure of the Senate to confirm nominations submitted by the President of the United States, the President may designate one of the remaining directors or, if none remain, some other citizen of the United States, to supervise the affairs of the Corporation in a manner not inconsistent with policies already established.

(f) The terms of the original members of the Board shall be measured from the date on which this Act is enacted into law.

(g) The Board of Directors shall have a Chairman, to be appointed by the President of the United States from among the duly appointed members of the Board of Directors for a term of one year, with the term of the first Chairman to be measured from the date on which this Act is enacted into law. If the President shall fail to name a Chairman within thirty days of a vacancy in the chairmanship, the members of the Board shall choose a Chairman from their own membership. No Chairman may immediately succeed himself. A Chairman may be removed at any time by a vote of a majority of the members of the Board.

(h) Meetings of the Board shall be held at the call of the Chairman, or by written request of a majority of its members, and shall be required to be held at least once in every four-month period. All meetings shall be held in the Federal city, except by unanimous agreement of the members of the Board.

(i) The purpose of the Corporation shall be—

(1) to render financial assistance to the States to enable the provision of legal assistance to qualified individual citizens who are indigent and in need of professional legal services (hereinafter "eligible clients");

(2) to assist in the provision of legal services to eligible clients by obtaining and making available information of a technical nature and making available information of a technical nature to those rendering legal services to eligible clients; and

(3) to, consistent with the provisions of this Act, set forth such procedures and regulations governing the use of Federal funds as may be authorized for expenditure by the Corporation.

(j) The Corporation shall maintain a principal office in the Federal city and shall therein designate an authorized agent for service of process.

(k) Subject to approval by a majority of the members of the Board, the Chairman shall select an Executive Director of the Corporation who shall serve at the pleasure of the Chairman, and be authorized to secure as many staff members as may be authorized pursuant to law, but in no event shall the Corporation have more than twenty-five employees. Employees of the Corporation shall serve at the pleasure of the Executive Director. No Executive Director may serve more than four years.

(l) Compensation of Board members shall be limited to cost of travel plus a per diem rate equal to one two-hundred-sixtieth the annual pay of the highest civil service grade schedule, on days actually employed on corporation affairs. The Executive Director shall be compensated at the rate of an employee in the highest civil service grade.

CORPORATION POWERS, REQUIREMENTS, AND PROHIBITIONS

SEC. 4. (a) The Corporation shall assign and disburse all funds appropriated to it to the governments of the several States, as qualify, in amounts proportionate to their respective shares of the total number of eligible clients in the United States (which shall be calculated so as to include eligible clients in the District of Columbia and the Commonwealth of Puerto Rico), as of June 30 of the fiscal year preceding the fiscal year for which an appropriation is made by Congress to further the provisions of this Act, only excepting:

(1) such funds as are necessary for administrative expenses including compensation of the Executive Director and his staff, payment of expenses and per diem of Board members, costs incurred in purchase and rental of space and equipment, and costs necessary to pay such audits, evaluations, and inspections as may be required to assure adherence to the provisions of this Act;

(2) such funds as may be made available by special grant to the various States as incentives to experiment with alternative delivery systems for legal services to eligible clients. Funds available to the Corporation for special grants shall be limited to maximum of 5 per centum of the Corporation's annual appropriation; and

(3) such funds as may be expended by the Corporation in entering into any contract as provided for in subsection (b) below. Funds available to the Corporation for such a contract shall be determined by Congress at the time of the Corporation's appropriation.

(b) The Corporation shall have the power to contract with a private or public group, association, or organization for the purpose of doing research into special legal problems encountered by those who qualify as eli-

gible clients. Such research shall be made available by the Corporation to those rendering legal assistance to eligible clients and to all others interested in such research.

(c) Funds appropriated to the Corporation, or appropriated by the Corporation to the States, shall only be used to make legal assistance available to individual eligible clients, and to pay necessary expenses as authorized by subsection (a), above.

(d) No funds shall be disbursed by the Corporation to any State until said State has qualified as set forth in section 5.

(e) Personnel employed by the Corporation and funds appropriated to the Corporation or disbursed by it to a State shall not be used or commingled with other funds being used—

(1) to initiate, organize, support, represent, or assist any training program, workshop, seminar, school, publication, newsletter, club, association, group, organization, demonstration, boycott, meeting, rally, march, strike, or any other activity, group, or institution;

(2) to support or oppose, directly or indirectly, any candidate for public or party office, or any political party;

(3) to represent any person less than eighteen years of age without formal written consent of one of said person's parents or guardian; or

(4) in a manner which tends to discriminate in favor of or against individual attorneys, employees, or clients, on grounds of race, religion, sex, or national origin;

(f) The Corporation shall not—

(1) initiate or defend litigation on behalf of clients other than the corporate entity itself;

(2) seek to influence, nor shall any funds appropriated or disbused by it be used to influence the passage or defeat of any legislation by the Congress or State or local legislative bodies or otherwise support any group or association advocating or opposing any legislative proposals, ballot measures, initiatives, referendums, executive orders, or similar enactments or promulgations.

(g) The income or assets of the Corporation shall not inure to the benefit of any director, officer, or employee thereof, except as salary or reasonable compensation for services.

(h) Persons directly or indirectly receiving compensation under this Act, as attorneys, for the provision of legal assistance, shall only receive such compensation subsequent to admission to practice law in the jurisdiction where such assistance is rendered.

(i) Persons advocating disregard or violation of Federal or State law, during their service, may not receive compensation under this Act.

(j) Notwithstanding the provisions of title I of the United States Code, all persons salaried by the Corporation, or paid from funds disbursed by the Corporation through the States in an amount which is equal to 50 per centum or more of said person's income during any four-month period, shall be subject to the provisions of rule IV of the civil service rules prescribed by the President of the United States pursuant to section 3301 of title 5, United States Code, as amended as of the date of enactment of this Act, as if said employees were employees of the Federal Government. Said employees shall not be treated as employees of the Federal Government for any purpose not specifically authorized in this Act.

(k) Funds made available by the Corporation, pursuant to this Act, may not be used—

(1) to provide legal services with respect to any criminal proceeding or, in the case of juveniles, proceedings which would be criminal if involving adults (including any extraordinary writ, such as habeas corpus and coram nobis, designed to challenge a criminal proceeding); or,

(2) for any of the political activities described in this section, or to contribute to or in any way assist any group or association participating in such activities;

(3) to maintain any action at law until such time as any and all administrative remedies provided for in applicable contracts have been exhausted; or

(4) to represent any person who fails to meet eligibility standards established in accordance with this subsection.

An individual shall be eligible for legal assistance pursuant to this Act (an "eligible client") if his assets or income would entitle him to receive benefits, in the State in which he is seeking legal assistance, under the program of the State established pursuant to title XIX of the Social Security Act or, in the event a State has not established a program, an individual shall be eligible for legal assistance pursuant to this Act if his income and assets fall below the official poverty line, as defined by the Office of Management and Budget, except that (1) no person shall be eligible for the receipt of legal services provided through this program if his lack of assets or income results from his refusal or unwillingness to seek or accept employment but in no event shall physical or mental incapacity prohibit an individual from receiving benefits under this Act, and (2) the States may impose additional eligibility criteria for the purpose of this Act.

(l) The Corporation shall evaluate annually the program for provision of legal services to eligible clients being conducted in each State. Should any such evaluation disclose: discrimination on the basis of race, religion, sex, or national origin in the provision of legal services to eligible clients; or violation of the code of professional responsibility for attorneys, in any State's program, the Corporation may terminate disbursal of funds to that State until it is determined by the Corporation that such discrimination or violation of the code of professional responsibility will no longer occur.

(m) Upon request by any Governor, Member of Congress, or authorized officials of executive branch departments and agencies, reports of particular audits, evaluations, and inspections will be made available to the requesting official or to the public. Such inspections, audits, and evaluations shall be initiated in response to the written request of any Governor, Member of Congress, or official of the executive branch whose appointment has been confirmed by the United States Senate or the separate request of a member of the Board or Executive Director of the Corporation.

(n) Violation of any of the provisions of this section by an individual shall constitute a misdemeanor. The penalties for such shall not exceed six months imprisonment or a $500 fine or both.

QUALIFICATION BY STATES

SEC. 5. (a) To qualify for assignment of funds from the Corporation, States shall be required to enact enabling legislation setting forth the manner in which grant funds will be used to furnish eligible individuals with legal assistance. Such enabling legislation shall provide for at least one of (but none other than) the following procedures:

(1) Empower a State instrumentality to administer the funds received from the Corporation and disburse such funds to attorneys representing eligible clients as such attorneys provide proof to such State instrumentality of services actually rendered eligible clients; or,

(2) Transmit the funds received from the Corporation to the bar association with overall jurisdiction in the State, which bar association shall have established a method for disbursal of funds to attorneys representing eligible clients as such attorneys provide proof to the bar association of services actually rendered on behalf of eligible clients; or,

(3) Establishment of a method of direct payment of funds received from the Corporation to eligible clients or their attorneys based upon a voucher system or other method whereby proof of services actually rendered on behalf of eligible clients is provided to the State.

(b) In their enabling legislation, all States shall (1) permit eligible clients to retain the individual attorney of their choice; (2) insure that all attorneys, while engaged in activities funded by Corporation grants:

(A) Refrain (i) from political activity, (ii) from any voter registration activity, (iii) from any activity to provide voters with, or prospective voters with, transportation to or from the polls or provide similar assistance in connection with an election, and (iv) from any activity organizing individuals or groups or encouraging groups to organize in the community.

(B) Shall not at any time identify the Corporation or any program assisted by the Corporation with any partisan or nonpartisan political activity.

(C) Maintain the highest quality of service and professional standards in providing legal services to eligible clients.

(c) In the event a State does not enact the required enabling legislation within ninety days of the effective date of this Act or the legislature of a State is not sitting when this Act becomes effective and will not be able to enact the required enabling legislation within ninety days of the effective date of this Act, the bar association of the State may submit a plan in the form of a petition, embodying the provisions of subsections (a) and (b) above to the court of highest jurisdiction in the State. Said court may adopt such plans and upon such adoption, the State shall be qualified to receive funds pursuant to this Act. Where such a plan is adopted by the court of highest jurisdiction in the State, the plan shall be annually reviewed by said court: *Provided*, That nothing contained herein shall be construed to prevent the State legislature from reviewing, amending, or revoking such plan adopted by the court of highest jurisdiction in the State.

(d) In the event a State fails to adopt a plan as provided in subsections (a), (b), and (c), above, within one hundred and twenty days of the effective date of this Act, the Corporation may assign funds for expenditure within said State in a manner to be determined by the Corporation: *Provided, however*, That, shall a State determine not to participate in a program of legal assistance to eligible clients, pursuant to this Act, the authority of the Corporation to so assign funds in that State shall be terminated.

ATTORNEY-CLIENT RELATIONSHIP

SEC. 6. (a) As this program is one for the benefit of those individuals financially unable to afford counsel, the Corporation, officers, and employees thereof, may not interfere with any attorney in carrying out his professional responsibility to anyone who has become his client, or abrogate the authority of a jurisdiction to enforce adherence by any attorney to applicable standards of professional responsibility.

(b) Nothing contained herein shall be construed to limit an attorney, representing an eligible client, from taking any necessary legal action to protect the legal rights of his client.

REPORTS AND RECORDS

SEC. 7. (a) The Corporation shall have authority to require, from the States, such reports as it deems necessary.

(b) The Corporation shall have authority to prescribe the keeping of records with respect to funds provided and shall have access to such records at all reasonable times.

(c) The Corporation shall publish an annual report by April 15 of each year which shall be filed by the Corporation with the President and with Congress.

AUDITS

SEC. 8. (a) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally

accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of a State.

(b) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons. The report of the annual audit shall be available for public inspection during business hours at the principal office of the Corporation. The above shall not be construed to limit the authority of the General Accounting Office to conduct such audits of the Corporation as deemed necessary.

(c) The Corporation may require from every State, an annual report conducted in accordance with generally accepted accounting standards by independent certified public accountants, who are certified by a regulatory authority of the State, with respect to funds received from the Corporation. The Comptroller General of the United States shall have access to such reports and may, in addition, inspect the books, accounts, records, files, and all other papers or property belonging to or in use by the State which relate to the disposition or use of funds received from the Corporation.

RIGHT TO APPEAL, ALTER, OR AMEND

SEC. 9. The right to repeal, alter, or amend this Act at any time is expressly reserved.

APPLICABILITY OF OTHER PROVISIONS OF LAW

SEC. 10. (a) In the absence of specific reference to this Act, the provisions of the Economic Opportunity Act of 1964, as amended (and references to that Act in other statutes) shall not be construed to affect the powers and activities of the Corporation or to have an applicability with respect to programs and activities assisted by Corporation grants.

(b) Title X of the Economic Opportunity Act of 1964 is repealed.

EFFECTIVE DATE

SEC. 11. (a) Except as provided in subsection (b) this Act shall take effect on the date of its enactment.

(b) Section 10(b) of this Act shall take effect on (1) the date of incorporation of the Federal Legal Aid Corporation, or (2) the date on which the first appropriation after incorporation becomes available to the Corporation, whichever is later.

Mr. HELMS. 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.

Mr. HELMS. Mr. President, as to the time of the rollcall vote, the Senator from North Carolina is entirely pliable—whatever is convenient for the Senate.

I say to the majority leader that if he wishes to recess now, that suits me just fine.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. ROBERT C. BYRD. I thank the distinguished Senator from North Carolina.

Mr. President, I ask unanimous consent that the Senate stand in recess, subject to the call of the Chair.

There being no objection, at 12:15 p.m. the Senate recessed, subject to the call of the Chair.

The Senate reassembled at 1:40 p.m., when called to order by the Presiding Officer (Mr. MELCHER).

## CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senate proceed to the consideration of three measures that have been cleared for consideration by unanimous consent, and that the Senate proceed to the consideration of Calendar Order Nos. 431, 444, and 445.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, all three of these items have been cleared on our calendar, and we have no objection to proceeding with them.

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

## INTERNATIONAL EMERGENCY ECONOMIC POWERS LEGISLATION

The Senate proceeded to consider the bill (H.R. 7738) with respect to the powers of the President in time of war or national emergency, which had been reported from the Committee on Banking, Housing, and Urban Affairs with amendments as follows:

On page 2, beginning with line 17, insert the following:

(c) The termination and extension provisions of subsection (b) of this section supercede the provisions of section 101(a) and of title II of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions.

On page 2, line 22, strike "(c)" and insert "(d)";

On page 6, line 6, strike:

uncompensated transfers of anything of value except to the extent that the President determines that such transfers (A) would seriously impair his ability to deal with the unusual and extraordinary threat which is the basis for the exercise of authorities under this title, and insert in lieu thereof;

donations, by persons subject to the jurisdiction of the United States, of articles, including food, clothing, and medicine, intended to be used solely to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his authority to deal with any national emergency declared under section 202 of this title,

On page 8, beginning with line 20, strike through and including page 9, line 13;

On page 9, line 15, strike "207" and insert "206";

On page 10, line 2, strike "208" and insert "207";

On page 11, beginning with line 18, insert the following:

SEC. 208. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–466), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill is to revise and delimit the President's authority to regulate international economic transactions during wars or national emergencies. The bill is a response to two developments: first, extensive use by Presidents of emergency authority under section 5(b) of the Trading With the Enemy Act of 1917 to regulate both domestic and international economic transactions unrelated to a declared state of emergency, and second, passage of the National Emergencies Act of 1977 which provides safeguards for the role of Congress in declaring and terminating national emergencies, but exempts section 5(b) of the Trading With the Enemy Act from its coverage.

Four national emergency declarations were in effect prior to passage of the National Emergencies Act of 1976: President Roosevelt's declaration in 1933 to cope with the banking crisis; President Truman's declaration in 1950 during the Korean War; President Nixon's declaration in 1970 to deal with the Post Office strike and his declaration of a balance of payments crisis in 1971. Any emergency declaration may be used by the President in conjunction with section 5(b) of the Trading With the Enemy Act to regulate domestic or international economic transactions or control property for an indefinite period. Such emergency authority was used by President Johnson to place controls on U.S. direct investment abroad in 1968 (controls which continued until 1974), by President Nixon to impose a 10-percent surcharge on U.S. imports from August to December 1971, and most recently by President Ford to extend controls and regulations issued under the Export Administration Act when that act lapsed temporarily between September 30, 1976 and June 22, 1977. President Johnson's action was based on the continuing emergency declared during the Korean War. Presidents Nixon and Ford based their actions on the Korean emergency and the 1971 balance of payments emergency.

The National Emergencies Act of 1976 terminated emergency authority existing under declarations of national emergency in effect on September 14, 1976, the date the act became law, and specified the manner in which future national emergencies are to be declared and terminated, and emergency authorities to be exercised. Section 5(b) of the Trading With the Enemy Act was excluded from coverage by the National Emergencies Act. The act instructed Congress to study section 5(b) and propose such revisions as might be found necessary.

Exclusion of section 5(b) reflected concern for preserving existing regulations imposed under emergency authority, including the following:

(1) the foreign assets control regulations, which block the assets of, and limit transactions with, the People's Republic of China, North Korea, Vietnam, and Cambodia;

(2) the Cuban assest control regulations, which block the assets of, and limit transactions with, Cuba:

(3) the transaction control regulations, which prohibit U.S. persons from participating in shipping strategic goods to any of the following countries: Albania, Bulgaria, People's Republic of China, Cambodia, Czechoslovakia, German Democratic Republic and East Berlin, Hungary, North Korea, Outer Mongolia, Poland and Danzig, Romania, the Soviet Union, North Vietnam and South Vietnam; and

(4) the foreign funds controls regulations, which continue World War II blockage of the assets of Czechoslovakia, Estonia, the German Democratic Republic, Latvia, Lithuania, and their nationals.

## EX-PRISONERS OF WAR, INC.

The bill (S. 1590) to incorporate the American Ex-Prisoners of War, Incorporated, was announced as next in order.

Mr. DOMENICI. Mr. President, S. 1590 is more than tribute to this Nation's brave heroes who have endured the agony of internment by the enemies of this Nation; for the National Organization of American Ex-Prisoners of War, Inc. exists for the purpose of honoring their country and serving their comrades and their loved ones who are disabled or disadvantaged as a result of service to our country.

In order to be effective in this mission, the American ex-prisoners of war need accreditation by the Veterans' Administration—a status which requires a Federal charter. This bill will provide them with such a charter.

I wish to take a moment to express my gratitude to the distinguished chairman of the Judiciary Committee, Mr. EASTLAND, for his prompt and expeditious attention to this worthy cause. Also, my colleagues and cosponsors, Senators THURMOND, GOLDWATER, and CHILES, should be commended for their zeal in aiding the cause of these patriots and their unique problems.

To the 5,000 ex-prisoners of war, may this be a reaffirmation of this country's gratitude for the suffering and indignity you endured.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 1590) was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following persons: Mel Madero, Albuquerque, New Mexico; Henry Goodall, Houston, Texas; Memory Cain, Santa Barbara, California; Delmar Spivey, Largo, Florida; Robinson Risner, Oklahoma City, Oklahoma; George E. Day, Eglin Air Force Base, Florida; Charles Morgan, San Antonio, Texas; Joseph G. Schisser, San Leon, Texas; Herman Molen, Las Vegas, Nevada; Joseph B. Upton, Saint Louis, Missouri; Edgar Van Valkenburg, Saint Petersburg, Florida; Pauline Brown, Tampa, Florida; Joseph R. Perry, Anaheim, California; Thornton E. Hambry, Arlington, Texas; Harry E. Steen, El Paso, Texas; Carl Allen, Macon, Georgia; James Atwell, Winter Park, Florida; Jack Aldrich, Albuquerque, New Mexico; Ernest Armijo, Los Lunas, New Mexico; William Mattson, Cheshire, Oregon; Donald T. Morgan, Tacoma, Washington; Eugene J. Shannahan, Williamsburg, Iowa; Stanley G. Sommers, Marshfield, Wisconsin; Anna Bressi, Mechanicsburg, Pennsylvania; Felix Stankus, Ipswich, Massachusetts; Jack D. Warner, Hammon, Oklahoma; Harold L. Page, Buckley, Washington; John Romine, Muskogee, Oklahoma; Albert W. Braun, Phoenix, Arizona, and their successors, are created and declared to be a body corporate by the name of the "American Ex-Prisoners of War, Incorporated" (hereafter in this Act referred to as the "corporation"), and by such name shall be known and have perpetual succession, and the powers, limitations, and restrictions contained in this Act.

COMPLETION OF ORGANIZATION

SEC. 2. The persons named in the first section of this Act are authorized to complete the organization of the corporation by the selection of officers and employees, the adoption of a constitution and bylaws, not inconsistent with this Act, and the doing of such other acts as may be necessary to carry out the provisions of this Act.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation shall be—

(1) to encourage fraternity for the common good;

(2) to foster patriotism and loyalty;

(3) to assist the widows and orphans of deceased ex-prisoners of war;

(4) to assist ex-prisoners of war who have been injured or handicapped as a result of their service;

(5) to maintain allegiance to the United States of America;

(6) to preserve and defend the United States from all of her enemies; and

(7) to maintain historical records.

CORPORATE POWERS

SEC. 4. (a) The corporation shall have power—

(1) to sue and be sued, complain, and defend in any court of competent jurisdiction;

(2) to adopt, alter, and use a corporate seal;

(3) to appoint and fix the compensation of such officers, directors, trustees, managers, agents, and employees as its business may require;

(4) to adopt, amend, and alter a constitution and bylaws, not inconsistent with the laws of the United States or any State in which the corporation is to operate, for the management of its property and the regulation of its affairs;

(5) to contract and be contracted with;

(6) to charge and collect membership dues, subscription fees, and receive contributions or grants of money or property to be devoted to the carrying out of its purposes;

(7) to take and hold by lease, gift, purchase, grant, devise, bequest, or otherwise any property, real or personal, necessary for attaining the objects and carrying into effect the purposes of the corporation, subject to applicable provisions of law in any State (A) governing the amount of real and personal property which may be held by, or (B) otherwise limiting or controlling the ownership of real or personal property by a corporation operating in such State;

(8) to transfer, encumber, and convey real or personal property;

(9) to borrow money for the purposes of the corporation, issue bonds therefor, and secure the same by mortgage, subject to all applicable provisions of Federal or State law;

(10) to adopt, alter, use and display such emblems, seals, and badges as it may adopt; and

(11) to do any and all lawful acts and things necessary and proper to carry out its objects and purposes.

(b) For the purpose of this section, the term "State" includes the District of Columbia.

PRINCIPAL OFFICE: SCOPE OF ACTIVITIES DISTRICT OF COLUMBIA AGENT

SEC. 5. (a) The principal office of the corporation shall be located in Tampa, Florida, or in such other place as may later be determined by the board of directors, but the activities of the corporation shall not be confined to that place and may be conducted throughout the various States, the Commonwealth of Puerto Rico, and the possessions of the United States, and in other areas throughout the world.

(b) The corporation shall maintain at all times in the District of Columbia a designated agent authorized to accept service of process for the corporation and notice to or service upon such agent, or mailed to the business address of such agent, shall be deemed notice to or service upon the corporation.

MEMBERSHIP: VOTING RIGHTS

SEC. 6. (a) Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided by this Act, be as set forth in the constitution and bylaws.

(b) Each member of the corporation, other than honorary and associate members, shall have the right to one vote on each matter submitted to a vote at all meetings of the members of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 7. (a) Upon the date of enactment of this Act, the membership of the initial board of directors of the corporation shall consist of the following named persons: Mel Madero, Albuquerque, New Mexico; Charles Morgan, San Antonio, Texas; Joseph G. Schisser, San Leon, Texas; Herman E. Molen, Las Vegas, Nevada; Joseph B. Upton, Saint Louis, Missouri; Edgar Van Valkenburg, Saint Petersburg, Florida; Pauline Brown, Tampa, Florida; Joseph Perry, Anaheim, California; Thornton E. Hamby, Arlington, Texas; Charles Morgan, San Antonio, Texas; Harry E. Steen, El Paso, Texas; Carl Allen, Macon, Georgia; James Atwell, Winter Park, Florida; Jack Aldrich, Albuquerque, New Mexico; Ernest Armijo, Los Lunas, New Mexico; William Mattson, Cheshire, Oregon; Donald T. Morgan, Tacoma, Washington; Eugene Shannahan, Williamsburg, Iowa; Stanley G. Sommers, Marshfield, Wisconsin; Anna Bressi, Mechanicsburg, Pennsylvania; Felix Stankus, Ipswich, Massachusetts.

(b) Thereafter the board of directors of the corporation shall consist of such number as shall be selected in such manner, and shall serve for such terms as may be prescribed in the constitution and bylaws of the corporation.

(c) The board of directors shall be the governing board of the corporation and shall, during the intervals between corporation meetings, be responsible for the general policies and program of the corporation. The board of directors shall be responsible for all finances of the corporation.

OFFICERS; ELECTION OF OFFICERS

SEC. 8. (a) The officers of the corporation shall be commander, senior vice commander, three junior vice commanders, adjutant, treasurer, and the national directors. The duties of the officers shall be as prescribed by the constitution and bylaws.

(b) Officers shall be elected annually at the annual meeting of the corporation.

USE OF INCOME; LOANS TO OFFICERS, DIRECTORS OR EMPLOYEES

SEC. 9. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director, or be distributable to any such person during the life of the corporation or upon dissolution or final liquidation. Nothing in this subsection, however,

shall be construed to prevent the payment of reasonable compensation to officers of the corporation in amounts approved by the board of directors of the corporation.

(b) The corporation shall not make loans to its officers, directors, or employees. Any director who votes for or assents to the making of a loan to an officer, director, or employee of the corporation, and any officer who participates in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

NONPOLITICAL NATURE OF CORPORATION

SEC. 10. The corporation, and its officers, directors, and duly appointed agents as such, shall not contribute to or otherwise support or assist any political party or candidate for office.

LIABILITY FOR ACTS OF OFFICERS AND AGENTS

SEC. 11. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

PROHIBITION AGAINST ISSUANCE OF STOCK OR PAYMENT OF DIVIDENDS

SEC. 12. The corporation shall have no power to issue any shares of stock nor to declare nor pay any dividends.

BOOKS AND RECORDS; INSPECTION

SEC. 13. The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having authority under the board of directors, and it shall also keep at its principal office a record of the names and addresses of its members entitled to vote. All books and records of the corporation may be inspected by any member entitled to vote, or his agent or attorney, for any proper purpose, at any reasonable time.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 14. (a) The accounts of the corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audit shall be conducted at the place or places where the accounts of the corporation are normally kept. All books, accounts, financial records, files, and all other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audit; and full facilities for verifying transactions with the balances or securities held by depositors, fiscal agents, and custodians shall be afforded to such person or persons.

(b) A report of such audit shall be made by the corporation to the Congress not later than six months following the close of the fiscal year for which the audit is made. The report shall set forth the scope of the audit and include such statements, together with the independent auditor's opinion of those statements, as are necessary to present fairly the corporation's assets and liabilities, surplus or deficit with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the corporation's income and expenses during the year including (1) the results of any trading, manufacturing, publishing, or other commercial-type endeavor carried on by the corporation, and (2) a schedule of all contracts requiring payments in excess of $10,000 and any payments of compensation, salaries, or fees at a rate in excess of $10,000 per annum. The report shall not be printed as a public document.

USE OF ASSETS ON DISSOLUTION OR LIQUIDATION

SEC. 15. Upon final dissolution or liquidation of the corporation, and after discharge or satisfaction of all outstanding obligations and liabilities, the remaining assets of the corporation may be distributed in accordance with the determination of the board of directors of the corporation and in compliance with the constitution and bylaws of the corporation and all Federal and State laws applicable thereto. Such distribution shall be consistent with the purposes of the corporation.

EXCLUSIVE RIGHT TO NAME, EMBLEMS, SEALS, AND BADGES

SEC. 16. The corporation shall have the sole and exclusive right to use and to allow or refuse to others the use of the terms "American Ex-Prisoners of War", and the official American Ex-Prisoners of War emblem or any colorable simulation thereof. No powers or privileges hereby granted shall, however, interfere or conflict with established or vested rights.

TRANSFER OF ASSETS

SEC. 17. The corporation may acquire the assets of the American Ex-Prisoners of War, Incorporated, chartered in the State of Washington, upon discharging or satisfactorily providing for the payment and discharge of all the liability of such corporation and upon complying with all laws of the State of Washington applicable thereto.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 18. The right to alter, amend, or repeal this Act is hereby expressly reserved to the Congress.

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.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-479), explaining the purposes of the measure.

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

STATEMENT

This bill proposes to grant a Federal Charter to the American Ex-Prisoners of War, Inc. This organization was initially incorporated in New Mexico in 1943 as the Bataan Relief Organization. It was later renamed "The American Ex-Prisoners of War" and incorporated in the State of Washington. The group now has a nationwide membership of more than 5,000 people organized into 61 chapters. Among its members are former prisoners of war from the Spanish-American War, World Wars I and II, Korea and Vietnam.

The committee adopted strict standards for the granting of Federal charters in the 91st Congress. The importance the committee places upon these standards is not lessened by its action today. However, this organization has demonstrated that it is of a unique character: organized and operated for patriotic, nonpartisan, nonprofit purposes, and conducting activities which are of a national scope and responsive to a national need.

The American Ex-Prisoners of War, Inc., have shown the committee that the group must be federally chartered to be recognized by the Administrator of Veterans Affairs. The organization must be recognized to be allowed to represent its members in Veterans Administration proceedings.

## RELIEF OF CERTAIN POSTMASTERS CHARGED WITH DEFICIENCIES

The bill (H.R. 1613) for the relief of certain postmasters charged with postal deficiencies, was considered, ordered to a third reading, read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-480), explaining the purposes of the measure.

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

PURPOSE

The purpose of the proposed legislation is to authorize the U.S. Postal Service, on such terms as it deems just and expedient, to compromise, release, or discharge, in whole or in part, the individual liabilities of the following listed postmasters and retired postmasters to the United States for the amounts set opposite their names resulting from the mailing at an improper rate, prior to 1969, of newspapers published by Fountain-Warren Publishers of Attica, Ind.:

| Postmaster and post office | Publisher | Amount |
|---|---|---|
| Vivian L. Smith, retired, Waynetown, Ind | Hub Press, Inc., Veedersburg, Ind | $272.18 |
| Wayne Simms, retired, Waveland, Ind | Hub Press, Inc | 412.62 |
| Charles A. Boggs, retired, Veedersburg, Ind | do | 1,687.50 |
| Joe Silotto, Dana, Ind | Vermillion Newspapers, Inc., Dana, Ind | 366.13 |
| Wayne Hillyer, Williamsport, Ind | Fountain Warren Publications, Attica, Ind | 124.17 |
| Lawrence D. Wolf, retired, Attica, Ind | Fountain Warren Publications, Inc | 511.67 |
| Gordon Stockdale, retired, Wingate, Ind | Hub Press, Inc | 177.22 |

STATEMENT

The facts of the case, as set out in House Report No. 95-201, are as follows:

"The Postal Service in its report to the committee stated that it favors enactment of the bill. As has been indicated, the bill would permit the Postal Service to compromise, release, or discharge, in whole or in part and on such terms as it deems just, the liabilities of seven postmasters, five of whom are now retired, to the United States for postage deficiencies charged to their accounts prior to 1969. The Secretary of the Treasury would be required to repay, out of money in the Treasury not otherwise appropriated, such sums as any individual relieved by the Postal Service has paid or had withheld in satisfaction of such postage deficiency. While the Postal Service generally has authority under 39 U.S.C. section 2601 to discharge claims against postmasters for postage deficiencies, the Comptroller General has ruled that this authority does not permit the reopening of cases in which he had denied such relief prior to the commencement of operations of the Postal Service on July 1, 1971. 50 Comp. Gen. 731 (1971).

"The postage deficiencies in question were disclosed as a result of an audit and investigation conducted in 1967 to determine whether proper postage was being paid on second-class mailings made by Hub Press, Inc., of Veedersburg, Ind. The following deficiencies were disclosed as a result of that inquiry:"

| Postmaster and post office | Publisher | Amount |
|---|---|---|
| Vivian L. Smith, retired, Waynetown, Ind | Hub Press, Inc., Veedersburg, Ind | $272.18 |
| Wayne Simms, retired, Waveland, Ind | Hub Press, Inc | 412.62 |
| Charles A. Boggs, retired, Veedersburg, Ind | do | 1,687.50 |
| Joe Silotto, Dana, Ind | Vermillion Newspapers, Inc., Dana, Ind | 366.13 |
| Wayne Hillyer, Williamsport, Ind | Fountain Warren Publications, Attica, Ind | 124.17 |
| Lawrence D. Wolf, retired, Attica, Ind | Fountain Warren Publications, Inc | 511.67 |
| Gordon Stockdale, retired, Wingate, Ind | Hub Press, Inc | 177.22 |

"The publishers involved had furnished incorrect information to the post offices concerning the number of their paid subscribers, and the postmasters had failed to make the required annual verification of the publishers' mailing statements. Postal Manual section 126.66 (1966). The postmasters appeared to have misunderstood their responsibility in this regard. As a result, the second-class bulk rate of postage, rather than the required transient second-class rate, had been paid on copies of the newspapers mailed free of charge, in excess of the allowable 10 percent, to former subscribers whose subscriptions had expired for more than 6 months. In some cases, paid subscriptions had fallen below the minimum allowable level for the second-class mailing permit.

"Postal inspectors investigating this matter stated that there was an obvious need for a set of instructions or guidelines to inform postmasters of their exact duties and the procedures to be followed in accomplishing the annual verification of publishers' circulation and subscription records.

"All of the amounts have been collected from the postmasters whose accounts were charged with the deficiencies, with the exception of $124.17 which is still unpaid and charged to the account of Postmaster Hillyer.

"The Postal Service report indicates that ordinarily, a postage deficiency would be collected from the mailer, thus discharging the postmaster's account. However, most of the small Indiana newspapers involved in this case soon ceased publication; all were unable to pay the prior deficiencies. The Post Office Department and later the Postal Service were not able to develop a sufficient case for holding the parent corporation of the three publishing firms, International Industries, Inc., or the principal stockholder, Mr. Robert M. Hemphill, formerly of Wilmette, Ill., responsible for the debts of the subsidiary corporation.

"In indicating that it would favor enactment of relief as provided in the bill, after reviewing the circumstances, the Postal Service stated:

"Under these circumstances, we believe that it would be appropriate to relieve the affected postmasters of liability for the postage deficiencies. Accordingly, we favor the enactment of H.R. 6512."

The committee agrees that this is an appropriate matter for legislative relief and recommends that the amended bill be considered favorably.

## 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, at 1:43 p.m. the Senate took a recess, subject to the call of the Chair.

The Senate reassembled at 1:58 p.m., when called to order by the Presiding Officer (Mr. MELCHER).

## TAX AND LOAN ACCOUNTS

TIME-LIMITATION AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed at this time to the consideration of Calendar Order No. 413, H.R. 5675, on the condition that there be a 20-minute time limit on the bill, to be equally divided between Mr. PROXMIRE and the minority leader or his designee; that there be a time limitation on any amendment, debatable motion, appeal, or point of order of 10 minutes, and the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The bill will be stated by title.

The second assistant legislative clerk read as follows:

A bill (H.R. 5675) to authorize the Secretary of the Treasury to invest public moneys, and for other purposes.

There being no objection, the Senate proceeded to consider the bill (H.R. 5675) which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment to strike all after the enacting clause and insert the following:

That the Secretary of the Treasury is authorized, for cash management purposes, to invest any portion of the Treasury's operating cash for periods of up to ninety days in (1) obligations of depositaries maintaining Treasury tax and loan accounts secured by a pledge of collateral acceptable to the Secretary of the Treasury as security for tax and loan accounts, and (2) obligations of the United States and of agencies of the United States: *Provided*, That the authority granted under this section not be construed as requiring the Secretary of the Treasury to invest any or all of the cash balance held in any particular account: *Provided further*, That the authority granted under this section shall not be construed as permitting the Secretary of the Treasury to require the sale of such obligations by any particular person, dealer, or financial institution. Investments in obligations of depositaries maintaining such accounts shall be made at rates of interest prescribed by the Secretary of the Treasury, after taking into consideration prevailing market rates of interest.

SEC. 2. (a) Section 5(k) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(k)) is amended by adding after "Bank" in the first sentence thereof the following: "shall be a depositary of public money and" and by striking the period at the end thereof and inserting the following: ", including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury is hereby authorized to deposit public money in any such Federal savings and loan association or member of a Federal home loan bank, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(b) Section 402(d) of the National Housing Act (12 U.S.C. 1725(d)) is amended by adding the following at the end thereof: "Insured institutions shall be depositaries of public money and may be employed as fiscal agents of the United States. The Secretary of the Treasury is authorized to deposit public money in such insured institutions, and shall prescribe such regulations as may be necessary to enable such institutions to become depositaries of public money and fiscal agents of the United States. Each insured institution shall perform all such reasonable duties as depositary of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.".

(c) The Federal Credit Union Act (12 U.S.C. 1751–1790) is amended—

(1) by inserting after section 209 the following new section:

"SEC. 210. Any credit union the accounts of which are insured under this title shall be a depositary of public money and may be employed as fiscal agent of the United States. The Secretary of the Treasury is authorized to deposit public money in any such insured credit union, and shall prescribe such regulations as may be necessary to enable such credit unions to become depositaries of public money and fiscal agents of the United States. Each credit union shall perform all such reasonable duties as depositaries of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States."; and

(2) by redesignating section 210 of the Federal Credit Union Act (12 U.S.C. 1790) as section 211.

(d) Banks, savings banks, and savings and loan, building and loan, homestead associations (including cooperative banks), and credit unions created under the laws of any State and the deposits or accounts of which are insured by a State or agency thereof or corporation chartered pursuant to the laws of any State may be depositaries of public money and may be employed as fiscal agents of the United States. The Secretary of the Treasury is authorized to deposit public money in any such institution, and shall prescribe such regulations as may be necessary to enable such institutions to become depositaries of public money and fiscal agents of the United States. Each such institution shall perform all such reasonable duties as depositary of public money and fiscal agent of the United States as may be required of it including services in connection with the collection of taxes and other obligations owed the United States.

SEC. 3. (a) Subsection (c) of section 6302 of the Internal Revenue Code of 1954 (relating to use of Government depositaries) is amended—

(1) by striking out "or trust companies" and inserting in lieu thereof ", trust companies, domestic building and loan associations, or credit unions"; and

(2) by striking out "and trust companies" and inserting in lieu thereof ", trust companies, domestic building and loan associations, and credit unions".

(b) Subsection (e) of section 7502 of the Internal Revenue Code of 1954 (relating to mailing of deposits) is amended by striking out "or trust company" each time it appears and inserting in lieu thereof ", trust company, domestic building and loan association, or credit union".

(c) The amendments made by this section shall apply to amounts deposited after the date of the enactment of this Act.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

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

Mr. PROXMIRE. I yield to the Senator from New Hampshire.

PRIVILEGE OF THE FLOOR—H.R. 5675, S. CON. RES. 31, AND S. 1303

Mr. DURKIN. Mr. President, I ask unanimous consent that Reed Ashinoff, of my staff, be granted the privileges of the floor during consideration of the pending bill, the air bag resolution, and the legal services bill.

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

Mr. PROXMIRE. Mr. President, I ask unanimous consent that during the debate on H.R. 5675 the following staff be granted the privileges of the floor: Kenneth McLean, Elinor Bachrach, Jeremiah Buckley, William Weber, Anthony Cluff, and Carolyn Jordan.

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

Mr. HELMS. Mr. President, I ask unanimous consent that Howard Segermark, of my staff, be granted the privileges of the floor during the consideration of H.R. 5675.

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

Mr. PROXMIRE. Mr. President, this bill is known as the tax and loan accounts bill. The bill was jointly referred to the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance, after it passed the House by a vote of 384 to 0. Both committees reported the text of the House bill with identical amendments, by voice vote with no opposition. I understand there is no objection to the amendments made by the two committees.

Mr. President, the purpose of this legislation is to correct a longstanding problem which has led to the loss of hundreds of millions of dollars in revenues to the Federal Government over the years. I am referring to the Treasury Department's practice of holding its excess cash balances as non-interest-bearing demand deposits in its tax and loan accounts at commercial banks, until the funds are withdrawn to cover disbursements. The Treasury does not earn any interest on these balances, because Federal law presently prohibits payment of interest on demand deposits and because these moneys do not remain in the banks long enough to qualify as interest-bearing time deposits. The banks, however, do get interest on these public funds, because they are free to invest them in the overnight Federal funds market or in other short-term interest-bearing instruments.

For many years, the Treasury Department claimed that it did not lose any money on these tax and loan accounts and that the banks' earnings on those accounts were not significantly greater than the cost of maintaining the accounts. On the other hand, the General Accounting Office and certain Members of Congress, notably the late Congressman Wright Patman, had long contended that there was a substantial revenue loss involved and an excessive profit for the banks.

Finally, with the higher interest rates prevailing in recent years, the Treasury was pushed to take another look at this question. In its report on a study of tax and loan accounts, issued in July 1974, the Treasury Department found that banks were earning a net profit of $260 million a year on the cash balances held in tax and loan accounts, over and above the value of services provided to the Federal Government. Furthermore, these profits were not even spread evenly among the participating banks. Some banks earned large amounts of money on their tax and loan accounts; others barely broke even.

As a stopgap measure to stem the drain in revenues, the Treasury Department has, since 1974, been withdrawing the funds from the banks more quickly and keeping larger balances in its accounts at the Federal Reserve, where it can earn interest indirectly. However, this action has complicated the Federal Reserve's job of controlling the money supply and has required a larger volume of Federal Reserve open market operations to offset the impact on bank reserves. Moreover, for various reasons, the Treasury Department contends that under the current procedure it is not possible to realize the full amount of potential earnings on its excess cash balances.

Thus the Treasury has requested authority to invest those funds in interest-bearing obligations. This would give the Federal Government an option already generally available to State and local governments, to corporations, and to other institutions—the option to invest and receive earnings on temporarily excess operating cash.

The committees approved the language contained in the House-passed version of H.R. 5675 which would give the Treasury this investment authority. Specifically, section 1 of the bill would permit the Secretary of the Treasury to invest excess cash balances in either (*a*) interest-bearing obligations of financial institutions holding tax and loan accounts or (*b*) obligations of the United States and of agencies of the United States. Those investments are required to be made at market rates, to prevent any prospective drain of revenues similar to that which occurred in recent years.

In return, the committees understand that the depositary institutions will be compensated directly by the Treasury out of appropriations for services rendered in maintaining the tax and loan accounts and in selling and redeeming U.S. savings bonds. The Treasury estimates that there will be a net gain in revenues of $50–$100 million a year as a result of the enactment of this legislation. It is the intent of the committees that the Treasury take every step necessary to gain the maximum earnings on its tax and loan account balances, and that the rates of compensation reflect only the actual cost to the banks of the services rendered.

INCLUSION OF SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS

Mr. President, I should like to draw attention to the other feature of this bill, which is to expand participation by financial institutions in the tax and loan accounts system. That system is now effectively limited to commercial banks and mutual savings banks. The House acted to include savings and loan associations in the tax and loan accounts system, on the same basis as banks. The Senate committees further amended H.R. 5675 to expand on authority contained in present law and insure that credit unions are fully authorized to hold tax and loan accounts as well. I understand there is every reason to believe that this Senate amendment will be acceptable to the House.

Sections 2 and 3 of H.R. 5675, as amended, contain the statutory authority needed to permit savings and loan associations and credit unions to participate in the tax and loan accounts system. Section 2 amends the banking laws to authorize S. & L.'s and credit unions which are federally or State chartered and federally or State insured to act as depositaries of Federal money and fiscal agents of the United States. Section 3 would amend the Internal Revenue Code to provide that timely deposits of income tax withholding and tax payments in savings and loan associations and in credit unions shall be taken as fulfillment of the tax obligation.

Mr. President, I think it is in the public interest to permit the maximum possible participation by financial institutions in holding these deposits of public tax moneys. Therefore, I urge the passage of H.R. 5675, as reported by the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance.

Mr. President, I wish also to pay tribute to Representative RON MOTTL, of Ohio, who worked very hard in the House to bring this bill to passage, and who has pressed hard for Senate action and deserves a great deal of credit. He is saving the people of America between $50 and $100 million a year by his energy and force on this bill.

I understand the Senator from Arkansas has an amendment and I am happy to yield to him.

UP AMENDMENT NO. 918

(Purpose: Extend for 2 years authority of national financial institutions to make large loans at rates up to 5 percent over rediscount rate.)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. HATHAWAY). The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Arkansas (Mr. BUMPERS) proposes unprinted amendment numbered 918.

Mr. BUMPERS. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

At the appropriate place in the bill, add the following new Section:

"SEC. . (a) Section 206 of the Act entitled "An Act to authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes", approved October 29, 1974 (Public Law 93-501), is amended by striking out "1977" and inserting in lieu thereof "1979".

(b) Section 304 of such Act is amended by striking out "1977" and inserting in lieu thereof "1979".

Mr. BUMPERS. Mr. President, 3 years ago, the Senate passed a bill, Public Law 93-501, to authorize interest rates that banks and savings and loans could charge on business and farm loans of

$25,000 or more. The maximum rate was set at the Federal Reserve discount rate, that is, the rate it costs banks to borrow money from the Federal Reserve, plus 5 percent. This bill had the practical effect of increasing usury limits for large farm and business loans in the States of Arkansas, Montana, and Tennessee. The bill was sponsored by Senators Mansfield, Fulbright, and Brock, and signed into law on October 19, 1974, with an expiration date of July 1, 1977. A provision was included to allow those States affected to opt out from under the bill's purview by act of the State legislature.

My amendment would extend this law for 2 more years, until July 1, 1979.

Mr. President, the year this act was first passed, the prime rate for banks ranged as high as 12 percent, and the Federal Reserve discount rate hovered at times at 13 percent and even higher. As we all remember, capital under those conditions was in short supply, and financial institutions were paying substantial interest rates on borrowed funds. Interest paid on certificates of deposit, for example, generally exceeded 10 percent. Arkansas banks, as a consequence, were caught in the perverse squeeze of borrowing money which cost in excess of 10 percent and then lending it out at a rate limited by Arkansas' 10 percent usury ceiling. If there ever was a formula for how to become a "problem bank" in short order, that was it. At that time, there was a need for the bill and, happily, it passed quickly.

Now, economic conditions have changed somewhat for the better. Some say these conditions will continue, but with inflationary pressures still continuing to plague our economy, we could well see a repeat of 1973 and 1974 economic conditions with interest rates soaring again to 10 percent or higher. If that happened without the relief of Public Law 93–501, investment capital would again flee my State as it did in 1973 and 1974 in search of higher interest rates in neighboring States and this would cause the capital available to Arkansas farmers for planting and harvesting and to Arkansas businesses for growth and expansion to be in short supply.

I am not talking here about home-mortgage loans or consumer loans. For these borrowers State usury laws would continue to control. But for loans of $25,000 or more to farm and business interests, the formula of the Federal Reserve discount rate plus 5 percent would apply. Thus only substantial borrowers who can take care of themselves and who do not need the protection of State usury laws would be affected. Moreover, these borrowers would be subject to one of the fairest economic indicators, the Federal Reserve discount rate, which the Federal Reserve Board adjusts according to the economic situation of the time.

The amendment is limited to a 2-year extension. Montana changed its law after the passage of Public Law 93–501. Similar activity might follow in Arkansas and Tennessee. In any case, we would be assured during the interim that the relief of Public Law 93–501 would be available, if necessary, to the people of Arkansas and Tennessee.

My distinguished senior colleague (Mr. McCLELLAN) joins me as a cosponsor in this effort. I urge my colleagues to adopt what is essentially a bipartisan, noncontroversial measure.

Mr. President, as I say, this bill is drafted to amend title II of the present law, Public Law 93–501, which was passed in 1974. This amendment would extend that for 2 years. To give historical background to the purpose of the amendment, most of my colleagues will remember that in 1973 and 1974, interest rates in this country soared almost exponentially for about 18 months. It was not uncommon for some of the biggest corporations in the country to pay anywhere from 12- to 20-percent interest. In my State and the State of Tennessee, there is a constitutional limitation on interest rates of 10 percent. It was in 1974, because of the problems that that limitation created, that the present limit was adopted.

Mr. President, in the State of Arkansas in 1973, there was a massive outflow of money for the simple reason that banks which cannot charge more than 10-percent interest obviously cannot pay more interest on CD's and other time deposits than they take in. Yet, there were instances where banks in Arkansas actually were paying 10 percent interest on CD's, and that was also the maximum they could receive as interest income. So that was a losing proposition.

The amendment that was passed by this body in 1974 provided these things: That banks, in States where the law limited the interest rate, such as Tennessee and Arkansas, could make loans of $25,000 or more for farm and business purposes at a rate of 5 percent above the current Federal Reserve discount rate.

Mr. President, this law is really not critical at this point. I think the Federal Reserve discount rate, as of this moment, is about 5 to 5.5 percent. Under my amendment, which would continue the present law, anybody who is going to borrow $25,000 or more for business or agricultural purposes could be charged the maximum of 10 to 10.5 percent, which will be 5 percent above the present Federal Reserve discount rate. It does not bother consumers, because consumers are normally the small borrowers. They would not be adversely affected, and they would still get the benefit of the low 10 percent usurious rate set up in the constitutions of those two States.

I finally want to make this point, that the legislature of either State can opt out of this program any time they so desire. If this amendment is agreed to and the Legislature of Arkansas, when it convenes in January—I think they are going to convene in January in special session. If they do, they can vote to abrogate the action that we take here today and say, "We do not want the U.S. Congress superseding State law."

Mr. President, finally, this is a little troublesome for me. I do not like the idea of overriding State law, either. But the State of Tennessee is having a constitutional convention right now and, presumably, they are going to deal with this problem of the interest rate being inordinately low. Whether or not they will choose to raise the interest rates, I do not know; whether they will or not, I do not know. But the State of Arkansas is also in the process of setting up machinery for a new constitutional convention, which could be voted on as early as 1979. They obviously will address the issue. How they will address it, I do not know. In 1970, we had a constitution presented to the State of Arkansas and it was defeated. This is another effort that will take place, probably, 9 years after that, in 1979. What I am saying is that I do not have any intention—it is certainly not my present intention—to offer this kind of legislation again. But the present law has been in existence for 2 years. It was very helpful when it was first passed. It is not, as I say, critical now, because interest rates are fairly low.

In any event, if we have another crisis such as we had in 1973 and 1974, this could keep some banks in my State from going under.

Mr. PROXMIRE. Mr. President, in response to the distinguished Senator from Arkansas, he makes a very, very strong case. I can understand the plight of the borrowers in the State of Arkansas and the State of Tennessee. I can certainly understand the plight of the banks. It is very, very difficult for them. But, Mr. President, it is impossible for me to accept this amendment, and I shall tell the Senator from Arkansas why.

Both the State of Arkansas and the State of Tennessee, as I understand it, have written into their constitutions a usury limitation. I frankly think that kind of limitation is economically foolish, but that is a decision made by the State. The State of Tennessee, as the Senator knows, has a constitutional convention under way. They expect to be able to act within a matter of a very few months. The State of Arkansas, as the Senator from Arkansas has indicated, will begin to act in the beginning of this coming year, begin the process of changing the State constitution. It seems to me that for the Federal Government to act and overrule, in effect, either the constitutions or the people of the States of Tennessee and Arkansas is wrong. If they want to change their law, they are free to do so and can do so. They are engaged in the process of considering whether or not to make that change.

As the Senator from Arkansas has properly pointed out, the discount rate now is around 5 or 5½ percent. The amendment he proposes would simply permit loans at a little over 10 percent. Ten percent is the constitutional limitation now, as I understand it, on such loans, so the relief would not be significant now. It might be 2 or 3 years from now.

By that time, it would seem to me, there should be plenty of time for the States of Arkansas and Tennessee to act. If they do not want to act, that is their

business and they should be free to make their own decision.

Mr. BUMPERS. I thank the Senator. I have talked to the chairman of the Banking Committee about this several times and I know that, from time to time, he has felt that perhaps he could accept the amendment. I recognize the feeling of responsibility that he has to Congress in opposing the amendment.

I do say for the record, Mr. President, that Congress has, time and time again, overridden State law—for example PCA's, Federal credit unions, the Federal Land Bank—all those loans in the billions of dollars in my State are not limited by the State constitution. While I have never known any of those institutions to charge any more than the 10 percent usury rate in my State, they are eligible to and entitled to if they want to.

Mr. President, in light of the chairman's opposition to the amendment, of course I feel that I have no choice but to withdraw the amendment, because I know that the Senate will not override his feelings on this.

I did feel strongly inclined not to even offer the amendment with the knowledge he might oppose it.

But, by the same token, I feel so strongly, if many banks in our State get in the same kind of trouble again they got into in 1973 and 1974, I would have no choice, if it occurred between now and the time the Arkansas Constitutional Convention had a chance to meet, but to come back to the Senate and put this amendment on the first vehicle I could get it on because otherwise there could be a massive outflow of capital from my State. Banks lost money for about two or three quarters in that period of time, and we were put at a severe disadvantage. The constitutional convention is the first chance we have had.

But in light of the chairman's opposition, I know he labored over this, talked to bankers in my State and in the State of Tennessee, I know he has reached what he thinks is the right decision for himself, his committee, and the Senate, and in light of his opposition, Mr. President, I will withdraw the amendment.

Mr. PROXMIRE. Mr. President, I thank the distinguished Senator.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. BUMPERS. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a letter to Senator PROXMIRE, it is from the Conference of State Bank Supervisors, dated October 5, 1977.

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

OCTOBER 5, 1977.

Hon. WILLIAM PROXMIRE,
*U.S. Senate,*
*Dirksen Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PROXMIRE: The Conference of State Bank Supervisors has as its regular members those state officials who have primary responsibilities for chartering and supervising some 10,000 state chartered commercial and mutual savings banks in the 50 states plus Guam, Puerto Rico and the Virgin Islands. The Conference is the primary and most persistent organization defending the rights of states to determine respective banking and bank regulatory structures needed to serve best the citizens of respective states which have diverse sets of circumstances.

Notwithstanding this strong stance in defense of states rights, CSBS supports a four year extension of Title II of Public Law 93-501. This singular and most unique apparent exception to the concept of states rights is warranted based on the crucial public interest implications of the constitutional interest rate contraints existing in a few states; and the four year extension is warranted so as to give affected states time to work through lengthy processes of constitutional revisions, if respective citizens display an inclination to do so.

A brief background on CSBS positions relative to this Law may help explain why the Conference, a leading states rights organization, favors an extension of Title II for a reasonable period of time.

CSBS originally opposed the initial bill on the grounds that it represented federal government arrogation of statutes or constitutions of three states—Arkansas, Montana and Tennessee. Fortunately, however, through cooperative efforts of various groups including CSBS, it was possible to achieve an accommodation which would minimize the states rights question and at the same time prevent potentially extreme damage to banks and to bank services to citizens of respective states. PL 93-501 as enacted was the product of that cooperation.

In like manner, the proposed extension of Title II is an appropriate accommodation to the states rights question and to the crucial public interest question of the ability of banks to serve their trade areas without unrealistic interest rate constraints.

It is our understanding that you have supported PL 93-501 and an extension of Title II. CSBS wishes to encourage you to continue that support. Affected states need a reasonable period of time, free of the onerous cloud of unrealistic interest rate constraints, to pursue needed state constitutional changes.

Sincerely,

LAWRENCE E. KREIDER,
*Executive Vice President-Economist.*

UP AMENDMENT NO. 919

Mr. HELMS. Mr. President, I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an unprinted amendment numbered 919.

Mr. HELMS. 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:

At the end of the bill, add the following:

SEC. . (a) The Bretton Woods Agreements Act (22 U.S.C. 286-286k-2) is amended—

(1) by striking out clause (g) of the first sentence of section 5, and by inserting immediately after clause (f) the following: "or (g) approve either the disposition of more than 25 million ounces of Fund gold for the benefit of the Trust Fund established by the Fund on May 6, 1976, or the establishment of any additional trust fund whereby resources of the International Monetary Fund would be used for the special benefit of a single member, or of a particular segment of the membership, of the fund.";

(2) (A) by inserting "(a)" immediately after "Sec. 14."; and

(B) by inserting at the end of section 14 the following new subsection:

"(b) The President shall, upon the request of any committee of the Congress with legislative or oversight jurisdiction over monetary policy or the International Monetary Fund, provide to such committee any appropriate information relevant to that committee's jurisdiction which is furnished to any department or agency of the United States by the International Monetary Fund. The President shall comply with this provision consistent with United States membership obligations in the International Monetary Fund and subject to such limitations as are appropriate to the sensitive nature of the information.".

(b) (1) Section 10(a) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(a)) is amended—

(A) by striking out "to and" immediately following "necessary" and inserting in lieu thereof a comma; and

(B) by inserting immediately after "International Monetary Fund" the following: "regarding orderly exchange arrangements and a stable system of exchange rates: *Provided, however,* That no loan or credit to a foreign government or entity shall be extended by or through such Fund for more than six months in any twelve-month period unless the President provides a written determination to the Congress that unique or exigent circumstances make such loan or credit necessary for a term greater than six months".

(2) Section 10(b) of the Gold Reserve Act of 1934 (31 U.S.C. 822a(b)) is amended by striking out the phrase "stabilizing the exchange value of the dollar" in the fourth sentence thereof and inserting in lieu thereof the phrase "the purposes prescribed by this section".

(c) The joint resolution entitled "Joint resolution to assure uniform value to the coins and currencies of the United States", approved June 5, 1933 (31 U.S.C. 463), shall not apply to obligations issued on or after the date of enactment of this section.

Mr. HELMS. Mr. President, the text of this amendment is identical to a bill, S. 2003, which the Senator from North Carolina introduced on August 3 of this year for himself and for the distinguished Senator from Illinois (Mr. PERCY), the distinguished Senator from Illinois (Mr. STEVENSON), and the distinguished Senator from Texas (Mr. TOWER).

Mr. President, I have a letter from Henry C. Stockell, Jr., Deputy General Counsel of the Department of the Treasury. Mr. Stockell's statement makes reference to S. 2003, which as I indicated earlier is the text of the amendment now pending. Mr. Stockell states the Treasury Department's agreement with the bill and, therefore, with the amendment.

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

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

DEPARTMENT OF THE TREASURY,
OFFICE OF THE GENERAL COUNSEL,
*Washington, D.C., September 30, 1977.*

Hon. WILLIAM PROXMIRE,
*Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2003, "A bill to amend the Bretton Woods Agreements Act and the Gold Reserve Act, and for other purposes."

The bill represents a compilation of amendments which had been proposed in the Senate last year to H.R. 13955, "A bill to

amend the Bretton Woods Agreement Act, and for other purposes." H.R. 13955 authorized U.S. acceptance of the Proposed Second Amendment of the Articles of Agreement of the International Monetary Fund (IMF) and consent to an increase in the U.S. quota in the IMF. Due to the urgency of enactment of that legislation, and Congressional time constraints, it was agreed by the Senators sponsoring these amendments that they would drop their amendments to H.R. 13955, so that the House version of the bill could be passed by the Senate. Consequently, that bill was enacted into law on October 19, 1976 (P.L. 94-564).

The present sponsors of S. 2003—Senators who had introduced amendmentts to H.R. 13955—agreed that they would reintroduce their legislative proposals during the 95th Congress. Officials of the Treasury Department expressed appreciation for that decision, which had made enactment of P.L. 94-564 possible under the circumstances noted above, and indicated that the Department would support the Senators' legislative proposals during the 95th Congress. The Treasury Department, respecting the arrangements agreed to at that time, has no objection to enactment of the provisions of S. 2003.

Specifically, S. 2003 contains the following provisions:

1. Revision of the Amendment introduced by Congressman Rousselot.—

Section 5 of the Bretton Woods Agreements Act was amended by P.L. 94-564 as proposed by Congressman Rousselot. The amendment was intended to require prior Congressional approval of any new agreement to use the resources of the IMF through a trust fund for the special benefit of a single member or segment of the membership of the IMF. (Congressman Rousselot's amendment does not affect the decision of the IMF to sell 25 million ounces of gold for a trust fund to provide balance of payments financing to lesser-developed-countries.

However, due to an error in drafting, the Rousselot amendment as presently enacted could be interpreted more broadly than was intended. P.L. 94-564 presently can be construed to require prior Congressional approval for the U.S. to vote in favor of the establishment of any new trust fund in the IMF—including one funded entirely by contributions from individual countries, for which the IMF would have only management responsibilities and no financial participation. Section 2 of S. 2003 clarifies the Rousselot amendment to reflect the Congressional intent accurately. The Treasury Department fully supports that proposed statutory change.

2. Amendment by Senator Percy on access to IMF documents.—

Section 2(2)(B) of S. 2003 constitutes an amendment introduced by Senator Percy which would require the Executive Branch to provide to those congressional committees with oversight jurisdiction over monetary policy or the IMF, any appropriate information relevant to their jurisdiction that has been furnished to the United States Government by the IMF. The purpose of this amendment is to improve Congressional oversight of U.S. international monetary policy.

The legislative history of Senator Percy's proposed amendment to H.R. 13955 makes clear that the amendment is not intended to change the present constitutional balance between the Executive and Legislative Branches nor to compel the Executive Branch to take actions inconsistent with U.S. membership obligations in the International Monetary Fund. Any information of a confidential nature provided by the U.S. Government to a Congressional committee pursuant to this provision would be handled on the same basis as classified information obtained from the Executive branch which is not publicly disclosed until its release has been cleared by the Executive Branch. Because of these safeguards, incorporated in the language of the Percy Amendment, the Treasury Department has no objection to its enactment.

3. Amendments by Senator Stevenson to section 10 of the Gold Reserve Act of 1934, as amended.—

Section 3(a)(1) and 3(b) of S. 2003 contain desirable technical drafting changes in section 10 of the Gold Reserve Act of 1934, as amended. Paragraph (2) of section 3(a) requires that no loan or credit be extended to a foreign government or entity, for the account of the Exchange Stabilization Fund (ESF), for more than a six-month period unless the President provides a written determination to the Congress that unique or exigent circumstances make such loan or credit necessary for a term greater than six months. Because this provision would be consistent with overall Treasury policy in managing the ESF, the Treasury Department has no objection to it.

4. Amendment by Senator Helms to repeal the Joint Gold Clause Resolution.—

The Joint Gold Clause Resolution makes unenforceable, in United States courts, clauses in contracts requiring payment in gold or an amount of U.S. dollars measured by gold. Senator Helms' amendment, in section 4 of S. 2003, would repeal the Joint Resolution with respect to obligations entered into after the date of enactment of Section 4.

With agreement on the Proposed Second Amendment of the IMF Articles of Agreement now in the process of ratification and with agreement to dispose of a substantial portion of the IMF's holdings of monetary gold, substantial steps have been taken toward a further reduction of the international monetary role of gold, and there is increased acceptance both in the United States and internationally that gold should be treated like any other commodity. In these circumstances, and in light of the demonstrated volatility in the price of gold that makes widespread use of gold as a measure of value in private transactions unlikely, the Treasury Department is of the view that repeal of the Joint Resolution, as proposed by Senator Helms, would not have undesirable monetary effects. The Treasury Department, therefore, supports such repeal as an appropriate step in treating gold like other commodities.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

HENRY C. STOCKWELL, Jr.,
*Deputy General Counsel.*

Mr. HELMS. Mr. President, today I offer an amendment which will take care of some unfinished business.

Last year, when the Senate was trying to wrap up the 94th Congress, the Banking Committee, of which I was a member, sent to the full Senate, the Bretton Woods Agreement Amendments of 1976, H.R. 13955.

This bill was primarily a change in Federal law to ratify a change in the charter of the International Monetary Fund and to increase our subscription to the IMF.

The House passed the bill on July 27, and the Senate Foreign Relations and Banking Committees subsequently held hearings on it. During the course of our deliberations, it was agreed to adopt a number of amendments to the bill. In fact, all the amendments were agreed to by the leadership on both sides and by all Senators working on the bill.

Unfortunately, and at the last minute, it became clear that there was not enough time to send an amended bill back to the House and go through the unanimous-consent procedures needed for the House of Representatives to pass the Senate-amended bill and send it to the President for his signature.

There was only time enough to do one thing: to take up the bill as approved by the House of Representatives, and send an unamended bill to the President.

That is what finally happened, and it was agreed that the Senate amendments would be acted upon during the 95th Congress.

The amendment I offer today has all those amendments except an amendment offered by the junior Senator from Illinois (Mr. STEVENSON), dealing with the Exchange Stabilization Fund. I understand he is developing separate legislation concerning that agency which will be acted upon by the Senate Banking Committee.

The amendment I offer today contains four key provisions. The first is a technical improvement relating a requirement that congressional approval be granted before added IMF gold could be used for the IMF Trust Fund for less developed countries, and requiring congressional approval before any new trust fund be established that would specifically aid a single member or group of IMF members.

Primarily, this is a clarification of the Rousselot amendment adopted in the House Banking Committee and subsequently enacted. Congressman ROUSSELOT endorses this technical change in the language.

The second portion of the amendment would direct the President to provide appropriate information to the committees of Congress having oversight responsibilities in the area of monetary and international policy. This amendment was offered by the distinguished senior Senator from Ilinois (Mr. PERCY), who stated:

> The purpose of the amendment is to improve the potential of Congressional oversight of U.S. Governmental activities regarding U.S. participation in the international monetary system and U.S. foreign economic policy. The growth of economic interdependence and the increasing size of the international sector of the U.S. economy necessitate greater Congressional concern to these policy areas. For example, in this Congress we have dealt with Bretton Woods, commodity agreements, energy problems and the OECD financial safety net.

Senator PERCY has told me that there have been no problems in recent months with obtaining needed information, but such language might be important in any future investigation Congress may pursue concerning international monetary matters.

The third area of the amendment concerns the maturity of loans made by the Exchange Stabilization Fund. The language would require that the President provide Congress with a written determination any time money is used from

the ESF for loans in excess of 6-month terms.

An added provision in this portion of the amendment would amend the Gold Reserve Act to specify that the purpose of the exchange stabilization is not exclusively to "stabilize the exchange value of the dollar." That of course, is something that we automatically gave up when our Government adopted irresponsible fiscal and monetary policies in the late 1960's and into the 1970's that put the lie to the phrase, "sound as a dollar."

The final portion of the amendment would effectively repeal the "Joint resolution to assure uniform value to the coins and currencies of the United States," of June 5, 1933. This joint resolution was adopted when President Roosevelt devalued the dollar and it served to eliminate the private ownership of gold and the enforceability of gold clause contracts.

In 1973, Congress restored the right of American citizens to hold gold, but Congress did not move to allow a contract between two citizens specifying payment in gold or in dollars measured in gold to be enforceable in the courts. That oversight will now be rectified. Last year, I received letters indicating that the Federal Reserve Board Chairman and the Secretary of the Treasury had no objections to this provision. Gold clause contracts are technically nothing more than a type of commodity contract that is presently fully legal in every other commodity except gold. This reform simply makes the law consistent.

Mr. President, my staff has worked closely with officials of the Treasury Department and this language has been cleared by officials there.

I specifically wish to give credit to former Congressman Tom Rees, who capably served as chairman of the International Monetary Policy Subcommittee of the House Banking and Currency Committee. Mr. Rees is now in private law practice here in Washington, but devoted much of his valuable time in helping get these loose ends tied up.

Mr. President, the distinguished chairman and manager of the pending bill is aware of the four sections of this amendment. I feel certain that he is willing to accept it.

Mr. PROXMIRE. Mr. President, I discussed these amendments with the distinguished Senator from North Carolina. I congratulate him on offering these amendments.

I ask the Senator from North Carolina, and he can correct me if I am wrong, all four were considered noncontroversial when the committee considered them, and the Senator, I think, was a member?

Mr. HELMS. That is correct.

Mr. PROXMIRE. All were accepted by the Senate, all passed in the Senate, and they were only rejected in the House because it was necessary to get a bill identical with the House bill under the pressure of time to get it passed, so that now it is necessary and desirable we enact this legislation.

As far as I know, it is acceptable to the House. It certainly was acceptable without objection here in the Senate. So I am delighted to have a chance to accommodate the distinguished Senator from North Carolina.

Mr. HELMS. I thank the able Senator.

Mr. GRIFFIN. Will the Senator yield?

Mr. HELMS. Yes.

Mr. GRIFFIN. I understand that the legal services bill was set aside in order to take up this bill; is that correct?

Mr. HELMS. That is correct.

## ORDER OF BUSINESS

Mr. GRIFFIN. I wonder, as long as the majority leader is on the floor, if I might direct a question to him.

Is it possible, after the disposition of this bill, that we, perhaps, could take up the resolution on air bags before we go back on the legal services legislation?

Mr. ROBERT C. BYRD. Under the order which I secured this morning and was about to get last night, the air bags measure will be the business of the Senate once we dispose of legal services, and I have good reason to hope and believe that we will dispose of the legal services sometime today.

Mr. GRIFFIN. I appreciate that, but I would like to say that it disturbs me no end that there are other matters of business being taken up and transacted which prolongs the time to be devoted to the Legal Services Act.

I would be reluctant, let me indicate, to agree to any unanimous-consent agreement that other business come in during this period.

Mr. ROBERT C. BYRD. Perhaps I could help the distinguished Senator by saying that I think that the time we are spending now is not taking anything away from legal services. There are various Senators who are consulting on that measure in an effort to work out their problems and we are actually not taking any time away from legal services by doing this. In the long run, those consultations are going to expedite the action on legal services.

Mr. GRIFFIN. I might say that so far as the resolution of disapproval of the air bag order by Secretary Adams, being the principal sponsor of that resolution, I would be willing to agree to a time limitation of an hour, or an hour-and-a-half, or 2 hours.

It would seem to me it would not be necessary to have any longer than that. And if these negotiations on the legal services are going to extend for any period of time, it might well serve the interests of the Senate to try to get some sort of a time agreement and go ahead and vote on the air bag——

Mr. DURKIN. Will the Senator yield at that point?

Mr. GRIFFIN. I am glad to yield.

Mr. DURKIN. I probably should state for the Senate——

Mr. ROBERT C. BYRD. Will the Senator yield to me first?

Mr. DURKIN. I am happy to.

Mr. ROBERT C. BYRD. If the Senator would allow me, I am working with my friends over here is an effort to try to bring all sides together, and I will be working with the Senator from New Hampshire in an effort to see if anything can be worked out.

Mr. GRIFFIN. I thank the majority leader.

Mr. ROBERT C. BYRD. If the Senator from Michigan will just allow us to proceed. I think legal services is going to work itself out and that the time we are spending now is really not impinging upon that item. As a matter of fact, I think we would be just in recess if we were not doing some business, in the meantime.

I assure the Senator, I think I know what I am talking about in this respect.

Mr. DURKIN. I might add, and not by way of threat, just by way of information, that if we do not table the resolution in disapproval of the air bag resolution, that the membership can have a long weekend because we will be discussing that until the time expires on Friday night.

Mr. GRIFFIN. The Senator from New Hampshire would be concerned that a majority of the Senate might be against the mandatory order?

Mr. DURKIN. I do not know if we need discussion of the resolution, we have had quite extensive discussion of the resolution.

Mr. GRIFFIN. If we have the votes on the Senator's side, he would not be concerned about voting up or down, would he?

Mr. DURKIN. I do not want to get in an argument with my good friend from Michigan, just to announce to those people who have engagements in their States that they can get an early start if we do not table that resolution. I do not want to get into an argument with the Senator. I am just trying to be nice. I am trying to let the word get out to the offices that if people have engagements they are thinking about going to on Thursday night or Friday night, in their home State, they should buy the tickets.

Mr. GRIFFIN. Is the Senator going to let the bureaucrats make the decision as to whether or not air bags go into the cars? Is that right?

Mr. DURKIN. I think we will have plenty of time to discuss the issue.

Mr. GRIFFIN. I am glad the Senator has clarified it, to know what is going on, at least.

## TAX AND LOAN ACCOUNTS

The Senate continued with the consideration of H.R. 5675.

Mr. PROXMIRE. Mr. President, the Helms amendment is pending.

Mr. HELMS. May we have a vote?

The PRESIDING OFFICER. Do Senators yield back their time on the amendment?

Mr. PROXMIRE. I yield back the remainder of my time.

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the 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.

The PRESIDING OFFICER. Who yields time?

Mr. PROXMIRE. Mr. President, now we have final passage of the measure.

The PRESIDING OFFICER. The Senator is correct.

The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. PROXMIRE. I yield back the remainder of my time.

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, and the bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 5675) was passed.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

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## DEFENSE PRODUCTION ACT AMENDMENTS OF 1977

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 373.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 695) to amend the Defense Production Act of 1950, as amended.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Banking, Housing and Urban Affairs, with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Defense Production Act Amendments of 1977".

SEC. 2. Insert immediately after title VII the following new title:

"TITLE VIII—CONDUCT OF GOVERNMENT PERSONNEL

"SEC. 801. (a) As used in this title, the term—

"(1) 'contracting officer' means any employee of the United States, the independent agencies thereof, or the government of the District of Columbia, or any commissioned Reserve or Regular officer of the Armed Forces of the United States, who by virtue of his position or appointment in accordance with applicable agency regulations is authorized to solicit or select sources of supply, define or describe requirements for, audit, award, modify, terminate, or make determinations or findings with respect to or to review, certify, or evaluate contractor performance under any contract, or to otherwise exercise any part of such authority;

"(2) 'compensation' includes any payment, gift, benefit, reward, favor, gratuity or employment valued in excess of $50 at prevailing market price;

"(3) 'contractor' is any person, partnership, corporation, or agency thereof other than the United States, the independent agencies thereof, or the District of Columbia, who offers, negotiates, agrees, or otherwise contracts to supply the United States, the independent agencies thereof, or the District of Columbia, with goods, services, or supplies, and any parent, subsidiary, or affiliate thereof; and

"(4) 'procurement contract' is any agreement by which the United States, the independent agencies thereof or the District of Columbia purchase, lease, or otherwise engage in the acquisition of supplies, services, or other materiel, to include such agreements as orders for the procurement of services or supplies; awards, notices of awards; contracts of fixed price, incentive contracts, and cost and cost-plus-a-fixed-fee contracts; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts and purchase orders; or any supplemental agreement with respect to any of the foregoing.

"(b) No contracting officer who at any time engaged, officially or unofficially, in duties of his office in regard to any procurement contract shall accept compensation from any contractor receiving funds under such contract for a period of two years following his employment with the United States, the independent agencies thereof, or the District of Columbia: Except that this paragraph shall not apply to any duties performed by such contracting officer more than three years before the termination of his employment with the United States, the independent agencies thereof, or the District of Columbia.

"(c) Whoever violates this section shall be guilty of a felony, and shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(d) Whoever knowingly and willfully offers, tenders, or grants any compensation to any contracting officer in violation of this section, shall be guilty of a felony and shall be fined not more than $25,000 and imprisoned for not more than one year, or both.

"(e)(1) This title shall take effect on January 1, 1978.

"(2) This title does not preclude the continuation of employment which commenced prior to the effective date of this Act, or the receipt of compensation for such employment.

"SEC. 802. (a) The Civil Service Commission shall have the authority to coordinate and review the administration and implementation of this title. In consultation with the Attorney General, and appropriate agency heads, the Chairman of the Civil Service Commission is authorized to issue regulations and to review agency regulations to implement this title.

"(b) All departments and agencies of the Government are authorized to cooperate with the Commission and to furnish information, appropriate personnel, with or without reimbursement, and such financial and other assistance as may be agreed to between the Commission and the department or agency concerned.

"(c)(1) Any person who is offered compensation that might place him in violation of subsection (b) of section 801 of this title, prior to the acceptance of such compensation, may apply to the Commission for advice on the applicability of this title to such compensation. Such application shall be made jointly by the contracting officer and the contractor who proposes to grant such compensation, and shall contain a full and complete description of the duties of such applicant during the last three years of his employment as a contracting officer; any official responsibilities such applicant exercised with regard to any procurement contract in which an interest is or was retained by the contractor which proposes to provide such compensation; and a description by a representative of the contractor, of the complete terms and conditions of the proposed compensation, including any prospective services that such applicant will perform on behalf of the contractor. Promptly upon receipt of such application, the Commission shall publish notice thereof in the Federal Register.

"(2)(A) Not later than ten days after receipt of a completed application, the Commission shall issue an interim advisory opinion stating whether payment and receipt of such compensation would violate the intent of this title. Pending issuance of a final advisory opinion, payment and receipt of such compensation may be temporarily authorized if the interim advisory opinion finds, based on initial review, that such compensation would not result in a violation of the intent of this title.

"(B) Not later than thirty days after receipt of a completed application, the Commission shall issue a final advisory opinion stating whether payment and receipt of such compensation would result in a violation of the intent of this title.

"(3) Pursuant to regulations promulgated by the Chairman of the Civil Service Commission, interested parties are permitted to present information or comments relating to the issuance of any such advisory opinion.

"(4) The Chairman shall inform Congress, and publish a notice in the Federal Register, within thirty days after the issuance of any advisory opinion, describing—

"(A) the name of the applicant for such advisory opinion;

"(B) the contractor from which such applicant intends to accept compensation;

"(C) the duties of such applicant during the last three years of his employment as a contracting officer;

"(D) any official responsibilities such applicant exercised with regard to any procurement contract in which an interest is or was retained by the contractor which proposes to provide such compensation;

"(E) a description by a representative of the contractor, of the complete terms and conditions of the proposed compensation, including any prospective services that such applicant will perform on behalf of the contractor; and

"(F) a statement of the findings of fact and opinion which led the Commission to conclude that such compensation would or would not offend the intent of this title.

"(5) The Commission is authorized to issue a statement of findings of fact and opinion along with an advisory opinion finding that the proposed compensation would not violate the intent of this title if—

"(A) the involvement of the applicant in a procurement contract otherwise described in this title was so remote or inconsequential that it could have had no significant effect on the procurement contract in question;

"(B) the involvement of the contractor in such procurement contract was remote or inconsequential; or

"(C) the national interest requires that, the prohibitions of this title notwithstanding, such applicant should be allowed to accept such compensation.

"(d) There shall be available to any person as a defense in any criminal or civil case brought for violation of this title that—

"(1) the Commission issued an advisory opinion finding that such compensation would not violate the intent of this title; and

"(2) such person fully complied, without alteration, with the understanding of circumstances as expressed by the Commission in such statement of findings of fact and advisory opinion, and with any additional guidance or suggestions proposed by the Commission; or

"(3) the Civil Service Commission did not file a timely advisory opinion, in accordance with the provisions of subsection (c)(2)(A) or (c)(2)(B) of this section.

"(e)(1) In furtherance of the duties and responsibilities described in this title, the Commission is authorized to hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission may deem advisable.

"(2) In the case of contumacy or refusal to obey a subpena issued under subsection (e)(1) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

"(f) All such meetings to consider applications for an advisory opinion on the applicability of section 801 of this title shall be open to the public, and a verbatim transcription of all such meetings shall be available for public inspection during regular working hours at the offices of the Commission.

"(g) The Chairman of the Civil Service Commission is required to promptly report to the Attorney General, and to provide such assistance as may be required, whenever he shall learn of an action which appears to involve a violation of this title or any other Federal law. The Attorney General shall report to the Chairman and to the Congress on the disposition of any such case.

"(h) The Chairman shall review all agency programs to assure that all positions subject to the provisions of section 801 of this title are identified, and that all persons subject to these provisions are provided adequate notice of such prohibitions and restrictions.

"(i) The Commission is authorized to develop and promulgate appropriate regulations to implement this title.

"(j) The Chairman shall report to the Congress, on an annual basis, on all activities, deliberations, and investigations, and shall recommend such legislative or regulatory actions as he deems appropriate to promote high ethical standards for Government employees.

"(k) There are authorized to be appropriated such sums as may be necessary to carry out the additional functions imposed by this title.".

Mr. PROXMIRE. Mr. President, I urge the passage of S. 695, the Defense Production Act Amendments of 1977. This is a vital piece of legislation. It would go a long way toward assuring efficient and ethical conduct of Federal procurement.

The means by which the Government purchases supplies and services has long been of concern to me. The Government each year spends far in excess of $30 billion on contracts with outside firms. It is important that we in the Congress do everything we can to assure that every dollar of the taxpayers' money is spent wisely and effectively. One major problem with Federal procurement has been the fact that the decisions of Federal acquisitions officials can be influenced by the desire of those officials for a lucrative job with the companies over which they exercise authority. Impartial studies have shown the phenomenal levels of interchange between Government and private industry, and have shown that many Federal procurement officials go to work immediately after leaving the Federal Government for companies over which they had exercised responsibility. This situation cries out for reform. No man can serve two masters, but yet, that is what we have been asking of Federal procurement officials. We have asked them to ignore their private economic interests and rigorously pursue the taxpayers' interest.

S. 695 would correct this problem, in a very simple way. It provides that, for a 2-year period after leaving the Federal Government, Federal acquisitions executives cannot accept employment with any contractor over which they had exercised responsibility. This action would remove temptation to favor outside interests.

The bill also establishes review authority with the Civil Service Commission. Under the provisions of the bill, individuals could apply to the Commission for counseling as to the effect of the bill. If the Commission finds that the employment would not offend the intent of S. 695, the individual would be free to accept this position without fear of prosecution or unfavorable public comment. This is an important mechanism to assure equitable treatment for all parties.

The bill has been carefully written to assure that it will not have an unfair impact on individuals, and was the subject of extensive hearings before the Committee on Banking, Housing, and Urban Affairs and the Committee on Governmental Affairs. Testimony was solicited from executive branch representatives, Members of Congress, and interested outside parties. After these hearings, it was unanimously supported by the Banking Committee.

I believe that this bill is a step in the right direction, and I urge its immediate passage.

Mr. President, this bill comes from our committee without opposition. It is a bill for which I am sure the distinguished Senator from New Mexico has indicated his support. He offered several amendments, and we have worked them out—incorporated them—and I think we can proceed. Senator CHILES also has some amendments.

Mr. ROBERT C. BYRD. Could we have them offered and adopted en bloc?

Mr. PROXMIRE. Mr. President, I send amendments to the desk which are proposed by the Senator from New Mexico (Mr. SCHMITT) and the Senator from Florida (Mr. CHILES).

The PRESIDING OFFICER. The amendments will be stated.

UP AMENDMENT NO. 920

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), on behalf of Mr. CHILES, proposes an amendment numbered 920:

On page 21, line 4: add "Administrator, Office of Federal Procurement Policy," after "General."

On page 20, line 4: delete "officially or unofficially," and substitute "personally and substantially,"

On page 18, strike lines 18–25 and page 19, lines 1–4; insert:

(1) The term "executive agency" means an executive department as defined by section 101 of title 5, United States Code; an independent establishment as defined by section 104 of title 5, United States Code (except that it shall not include the General Accounting Office); a military department as defined by section 102 of title 5, United States Code; and the U.S. Postal Service.

(2) "acquisitions officer" means any employee of an executive agency who by virtue of his position or appointment in accordance with applicable agency regulations is authorized to solicit or select sources of supply, define or describe requirements for, audit, award, modify, terminate, or make determinations or findings with respect to or to review, certify, or evaluate contractor performance under any contract, or to otherwise exercise any part of such authority, and who receives compensation at a level equivalent to GS–11 or greater.

and renumber subsequent sections sequentially.

On page 19, line 16: insert "greater than $25,000" after "agreement".

On page 20, lines 3, 10, and 18: delete "contracting officer" and substitute "acquisitions officer".

UP AMENDMENT NO. 921

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE), on behalf of Mr. SCHMITT, offers an unprinted amendment numbered 921:

On page 20, line 25: add after "employment" "nor does it apply to any acquisitions officer whose employment with any executive agency terminated prior to the effective date of this Title.";

On page 20, line 25: add "(3) This Title shall not apply to any acquisitions officer who is involuntarily separated from the service, not by removal for cause or charges of misconduct, delinquency, or inefficiency, or failure at selection to a higher grade."

Mr. SCHMITT. Mr. President, my first amendment would exempt individuals who are involuntarily terminated through reductions in force or similar personnel cutbacks. This would insure equitable treatment for individuals who are suddenly terminated from Federal employment. It would not exempt individuals who are involuntarily terminated for cause, or military officers who are forced to retire by reason of being passed over for promotion.

The second amendment would provide that individuals who have left the employment of the Federal Government before the effective date of this act will be exempt from the bill's provisions. Again, this insures equitable treatment for individuals who may not be aware of the bill's provisions.

Mr. PROXMIRE. Mr. President, I have reviewed these amendments and they are acceptable to me.

Mr. President, I ask unanimous consent that these amendments, which have

been worked out carefully by the sponsors—they are amendments which I am convinced are not controversial; they have been cleared on both sides—be adopted en bloc.

The PRESIDING OFFICER. Without objection, the amendments are agreed to en bloc.

Mr. SCHMITT. I would like to ask a question of the distinguished Senator from Wisconsin. The prohibitions contained in section 801 are written very broadly such that they might be interpreted to mean that those individuals who participate in an advisory board assembled solely for the purpose of making a recommendation to a higher official would come under these provisions. These individuals are members of a board solely for the purpose of giving technical advice. Am I correct in assuming that the committee does not intend for these individuals to be covered by the prohibitions of section 801?

Mr. PROXMIRE. That is correct. As stated in the committee report, it is our intention that, in any case where an individual's involvement in a procurement decision was confined solely to rendering technical advice to a board, the Civil Service Commission should find that the proposed employment would not violate the intent of the act.

UP AMENDMENT NO. 922

Mr. PROXMIRE. I send to the desk an amendment, to change the effective date from January 1, 1978, to October 1, 1978. And move its adoption. This amendment is needed to avoid any conflict with the Budget Control Act.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposes an unprinted amendment numbered 922:

On page 20, line 22: delete "January 1" and substitute "October 1".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

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 bill having been read the third time, the question is, Shall it pass?

The bill (S. 695) was passed, as follows:

S. 695

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Defense Production Act Amendments of 1977".

SEC. 2. Insert immediately after title VII the following new title:

"TITLE VIII—CONDUCT OF GOVERNMENT PERSONNEL

"SEC. 801. (a) As used in this title, the term—

"(1) the term 'executive agency' means an executive department as defined by section 101 of title 5, United States Code; an independent establishment as defined by section 104 of title 5, United States Code (except that it shall not include the General Accounting Office); a military department as defined by section 102 of title 5, United States Code; and the United States Postal Service.

"(2) 'acquisitions officer' means any employee of an executive agency who by virtue of this position or appointment in accordance with applicable agency regulations is authorized to solicit or select sources of supply, define or describe requirements for, audit, award, modify, terminate, or make determinations or findings with respect to or to review, certify, or evaluate contractor performance under any contract, or to otherwise exercise any part of such authority, and who receives compensation at a level equivalent to GS–11 or greater.

"(3) 'compensation' includes any payment, gift, benefit, reward, favor, gratuity, or employment valued in excess of $50 at prevailing market price;

"(4) 'contractor' is any person, partnership, corporation, or agency thereof other than the United States, the independent agencies thereof, or the District of Columbia, who offers, negotiates, agrees, or otherwise contracts to supply the United States, the independent agencies thereof, or the District of Columbia, with goods, services, or supplies, and any parent, subsidiary, or affiliate thereof; and

"(5) 'procurement contract' is any agreement greater than $25,000 by which the United States, the independent agencies thereof or the District of Columbia purchase, lease, or otherwise engage in the acquisition of supplies, services, or other materiel, to include such agreements as orders for the procurement of services or supplies; awards, notices of awards; contracts of fixed price, incentive contracts, and cost and cost-plus-a-fixed-fee contracts; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts and purchase orders; or any supplemental agreement with respect to any of the foregoing.

"(b) No acquisitions officer who at any time engaged, personally and substantially, in duties of his office in regard to any procurement contract shall accept compensation from any contractor receiving funds under such contract for a period of two years following his employment with the United States, the independent agencies thereof, or the District of Columbia: Except that this paragraph shall not apply to any duties performed by such acquisitions officer more than three years before the termination of his employment with the United States, the independent agencies thereof, or the District of Columbia.

"(a) Whoever violates this section shall be guilty of a felony, and shall be fined not more than $5,000 or imprisoned for not more than one year, or both.

"(d) Whoever knowingly and willfully offers, tenders, or grants any compensation to any acquisitions officer in violation of this section, shall be guilty of a felony and shall be fined not more than $25,000 and imprisoned for not more than one year, or both.

"(e)(1) This title shall take effect on October 1, 1978.

"(2) This title does not preclude the continuation of employment which commenced prior to the effective date of this Act, or the receipt of compensation of such employment nor does it apply to any acquisitions officer whose employment with any executive agency terminated prior to the effective date of this title.

"(3) This title shall not apply to any acquisitions officer who is involuntarily separated from the service, not by removal for cause or charges of misconduct, delinquency, of inefficiency, or failure at selection to a higher grade.

"SEC. 802. (a) The Civil Service Commission shall have the authority to coordinate and review the administration and implementation of this title. In consultation with the Attorney General, Administrator, Office of Federal Procurement Policy, and appropriate agency heads, the Chairman of the Civil Service Commission is authorized to issue regulations and to review agency regulations to implement this title.

"(b) All departments and agencies of the Government are authorized to cooperate with the Commission and to furnish information, appropriate personnel, with or without reimbursement, and such financial and other assistance as may be agreed to between the Commission and the department or agency concerned.

"(c)(1) Any person who is offered compensation that might place him in violation of subsection (b) of section 801 of this title, prior to the acceptance of such compensation, may apply to the Commission for advice on the applicability of this title to such compensation. Such application shall be made jointly by the contracting officer and the contractor who proposes to grant such compensation, and shall contain a full and complete description of the duties of such applicant during the last three years of his employment as a contracting officer; any official responsibilities such applicant exercised with regard to any procurement contract in which an interest is or was retained by the contractor which proposes to provide such compensation; and a description by a representative of the contractor, of the complete terms and conditions of the proposed compensation, including any prospective services that such applicant will perform on behalf of the contractor. Promptly upon receipt of such application, the Commission shall publish notice thereof in the Federal Register.

"(2)(A) Not later than ten days after receipt of a completed application, the Commission shall issue an interim advisory opinion stating whether payment and receipt of such compensation would violate the intent of this title. Pending issuance of a final advisory opinion, payment and receipt of such compensation may be temporarily authorized if the interim advisory opinion finds, based on initial review, that such compensation would not result in a violation of the intent of this title.

"(B) Not later than thirty days after receipt of a completed application, the Commission shall issue a final advisory opinion stating whether payment and receipt of such compensation would result in a violation of the intent of this title.

"(3) Pursuant to regulations promulgated by the Chairman of the Civil Service Commission, interested parties are permitted to present information or comments relating to the issuance of any such advisory opinion.

"(4) The Chairman shall inform Congress, and publish a notice in the Federal Register within thirty days after the issuance of any advisory opinion, describing—

"(A) the name of the applicant for such advisory opinion;

"(B) the contractor from which such applicant intends to accept compensation;

"(C) the duties of such applicant during the last three years of his employment as a contracting officer;

"(D) any official responsibilities such applicant exercised with regard to any procurement contract in which an interest is or was retained by the contractor which proposes to provide such compensation;

"(E) a description by a representative of the contractor, of the complete terms and conditions of the proposed compensation, including any prospective services that such

applicant will perform on behalf of the contractor; and

"(F) a statement of the findings of fact and opinion which led the Commission to conclude that such compensation would or would not offend the intent of this title.

"(5) The Commission is authorized to issue a statement of findings of fact and opinion along with an advisory opinion finding that the proposed compensation would not violate the intent of this title if—

"(A) the involvement of the applicant in a procurement contract otherwise described in this title was so remote or inconsequential that it could have had no significant effect on the procurement contract in question;

"(B) the involvement of the contractor in such procurement contract was remote or inconsequential; or

"(C) the national interest requires that, the prohibitions of this title notwithstanding, such applicant should be allowed to accept such compensation.

"(d) There shall be available to any person as a defense in any criminal or civil case brought for violation of this title that—

"(1) the Commission issued an advisory opinion finding that such compensation would not violate the intent of this title; and

"(2) such person fully complied, without alteration, with the understanding of circumstances as expressed by the Commission in such statement of findings of fact and advisory opinion, and with any additional guidance or suggestions proposed by the Commission; or

"(3) the Civil Service Commission did not file a timely advisory opinion, in accordance with the provisions of subsection (c)(2)(A) or (c)(2)(B) of this section.

"(e)(1) In furtherance of the duties and responsibilities described in this title, the Commission is authorized to hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission may deem advisable.

"(2) In the case of contumacy or refusal to obey a subpena issued under subsection (e)(1) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

"(f) All such meetings to consider applications for an advisory opinion on the applicability of section 801 of this title shall be open to the public, and a verbatim transcription of all such meetings shall be available for public inspection during regular working hours at the offices of the Commission.

"(g) The Chairman of the Civil Service Commission is required to promptly report to the Attorney General, and to provide such assistance as may be required, whenever he shall learn of an action which appears to involve a violation of this title or any other Federal law. The Attorney General shall report to the Chairman and to the Congress on the disposition of any such case.

"(h) The Chairman shall review all agency programs to assure that all positions subject to the provisions of section 801 of this title are identified, and that all persons subject to these provisions are provided adequate notice of such prohibitions and restrictions.

"(i) The Commission is authorized to develop and promulgate appropriate regulations to implement this title.

"(j) The Chairman shall report to the Congress, on an annual basis, on all activities, deliberations, and investigations, and shall recommend such legislative or regulatory actions as he deems appropriate to promote high ethical standards for Government employees.

"(k) There are authorized to be appropriated such sums as may be necessary to carry out the additional functions imposed by this title.".

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

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

The motion to lay on the table was agreed to.

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## LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1977

Mr. ROBERT C. BYRD. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The Senate will resume consideration of S. 1303, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 1303) to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes.

Mr. SCOTT. Mr. President, I was not fully acquainted with this bill when it was first brought up. It came, as Senators know, from the Human Resources Committee. It is the Legal Services Corporation Act Amendments of 1977. I feel that it should have been considered by the Judiciary Committee, of which I am privileged to be a member. It was not even submitted to our committee.

Last night, after returning home, I read the mimeographed sheet that is put out by the Republican policy committee. I also read the committee report. When I came to the office today, I picked up the United States Code and I read the entire present law from the United States Code. I hold in my hand a pocket part, because this is a new law. It is a rehash, as Senators know, of the legal services that we had under the old poverty law that was subject to much abuse, a bill that was changed in large part, I think, through the efforts of the distinguished gentlewoman from Oregon (Mrs. GREEN).

Mr. President, I spoke with the distinguished ranking member of this committee, and he assured me that he would be here and listen to my remarks. I told him that I would talk for about 1 hour, and he said that if I put in a quorum call, he would know and he would come and listen to my remarks. I do not wish to speak in his absence, so I suggest the absence of a quorum.

Mr. NELSON. Mr. President, will the Senator withhold that for a moment?

The Senator from New York (Mr. JAVITS), as perhaps the Senator knows, is at a conference with the House on the black lung bill. He said that he would return, and I believe he has been sent for. I believe that if we have a quorum call, he will be here in 2 or 3 minutes.

Mr. SCOTT. All right.

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. SCOTT. 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. SCOTT. Mr. President, I appreciate the attendance of the distinguished floor manager of the bill and the attendance of the distinguished ranking minority member of the Committee on Human Resources.

This matter before us, I believe, is quite important, and I would like to just share my own personal thoughts with these distinguished Senators, as well as other Members of the Senate, with regard to the measure before us.

I have not studied this in great detail, although I am familiar with the fact that the bill that was adopted in 1974 was a substitute for earlier legislation we had administered by the Office of Economic Opportunity.

I know the distinguished gentlewoman from Oregon, Representative Edith Green, was in the forefront of pointing out the many abuses, pointing them out in the other body, while she was a Member of that body. She did it in a very effective way.

So we did agree on a bill in 1974 that eliminated some of the abuses that had been practiced.

But last night, in order to be familiar with the matter before us, I did spend some time at home looking at the mimeographed sheet that is furnished by the Republican policy committee, a summary of the bill, an explanation of it. Then I also read the committee report.

When I arrived at the office this morning I spent a couple of hours looking through the USCA, and I read in its entirety the legislation that was enacted in 1974.

I have since looked at the back of the report and have seen the changes that are being made.

Now, Mr. President, I know that reasonable people can have differences of opinion. I believe we have on what used to be called the Committee on Labor and Public Welfare, but is now the Committee on Human Resources, distinguished Senators and distinguished Members of the House of Representatives who have a philosophy that is somewhat different from my own.

In the process of reading last night I turned to the back page of the U.S. News & World Report, and I read an editorial there that I would like to at least share a portion of with my colleagues here. It is called "Think Positive."

This is something our more liberal friends often say the conservatives do not do. It reads like this—I will not read the entire thing, but I would like to share part of it with my colleagues. It says:

During the past few years it has become fashionable in the media generally to refer to any politician who votes against major spending programs as negative or lacking in compassion. Similarly, politicians who regularly vote for vast government social enterprises are regarded as positive or compassionate or liberal.

That is, they are for the people.

Then it goes on and speaks about the amount of our national debt, and it speaks about the amount of the deficit that we have. Then it raises the question:

What is positive about more than $4 billion in known welfare abuse, error and fraud? What is positive about a nation where there are nearly 85 full-time dependents or employees of government for every 100 productive private taxpayers? What is positive or compassionate about government housing and urban development programs which have only accelerated urban decay or isolated the poor in bleak warehouses? What is positive about a government which is printing money at a rate more than twice as fast as the Nation's economy is growing?

Then it goes on, and I will just quote the concluding paragraph, which says:

We think we know what Thomas Jefferson would have said about this rhetorical question. In 1801 he wrote: "Every man wishes to pursue his occupation and to enjoy the fruits of his labor and the product of his property in peace and safety and with the least possible expense. When these things are accomplished, all the objects for which government ought to be established are answered."

Now, Mr. President, turning to the legislation before us, I regard it as a measure that tends to stir up strife and litigation. I can understand why we need to have more judges, why we have an overcrowded court docket. I cannot help thinking about common law barratry, when we consider bills like this, and that is still a crime in many of our States. I think this bill should have been referred to the Committee on the Judiciary.

But I read about this Legal Services Corporation that is to assume responsibility "for administering the legal service program and furnish support for programs providing legal assistance to persons otherwise unable to afford such assistance."

Well, on the surface that appears to be a very commendable beginning. But let us look a little bit further. "The corporation provides funds for 300 legal services programs serving States, cities, counties, multicounty groups, Indian reservations and migrant farmers."

It has nine regional offices throughout the Nation, with a staff of 141 persons. That does not sound like very much. But it spends more than 90 percent of its funds to support the field programs. It sets guidelines within which local programs set their own client eligibility standards. Programs provide counseling in a large range of civil matters. They do not provide criminal representation. They are staffed by approximately—and I emphasize this—they are staffed by approximately 3,000 full-time attorneys, and this is a matter that concerns me.

How many departments within the executive branch of the Government have a legal staff of 3,000 full-time attorneys? How many have 1,200 paralegal assistants?

I know in reading the book that these paralegal assistants do actually go into court, and perhaps that is good training for the internship of embryo lawyers. But I wonder just how good that is for the people of the country, for the taxpayer, to be paying for the expense of 3,000 full-time attorneys and 1,200 paralegal assistants.

The purpose of this bill is to extend the Legal Services Corporation for 5 additional years. We speak of sunset laws and yet this would extend the bill. It would amend it in various respects to which I shall refer, but would extend it for 5 additional years.

Frankly, I have legislative counsel preparing amendments for me. One would change the 5 years to 1 year. One would change it to 2 years. One would change it to 3 years, and one would change it to 4 years. If we are unable to work some sort of a compromise I am going to offer these. First the 1 year, then the 2 years, then the 3 years, and then the 4 years.

It authorizes $225 million for the fiscal year of 1978, and such sums as necessary for each of the following years. It is an open-ended funding bill.

If we assume, and I do not believe it is a reasonable assumption, but if we assume that it would continue at this rate of $225 million per year, it would mean that we would have over $1 billion in 5 years' time.

The bill in the fiscal year 1975 was only $90 million. Now it is going up to $225 million. So if it is an open-ended bill, we can expect it to go beyond the $225 million and, Mr. President, I also have amendments prepared that would reduce that to $125 million—I believe that is the current amount—and would have it for each year that the measure is authorized by this bill.

The bill provides that the governing body is made up of at least three persons who are eligible to be clients of the private corporation. When we speak of a private nonprofit corporation, we are really talking about a Government corporation. Call it what you may want to, the employees of that corporation are subject to the Federal Retirement Act. They also receive the insurance the same as a Federal employee. They receive the hospitalization program that the Federal employee receives. Under this bill they would be exempted from the Hatch Act when they are not on Government time.

I would hope that Government employees are not practicing politics in our Government during public time. But I think that has happened in this predecessor organization that we did have where some of the people spent their time going through the record books and finding out who was registered to vote and even went out during Government hours and took people to the polls. This bill has a bad history and there has been an effort in 1974 to clean up some of the things.

Section 6 under power, duties, and limitations of the corporation, grants to the corporation exclusive jurisdiction as to whether a person is to be represented. I wonder if that should not be something that might be determined by a court of general jurisdiction, and I do have an amendment to provide for that.

It permits these paralegals, supervised by staff attorneys, to represent eligible clients. It repeals the requirement that only local legal service programs give preference to local residents in filling staff positions.

It clarifies circumstances under which fee-generating cases and cases involving civil action arising out of criminal convictions may be undertaken by legal service programs.

It clarifies the circumstances under which there is the prohibition against legal service programs from taking cases arising out of desertions from the armed services where counsel is available from the Department of Defense. It has model projects. It establishes legislative authority for corporations to make grants or contracts to develop national, State, regional, or local model projects to segments of the population with special difficulties of access to legal services or special legal programs with more than 3 percent of funds to be used for that purpose.

It provides for hearing examiners, requires that independent hearing examiners be appointed pursuant to corporate regulations if and when there is a hearing relating to the denial of funding.

But turning now, Mr. President, to the report that is put out by the committee, I see here my computation of $225 million for 5 years. If that should remain constant, it amounts to $1.125 billion that would be authorized out of taxpayers' money for free legal services, and I know there were 2 days of hearings—it says 2 days—I do not know how many hours were spent each day—but 2 days of hearings involving the authorization of $1.125 billion.

This corporation is not a department, an agency, nor instrumentality of the Federal Government. Its officers and employees are not officers or employees of the Federal Government. It is interesting to note, however, that the governing body of the corporation can pay without any restriction at all up to level 5 of the executive level of employment.

I know of no Government agency where the head of a department or agency can pay as many employees as he sees fit up to level 5. I asked my staff what the present pay of level 5 was, and I got two answers. One was $47,500; the other was $49,000.

They could pay any number of employees or officers of this corporation, under the bill, $47,500 or $49,000, whichever is the accurate amount.

I notice that they provide legal services in Micronesia. Micronesia: Well, now, of course we remember that being made a part of the territory of the United States just last year, but if we reflect upon it, that is an area that does not pay any Federal income taxes, so it is just a one-way street.

The agency has 300 legal service programs serving citizens in nearly 700 offices in all of the 50 States, Puerto Rico, the Virgin Islands, and Micronesia.

This idea of a total staff of persons, with only 2.9 percent of the total funds appropriated to the corporation used for

administration, sounds like a very good thing, but I wonder. These people who make this level 5, is that administration cost?

It is provided here that the programs provide legal representation and counseling in a large range of civil matters. It does not include criminal representation; but later we say that there are exceptions.

I am just looking through here, Mr. President. I know that my talk is not prepared remarks; it may be a little rambling, but it is some of the thinking that has occurred to me with regard to this bill, and it just solidifies some of the reasons why I hope we can work out some differences.

Most of the legal problems of the eligible clients fall into four broad categories. Family laws: I understand that a very large portion of the money is for divorce cases. I just wonder what effort is being made, in the area of family law, to reconcile families. One of the first questions the private lawyer in family practice asks, when a potential client comes in to talk with him, is whether there can be a reconciliation within the family, before he ever discusses what the grounds for divorce are.

It includes administrative benefits, medicare, consumer law, and housing law. Because none of the programs has sufficient resources—we are talking about $1.125 billion over 5 years, if we do not increase the amount, but because none of the programs has sufficient resources to meet all of the needs of the eligible clients, the agency now requires that each program determine, in consultation with the client community, priorities for legal assistance.

Then it speaks of the 3,000 full-time lawyers and the 1,200 paralegal assistants. Certain key provisions of the Legal Services Corporation Act are designed to protect the corporation from inappropriate control by the executive branch.

Mr. President, when we talk about the taxpayers' money, it seems to me that everyone, every official ought to, at one time or another, have to account for his stewardship. Whom does this organization account to?

I would submit that it supposedly accounts to Congress. It files a report with Congress. It is a somewhat lengthy report. I saw a copy of it today. But how many Senators read a report that comes in? For all practical effects, this group is not accountable to anyone.

Two days of hearings before the committee, for a 5-year authorization.

I am quite aware, Mr. President, that the distinguished floor leader and the distinguished ranking minority member can make some responses to some of the things I am saying. I am indebted to them, and I appreciate their indulgence in not interrupting to refute the things that I am saying. I am hopeful, if they will listen to me for an hour, that I will not have to speak to an empty Chamber for a number of days.

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

Mr. SCOTT. I am glad to yield to the Senator from New York.

Mr. JAVITS. I must leave the Chamber. I am due at a markup where I am presenting the bill, and I simply have to go.

I will be very pleased if the Senator will ask for a quorum call, and I will get back as soon as I can, but I must go.

Mr. SCOTT. Did I understand the Senator from New York to suggest that we have a quorum call, and in effect have a recess for a period of time?

Mr. JAVITS. I cannot run the recesses.

Mr. SCOTT. I certainly ask for a quorum call, but when would the distinguished Senator feel he would be able to come back?

Mr. JAVITS. I will call back after I am in the committee and find out where we are. But I am involved in a markup, and simply must leave.

Mr. NELSON. Mr. President, if the Senator will yield, I wonder if we can locate the Senator from Arkansas (Mr. BUMPERS). He has an amendment he would like to call up, and perhaps we could go on with that, with the debate and vote, and so on, on the pending matter following the amendment of the Senator from Arkansas.

Mr. SCOTT. I am agreeable to that procedure, but I would like to have the distinguished Senator from New York, the ranking Republican member of the committee, or another Senator in whom he has great confidence, that might be able to relay to him the things I would say. Frankly, I would like to be talking to his ears directly.

Mr. JAVITS. Senator, let me say I just tried to get every member of the minority. I believe one will be here before long. I have really taxed the indulgence of the Foreign Relations Committee; they are all waiting for me.

Mr. SCOTT. Before the distinguished Senator leaves, let me tell him, if he does not already know, and for the information of other Senators, that we have a group of opponents to the bill who are meeting outside the Chamber for the purpose of attempting to see if we can arrive at some agreeable compromise of this bill, so that we will not have extended debate lasting over a period of days. I hope that can be accomplished; and if the distinguished Senator from Wisconsin feels that we can expedite things by calling up another amendment, I am perfectly willing to do that, but I would want to reserve the right to reclaim the floor after that amendment is acted upon, and then hopefully by that time the Senator from New York can come back.

Mr. JAVITS. I thank the Senator.

Mr. SCOTT. Mr. President, I ask unanimous consent that after the next amendment is called up I again be recognized for the purpose of continuing my remarks.

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

Mr. NELSON. Mr. President, I am assuming that the Senator from Virginia would want his remarks and dialog to be consecutive, and not interrupted by any other business that is called up.

I ask unanimous consent that any business taken up between now and the time that the Senator from Virginia resumes discussion on the floor be printed in the RECORD subsequent to his remarks.

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

(The following remarks were made later in the day by Mr. SCOTT and printed at this point in the RECORD by unanimous consent.)

Mr. SCOTT. Mr. President, I had hoped that the distinguished senior Senator from New York would be present at this time. I had had indications that he would be here, but I realize the multiplicity of duties that the distinguished senior Senator has. In view of his inability to be here at the present time, I do not want to delay further the business of the Senate and inconvenience other Senators. So I shall go ahead with my statement.

Mr. President, there are a number of matters that I could share with the Senate that are objections to S. 1303, the measure before us. Perhaps they could best be illustrated not by direct reference to the text of the bill, or to the report or to our United States Code, but just by a reference to a short synopsis of proposed amendments that I intend to introduce, in the event a satisfactory compromise is not arrived at.

Mr. President, I intend to read the synopsis. I ask unanimous consent at this time that these proposed amendments be printed in the RECORD.

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

AMENDMENT NO. 1434

On page 11, line 9, beginning with "1978" strike out through line 10 and insert in lieu thereof the following: "1978".

AMENDMENT NO. 1435

On page 11, line 10, strike out "each of the four succeeding fiscal years" and insert in lieu thereof: "the succeeding fiscal year".

AMENDMENT NO. 1436

On page 11, line 10, strike out "four" and insert in lieu thereof "two".

AMENDMENT NO. 1437

On page 11, line 10, strike out "four" and insert in lieu thereof "three".

AMENDMENT NO. 1438

On page 11, line 9, beginning with "$225,000,000" strike out through the period the first time it appears in line 10 and insert in lieu thereof the following: "$125,000,000 for fiscal year 1978".

AMENDMENT NO. 1439

On page 11, line 9, beginning with "$225,000,000" strike out through the period the first time it appears in line 10 and insert in lieu thereof the following: "$125,000,000 for the fiscal year 1978 and for the succeeding fiscal year".

AMENDMENT NO. 1440

On page 11, line 9, beginning with "$225,000,000" strike out through the period the first time it appears in line 10 and insert in lieu thereof the following: "$125,000,000 for the fiscal year 1978 and for each of the two succeeding fiscal years".

AMENDMENT NO. 1441

On page 11, line 9, beginning with "$225,000,000" strike out through the period the first time it appears in line 10 and insert in

lieu thereof the following: "$125,000,000 for the fiscal year 1978 and for each of the three succeeding fiscal years".

AMENDMENT No. 1442

On page 11, line 9, beginning with "$225,000,000" strike out through the period the first time it appears in line 10 and insert in lieu thereof the following: "$125,000,000 for the fiscal year 1978 and for each of the four succeeding fiscal years".

AMENDMENT No. 1443

On page 12, strike out line 14 and insert in lieu thereof the following:

SUNSHINE PROVISION AND PROHIBITION ON OUTSIDE COMPENSATION FOR OFFICERS

On page 12, line 15, insert "(a)" after "Sec. 4.".

On page 12, between lines 19 and 20, insert the following:

(b) Section 1005(a) of the Legal Services Corporation Act (42 U.S.C. 2996d(a)) is amended by striking out "except as authorized by the Board" in the second sentence thereof.

AMENDMENT No. 1444

On page 13, strike out lines 7 through 13 and insert in lieu thereof the following:

"(B) The question of whether representation is authorized under this title, or the rules, regulations, or guidelines promulgated pursuant to this title, shall be determined only by appropriate order by a court of general jurisdiction.".

AMENDMENT No. 1445

On page 12, strike out lines 20 through 24. Redesignate the succeeding sections accordingly.

AMENDMENT No. 1446

On page 11, line 18, beginning with the word "At" strike out through the period on line 2, page 12, and insert in lieu thereof the following: "Not more than one person appointed to fill a vacancy occurring after January 1, 1977 but before July 30, 1978, shall be, when selected for appointment, an eligible client. Following July 30, 1978, not more than one member of the Board shall be an eligible client".

AMENDMENT No. 1447

On page 19, strike out lines 15 through 25.

Renumber the succeeding section accordingly.

AMENDMENT No. 1448

On page 18, strike out lines 6 through 22. Renumber succeeding sections accordingly.

AMENDMENT No. 1449

On page 16, line 10, beginning with the word "to" strike out through the word "or" on line 23, and insert in lieu thereof the following: "by inserting "(A)" after 'provide', and by inserting a comma and the word 'or' ".

AMENDMENT No. 1450

On page 11, line 16, strike out "(a)".

On page 12, strike out lines 7 through 13.

AMENDMENT No. 1451

On page 15, beginning with line 16, strike out through line 3 on page 16.

On page 16, line 4, strike out "(d)" and insert in lieu thereof "(c)".

AMENDMENT No. 1452

On page 19, line 4, strike out "three" and insert in lieu thereof "six".

AMENDMENT No. 1453

On page 17, strike out lines 17 through 23.

On page 17, line 24, strike out "(e)" and insert in lieu thereof "(d)".

AMENDMENT No. 1454

On page 14, strike out lines 3 through 5.

AMENDMENT No. 1455

On page 14, strike out lines 7 through 15.

On page 14, line 16, strike out "(b)" and insert in lieu thereof "Sec. 8. (a)".

On page 15, line 16, strike out "(c)" and insert in lieu thereof "(b)".

On page 16, line 4, strike out "(d)" and insert in lieu thereof "(c)".

Mr. SCOTT. The first amendment would provide for authorization of appropriations for the Legal Services Corporation for 1 year, rather than the 5 years as is provided in the bill.

The second amendment would provide for authorization of appropriations for the Legal Services Corporation for 2 years, rather than for the 5 years as provided in the bill.

The third amendment would provide for authorization of appropriations for the Legal Services Corporation for 3 years, rather than the 5 years that is provided in the bill.

The fourth amendment would provide for authorization for the Legal Services Corporation for 4 years, rather than 5 years as provided in the bill.

The next amendment would authorize $125 million for the Legal Services Corporation Act for 1 year, rather than the $225 million as set forth in the bill to go for the next fiscal year and the open-end appropriation for the balance of the 5 years.

The next amendment would authorize $125 million for the Legal Services Corporation for each of 2 years.

The next amendment would authorize $125 million for the Legal Services Corporation for each year of 3 years.

The next amendment would authorize $125 million for the Legal Services Corporation for each year for 4 years.

The net amendment would authorize $125 million for the Legal Services Corporation per year for 5 years.

The next amendment would modify the prohibitions on outside compensation for officers of the Legal Services Corporation.

The next amendment would require representation questions to be decided by authorization of a court of general jurisdiction.

Mr. President, I wonder if I might have the attention of the distinguished chairman of the committee inasmuch as I do not have the attention of the distinguished ranking member of the committee. I would appreciate it. I will just take about 10 more minutes.

Mr. President, the next amendment is to retain the present provisions of existing law with regard to the Legal Services Corporation with respect to research, training, technical assistance, and information.

The next amendment would be to delete the provision with respect to hearing examiners.

The next amendment would be to delete the model projects for the Legal Services Corporation Act.

Mr. President, the next amendment would reinstate the provisions with respect to fee generating cases.

The next amendment would be to reinstate existing provisions of the Legal Services Corporation Act with respect to membership of eligible clients on governing bodies.

The next amendment would be to provide for membership on the governing body of the Legal Services Corporation of not more than one eligible client.

The next amendment would be to reinstate the provisions of the Legal Services Corporation Act with respect to representation by an attorney.

The next amendment would be to increase the period for the retention of records by recipients under the Legal Services Corporation Act.

The next amendment would be to reinstate the provisions of the Legal Services Corporation Act relating to representation in military matters.

The next amendment would be to reinstate the provisions with respect to political activity on off-duty hours by attorneys under the Legal Services Corporation Act.

The next amendment would be to reinstate the requirement relating to refusal or unwillingness without good cause to seek acceptable employment as a basis for eligibility under the Legal Services Corporation Act.

Mr. President, I also have two motions that I ask be printed in the RECORD.

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

Mr. President: I move that the bill, S. 1303, "A bill to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes", be referred to the Committee on the Judiciary.

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Mr. President: I move that the bill, S. 1303, "A bill to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes", be referred to the Committee on the Judiciary, with instructions to report that bill back to the Senate within 30 legislative days.

Mr. SCOTT. The first motion would be to amend the act to provide authorization of appropriation for additional fiscal years, and for other purposes, that it be referred to the Committee on the Judiciary.

The second motion that I ask to have printed would be to refer the same measure to the Committee on the Judiciary with instructions to report it back to the Senate within 30 legislative days.

Mr. President, I appreciate the indulgence of the distinguished chairman of the committee. I hope that we can reach a satisfactory compromise of our differences and take action upon this bill.

Mr. President, I yield the floor.

(This concludes Mr. SCOTT's remarks that were made later in the day.)

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. (Mr. RIEGLE). The Chair must advise that it will take unanimous consent to lay aside the pending amendment in order to take up another. So I ask, is there objection to taking up the amendment of the Senator from Arkansas?

Mr. BAKER. Mr. President, reserving the right to object, will the Senator from Arkansas give me just a few moments before he presses his request for unanimous consent?

Mr. BUMPERS. Certainly.

Mr. BAKER. There is no one on this side who is actively involved in the management of the bill.

Mr. BUMPERS. If the Senator wants to put in a quorum call so he can get clearance on his side, we have no objection.

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

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

UP AMENDMENT NO. 923

Mr. NELSON. I understand that it is satisfactory for the Senator from Arkansas to call up his amendment.

The PRESIDING OFFICER. The Chair puts again the question, is there objection to laying aside the pending amendment to take up the amendment of the Senator from Arkansas?

The Chair hears no objection. The Senator from Arkansas is recognized for his amendment.

The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas proposes unprinted amendment numbered 923.

Mr. BUMPERS. I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

On page 20, line 11, insert the following:

"SEC. 15. Section 1007(g) of the Legal Services Corporation Act, 42 U.S.C. § 2996f(g), is amended to read as follows:

" 'The Corporation shall conduct a fair and impartial study of the relative advantages and disadvantages of the existing staff attorney method of delivering legal services as compared with other methods (or combinations of methods) including judicare, prepaid legal insurance, vouchers, and contracts with private law firms, in order to determine whether and to what degree the existing staff attorney method should be supplanted by alternative methods of delivery. A sufficient number of demonstration projects using alternative methods of delivery in both urban and rural settings shall be established nationwide to insure a valid comparison. Based on the results of such a study and on an evaluation of these results to be conducted by the National Science Foundation (which shall not subcontract for any part of the evaluation with any recipient of Corporation funds), the Corporation shall make recommendations to the President and the Congress not later than September 30, 1979, concerning improvements or changes in the methods of service delivery to render such delivery more economical, more effective and more satisfying to clients.' "

IMPARTIAL STUDY OF JUDICARE

Mr. BUMPERS. Mr. President, I am today introducing an amendment to S. 1303, a bill to amend the Legal Services Corporation Act. The purpose of the amendment is to insure that the Legal Services Corporation shall conduct a fair and impartial study of the relative advantages and disadvantages of the existing staff attorney method of delivering legal services to the poor as compared with other methods, including especially judicare. The essential difference between the two methods, of course, is that under a judicare program, each client has the right to pick his own counsel, just as patients choose their own physicians under the medicare program. Under the staff-attorney method, which is the method now being used predominantly by the Legal Services Corporation, legal services to the poor are rendered exclusively by paid Government employees who are not engaged in the general practice of law.

The present law on this subject is contained in section 1007(g) of the Legal Services Corporation Act of 1974, 42 U.S.C. § 2996f(g). This section provides as follows:

The Corporation shall provide for comprehensive, independent study of the existing staff attorney program under this Act and through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes or alternative methods for the economical and effective delivery of such services.

My proposed amendment would expand and clarify this section and, I believe, carry out the intent of the Congress in enacting it in the first place. The amendment would essentially do two things. It would make more clear the intent of Congress that judicare should be tested not merely as a possible supplement to the prevailing staff attorney method of delivery, but as a possible alternative as well. The amendment would also provide for an evaluation of the experiment by a third party, rather than by the Legal Services Corporation itself.

Mr. President, my amendment does not in the least assume that the experiment will show that one method of delivery is the best in all situations. Nor am I asking the Senate to endorse judicare, the staff attorney method, or any other particular method of delivering legal services to the poor. A fair and impartial test might show, however, that judicare, or a combination of judicare and prepaid legal insurance, ought to be the primary vehicle for delivering legal aid to the poor, instead of the staff attorney method now almost exclusively used by the LSC. My amendment would leave this possibility open. It does not seek to predetermine the results of the study, only that the study be fair and impartial.

Existing law requires the Corporation to submit a report to Congress on the results of its experiments and studies by July 1977, and such a report was actually submitted. It is obviously, however, an interim report, since the study is far from complete. The Corporation is not yet ready to make recommendations to Congress and, as a matter of fact, is now in the process of funding different studies in Round II of the experiment. My amendment would simply insure that the remaining portion of the experiment will be impartially designed, that its evaluation will be conducted by an impartial third party, the National Science Foundation, and that the deadline for report be extended until September 1979, in order that enough time will be given the National Science Foundation and the Legal Services Corporation to make a full and ample study and report.

Let me stress that there is no doubt in my mind that the LSC can be trusted to conduct a fair experiment. The important point is to avoid even the appearance of a conflict of interest. The LSC has traditionally used the staff attorney method almost exclusively, and members of the private bar who favor judicare may be pardoned for believing that the evaluation of any study should not be entrusted to the LSC itself. In other words, the judicare test must not only be fair, it must also be perceived to be fair by both the private bar and the general public.

The evaluation of the judicare test will not only be an evaluation of the relative advantages and disadvantages of judicare versus the staff attorney approach. It will also involve an assessment of the validity of the design and implementation of the study itself. It goes without saying, therefore, that if the evaluation is to be fair, it ought not to be conducted by anyone who participated in this design and implementation.

Mr. President, I know that all Members of the Senate share with me a determination to make the best possible legal services available to those who cannot afford them, and to accomplish this result by whatever method will be most effective, least costly, and result in the greatest client satisfaction. The purpose of my amendment is simply to insure that the inquiry now being made into these questions be completely impartial and insulated from any appearance of a conflict of interest. I am hopeful that the amendment will be acceptable to the committee and to the Senate.

Mr. President, my amendment, on the face of it, seems to be requesting something that the law already provides for. But my amendment is designed to clarify, at least, any misconceptions that anybody might have about the present requirement that the Legal Services Corporation conduct a fair and impartial study to consider the use of prepaid legal insurance, judicare, and vouchers—not just as a supplement to the present staff attorney method of providing legal services to the poor, but as an alternative.

The present law requires that the Legal Services Corporation make a study of all these different possible systems for providing the least costly and most effective legal services to the indigent and the poor who cannot afford attorneys.

I do not have any preset notions about which is the most effective way, but it has been brought to my attention that the present study, which I think was—I forget the time frame within which it was supposed to be completed. I know the first part of it has already been filed and some interim recommendations, perhaps, made to Congress and the President. This amendment is not, then, going to torpedo or disturb the study that is being made right now. But, Mr. President, the thing that I want to be sure of, and I think the thing that the Senate

wants to be sure of, is that this study is an impartial study based on legitimate demonstration projects and that it is fairly critiqued, not one of those things where the foxes watch the henhouse, or the dogs watch the meathouse, but something that has been critiqued separately by a totally disinterested group.

Now, in a nutshell, my amendment places the burden on the Legal Services Corporation to carry out demonstration projects, for example, of judicare, not in a vacuum, but in separate parts of the country, rural and urban, so that legitimate comparisons can be made as to the effectiveness of the judicare system. For the unenlightened in this body, that is simply a system for legal services almost identical to the medicare services for the delivery of health services to people who cannot afford health care.

The poor now have to go down and accept some staff attorney who may be fresh out of law school, or he may be a seasoned, brilliant attorney, but there is one sure thing, it is an a la carte situation with the people who need the legal service. He goes in and they assign him a staff attorney, assuming he meets all the criteria of determining whether or not he is entitled to the help, and he or she is at the mercy of the staff attorney until his case is resolved.

All I am saying is that we give people on medicare and medicaid in this country the right to pick their own doctor and we pick up the tab for it.

Mr. President, as I say, I have no present notions about it, no preconceptions about it, but it just might be that the people of this country would feel more secure if they could go to their own attorney or one of their choice and let him help them.

I think one of the most cogent arguments being made in this country against national health insurance is that people are afraid the next step will be that they will have to take whatever doctor they are assigned, and people in this country are not ready for that. I am not ready for it.

Maybe it is not practical, but all I am saying is that this study ought to include demonstration projects from all geographical sections of the country, populated and unpopulated areas, urban and rural areas, and that the study include the possibility of judicare, of prepaid legal services, as alternatives to the present staff attorney system.

Finally, the report ought to be critiqued by the National Science Foundation. That seems like a strange place, I know, and a strange organization to place this study with for independent critiquing.

But the present study, Mr. President, is going to be critiqued by people from the Legal Services Corporation and attorneys from the American Bar Association.

As far as I am concerned, there will still be that lingering doubt among many that the study has not been impartially evaluated.

I think in order to eliminate even a possibility of a conflict on the part of the Legal Services Corporation, that an independent judgment that could be rendered by the National Science Foundaiton should be made.

Why that foundation? Because they have got a whole division of social services and social scientists who have studied the delivery of social services in many other studies. I am not just hung up on them.

The floor manager says he might take my amendment if I would change that to GAO. I would probably go along with it, that is the normal procedure, but there are those who do not want GAO to do it.

As far as I know, there is no objection to the National Science Foundation evaluating the study.

Mr. President, I have tried to make it as short and clear as I can as to the reason for this. There are those who say that the Legal Services Corporation is already doing this, that the law already mandates they do it. But I want it clarified, I want it broadened, and I want an independent evaluation of the study when it is completed. There is still ample time.

Incidentally, there is a fourth thing the amendment does, Mr. President. As I remember, it gives them 2 years and 2 months more time than the deadline in 1977. The amendment sets the date down to September 1, 1979.

So they still, if this is adopted, have the 2-year period in which to make this study, and nobody is dislocated or discommoded as a result.

I sincerely hope that the committee will see fit to adopt the amendment.

I might say, if the Senator from Wisconsin will permit me, that the American Bar Association has endorsed the amendment.

Mr. NELSON. Mr. President, I say to the distinguished Senator from Arkansas, if the American Bar Association has endorsed the amendment, then they have also endorsed my opposition to the amendment, which is a position that the American Bar Association may very well have taken.

Mr. BUMPERS. If the Senator will yield, I slightly misspoke myself in my exhuberance and enthusiasm. I said they had endorsed it. Actually, it is the Chairman of the General Practice Section Committee on the National Legal Services Corporation of the American Bar Association that has endorsed it.

In other words, it is the sort of oversight committee of the American Bar Association that has endorsed it.

Mr. NELSON. So that the record will be balanced and clear, Mr. Robert Evans, legislative representative of the American Bar Association, states:

> The American Bar Association supports S. 1303 without amendments which would restrict the Legal Services Corporation or its program attorneys to provide effective representation for all eligible clients. The ABA has testified in support of the Corporation carrying out a study of alternative and supplemental systems for providing legal services to the poor. The Corporation is moving forward with this study, and the ABA has been following the study with great interest. Four attorneys active in the Association, including former President Robert W. Meserve and J. Thomas Greene of Utah serve on the Advisory Panel which is monitoring the alternative delivery system study.
>
> The Association has never recommended that a "study of the study" should be undertaken by a government agency such as the National Science Foundation. While we in the Association intend to review the study with care, we are not in a position to recommend to the federal government that it fund a study of another study, at least until the Corporation's study has been completed and its results made public.

That pretty well states, I say to the distinguished Senator from Arkansas, my position. It may very well be that some independent group ought to further study the results of the study that is made purusant to the directive of the statute which we adopted back in 1974.

As I am sure the Senator knows, an independent advisory panel was appointed by the Corporation. That advisory panel then selected the projects and the programs to be tested for purposes of determining how better to deliver legal services to the poor.

Those experimental programs, when they are completed, will then be in report form and available to the Congress. At that time, the American Bar Association will evaluate the studies, as will anyone else who has an interest in or out of the Congress.

Furthermore, it would be, in my judgment, the responsibility of the Subcommittee on Employment, Poverty, and Migratory Labor, of which I am chairman, to conduct comprehensive hearings on the study and take testimony, pro and con, on the studies and on the methods of delivering legal services to the poor.

I assure the Senator from Arkansas that when these studies are completed and we receive a report from the Legal Services Corporation based upon the studies that have been done, we will schedule hearings. We will ask the American Bar Association, local bar associations, representatives of various groups, and Members of Congress to come and give us their testimony, their advice, their suggestions, and their evaluation of the studies. If at that time it appears that there should be some further independent evaluation, I would be prepared to support the concept at that time.

However, I do not really see the value at this stage in writing into law a requirement that once the studies are all completed, they be referred to the National Science Foundation for the purpose of their making a reevaluation at that time. So I am reluctant to say that I oppose the amendment at this time on the ground of timeliness, but it may very well be a good idea once we have looked at it and once we have conducted hearings.

It never would have occurred to me to have referred this study to the National Science Foundation. I may be mistaken, but I do not know that it is their expertise to evaluate this kind of study. It may very well be. But I would be disinclined to write such a requirement into the statute at this time, making that requirement part of the law.

Mr. MATHIAS. Mr. President, on behalf of the managers on this side of the aisle, we associate ourselves with the comments of the distinguished Senator from Wisconsin and oppose the amendment.

Going a little beyond what I am authorized to say on behalf of the man-

agers, and getting into the area of personal comment, I might say that if the Senator from Wisconsin were present at this moment, he might be getting out a "fleece" to award.

As a member of the Appropriations Committee, I have had a rather tender interest in the National Science Foundation, and I have been very much interested in the work they have done in trying to create measurements for progress in social areas. I have been largely supportive of those efforts. But I have observed that Mr. PROXMIRE has awarded the "fleece" on a number of these projects; and I think that if we start making studies on studies, we are at least giving him a candidate for consideration.

I hope we will defer that until we get a little further along on this project and see where we are going.

Mr. BUMPERS. Mr. President, I do not know Thomas Greene of the American Bar Association Committee on the National Legal Services Corporation. Based on what the distinguished Senator from Wisconsin read into the RECORD earlier, he is at least a very peripatetic gentleman, because here is a telegram he sent me on September 15:

> Strongly urge passage of amendment to S. 1303 Legal Services Corporation Act to insure (1) fair test of all methods of delivering legal aid to poor including judicare; and (2) independent evaluation of tests of National Science Foundation or other appropriate persons or organizations.
>
> J. Thomas Greene, chairman, American Bar Assn., General Practice Section Committee on National Legal Svcs. Corp.

I understood the Senator from Wisconsin to say a moment ago that he has a telegram or some communique from this gentleman saying that he wants the Legal Services Corporation Act passed or extended without any amendments.

Mr. NELSON. No. The Senator from Wisconsin did not say that.

The only context in which Mr. Greene's name appeared is that Mr. Robert Evans, legislative representative of the American Bar Association, simply stated in his communication to me that four attorneys active in the association, including former president Robert Meserve, and J. Thomas Greene of Utah serve on the advisory panel which is monitoring the alternative delivery system study. Mr. Greene did not directly contact me in any respect concerning the Senator's amendment. He is on the panel.

Mr. BUMPERS. Mr. President, I recognize the difficulty of having an amendment adopted which the floor managers oppose. I am not sure right now whether I am going to pursue it to an up or down vote, but I say this:

I am not one who is prone toward having committees appointed to study the work of other committees or studies of studies. But I am prone to want individual analysis made of studies that are made by those people about whom the study is concerned.

When I was Governor of my State, I used to get those studies in my office, those in-house studies, and I would say, "That's just one of those dogs-watching-the-meat-house studies."

We had all kinds of regulatory bodies in my State which were supposed to regulate everything from the real estate practice—you name it. It did not make any difference whether it was massage parlors or real estate—we had a committee to oversee the operations of those particular professions in the studies. Almost without exception, the commission was made up exclusively of people engaged in that profession.

One of the reasons I offer this amendment is that I favor the Legal Services Corporation concept. I am going to vote for the bill. But I think there are some very serious concerns in this body and in Congress about where we are going with the concept. Unless we have a fair number of demonstration tests across the country, what is there going to be to evaluate?

If I were in the Legal Services Corporation and I did not want judicare or prepaid insurance or anything like that because somebody in the Legal Services Corporation might lose his job, I would be violently opposed to this amendment, as they are. They do not like it. I like the concept, and I like the Legal Services Corporation. But I also know how organizations that are set up by Congress have a system of self-perpetuation. I know how they perpetuate themselves, and I know this is not going to be any different.

I am not saying that judicare is a suitable alternative. Perhaps it should not even be a supplement. But I think it should be studied. All I am saying is that the study is being done by the Legal Services Corporation, which is opposed to prepaid services, which is opposed to judicare; and I am afraid that the study may not come out favorably inclined toward either of those concepts.

Mr. NELSON. The provision in the statute which was adopted in 1974 originated in Congress. We were the ones who decided that this study should be made. As chairman of the subcommittee, I favored it. We wrote the language, and the language says:

> The corporation shall provide for comprehensive, independent study of the existing staff attorney program under this Act and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress not later than two years, after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

The delay in meeting the completion deadline, which was July 1, 1977, was a consequence of the delay in the appointment of the members of the Board of Directors, so the Board cannot be blamed for that.

It may be that those of us who drafted the statute are subject to criticism for not providing the kind of independence that the Senator from Arkansas thinks ought to be there. That could be so. But I think it is designed pretty well.

They made an interim report in July 1977 showing the contracts they have let. It is a 172-page report.

I am not prepared to say to the Senator from Arkansas that I am qualified at this moment or satisfied at this moment that the study is being conducted in the best possible way—not because I know it is not, but because I do not know whether it is. I know not either way. But they are proceeding as the Congress directed them to proceed, and that proposal came through the subcommittee of which I am chairman.

They are directed to try these various methods of delivery, including judicare, which the Senator from Arkansas says they are opposed to, although I have never heard from them that they are so opposed; but, nevertheless, they are directed to study all these various proposals.

When they complete that study, and it goes to the American Bar Association for their evaluation, I am assuming they will make a good study of it. They have done lots of very good volunteer work respecting delivery of legal services to the poor, and the Legal Services concept has been of great interest to them.

I will conduct hearings, as I am sure the House of Representatives will, too, and if, in fact, valid complaints lie against the way the study is conducted because of a bias in the study or incompetence in the performance of these studies contracted for by independent contractors in various States, I assure the Senator from Arkansas I would be prepared to refer this to the appropriate place for a further independent study.

Let me say to the Senator from Arkansas I am not prepared to argue the merits of whether or not such a study at some time ought to be made. The Senator may be absolutely right, it may be perfectly clear from hearings and looking at the finished product that the study is inadequate. I do not know because they are not complete. But I have enough confidence in the Senator from Arkansas that after the American Bar Association has evaluated it, after Members of the Senate and the Senator from Arkansas have evaluated it, and after those who are interested and qualified have evaluated the study now being made, and after our hearings, it is in fact indicated at that time that there ought to be some further independent evaluation, and such is the judgment of the Senator from Arkansas, I have enough confidence in his judgment such that I will join him in supporting such an independent study.

Now, that may not assure that a further study would be done, but at least it would assure there would be 2 votes for it out of 100, and maybe we could persuade some others at that time.

Mr. BUMPERS. Mr. President, let me say I appreciate very much the sense of fairness just expressed by the Senator from Wisconsin. He has always been eminently fair and has been most highly concerned about the fate of the Legal Services Corporation and the services it renders. I will come back to that in just a moment.

But, Mr. President, there are two or three points I would like to make: No. 1, the amendment we offer will cost no more than is already going to be expended. I am not suggesting that the study be expanded, I am not suggesting that a lot more demonstration projects be taken on. But I do think this: If we wait

2 years until the final report is in, and the evaluation is made either by the Legal Services Corporation or somebody designated by them to give it some air of independence, I think the results of the study are virtually a foregone conclusion. I think the Legal Services Corporation report, and whatever so-called independent, evaluator evaluates it, are going to find the services being rendered under the present system as being excellent, of high quality, and that there should not be any disturbance of the present system.

I just almost would be willing to bet the family farm on that study and what it is going to show when it comes in here, in, we will say, July of 1979.

The interim report has already been filed. They missed the deadline on July 1, 1977. They did file a report, as the Senator from Wisconsin said, because the board was late in being selected, but it is an interim report only. The final report has not been made, and, I assume, will not be made until these demonstration projects have been completed.

Now, No. 2, if the Legal Services Corporation report comes out as I anticipate and predict it will come out, it will be subject to the very criticism that I am saying we can avoid now on the front end because everybody is going to say, "we told you 2 years ago what the study was going to show. It has shown exactly what we said it would. It is indeed a case of the dogs watching the meathouse. How can you expect them to come up with any different report?"

Now, this amendment gives us an opportunity to, No. 1, bring the National Science Foundation into it right now and let them make some suggestion to the Legal Services Corporation as to how many demonstration projects there should be and where they ought to take place, so they will be in a position to make an independent analysis. Obviously, it is just like a pollster. You have got to frame the question correctly or the results are flawed.

Mr. NELSON. Mr. President, will the Senator yield at that point?

Mr. BUMPERS. Yes.

Mr. NELSON. I interpret the Senator's amendment, as I read it, to say quite clearly that when the present study is completed, the National Science Foundation will evaluate the study. The Senator's amendment says, "Based on the results of such study and on the evaluation of these results to be conducted by the National Science Foundation, the corporation shall make recommendations."

As I read this amendment, I interpret it to mean that once the studies we are talking about are completed, the National Science Foundation will then make its evaluation of the results of the studies.

Therefore, there is nothing which can be referred to the National Science Foundation, as was suggested a moment or two ago by the Senator from Arkansas. In fact, there is not anything to refer to the National Science Foundation unless it is further proposed that they be consulted to determine what additional studies should be made. The 38 demonstration programs have been commissioned. So whatever role, under this amendment, the Senator from Arkansas has in mind would not fall upon the shoulders of the National Science Foundation until the studies were over in any event.

Mr. BUMPERS. Let me say to the Senator from Wisconsin, Mr. President, that, perhaps, I was being a little presumptuous that my amendment carry with it the implication that the Legal Services Corporation would consult with the National Science Foundation now to make certain that the studies being undertaken will be sufficient and broad enough and designed to give the National Science Foundation enough information on which they could base a decision, that they would do this now if the amendment is agreed to; and then, of course, the independent analysis would be made at the conclusion of the study.

If there is any question about that, either of two things could occur. We could correct that by colloquy or I could modify my amendment.

But I would like to read to the Senator from Wisconsin just a little quotation here that fortifies the position and the feeling and the apprehensions I have about the legitimacy of the study. Here is a letter dated April 4, 1977, from Tom Ehrlich, who is president of the Legal Services Corporation, to a fellow named Brakel, I guess it is, who is with the American Bar Foundation. Here is a quote, because the correspondence carried on between the two deals with Brakel's insistence that the study be conducted, and Mr. Ehrlich writes and says——

Mr. NELSON. What study is to be conducted?

Mr. BUMPERS. The one I am talking about—that some independent organization be brought into it. Ehrlich's response says:

> We have carefully evaluated the existing staff attorney programs and have found that they are providing high quality service. We will not precipitously force shifts in delivery methods without adequate evidence that service will be improved. I do not believe that one single approach is the best for all circumstances.

Mr. President, while I say I have no preconditions or prenotions about this, I believe that the Legal Services Corporation does, and I am reluctant to call for an up or down vote on this. I feel strongly about it. I feel so strongly that I will predict that I will be back in the Chamber 2 years from now, when that study is completed, making the same plea for the same thing and we will then spend money to do an additional study that we would not have to spend if we adopt this amendment now.

I am not saying that I think judicare is a suitable supplement or suitable alternative. I am not saying that I think prepaid legal insurance is suitable as a supplement or alternative.

All I am saying is that there should be sufficient information derived from this study that we can make a sensible evaluation which is the best. Perhaps some mix of all three or some mix of two would be suitable. But what we are getting ready to do is not to conduct a study to evaluate the study—a study of a study. What I am suggesting now is to avoid that by doing the study right in the first place because, if we do not, 2 years from now we are going to be back here sure enough authorizing a study of the study that no one likes.

Mr. NELSON. I guess we covered most of everything. This may be a bit repetitious. I feel the same way the Senator from Arkansas does respecting the question of objectivity in making studies, and if the studies disclose that there is somehow or another a bias that demonstrates in the studies that certain important areas of study or evaluations were not made, I will be as indignant as the Senator from Arkansas. A chairman of the authorizing subcommittee, I give him my word that I will do everything in my power to rectify it. I think it is important that all parties, whether in Congress or out of Congress, deal in good faith.

The Corporation in selecting the Advisory Panel has selected a distinguished list of conscientious, independent attorneys and representatives of the poor who are dedicated to the public welfare.

I only know one personally, and that is Ellen Jane Hollingsworth of Madison, Wis. She possesses a fine reputation, is able, with a great deal of integrity and dedication to the public welfare.

I have no reason to believe that all of the people on the Advisory Panel are not the same. However, the test will be what are the results of the studies, and I repeat what I said. If after evaluation by lawyers who are familiar in the field in the American Bar Association and after hearings by the subcommittee of which I am chairman, if the Senator from Arkansas is still convinced that there should be further independent evaluation, as I said, and I repeat, I have enough confidence in his good judgment to be perfectly comfortable in saying now that if he concludes that, then I will join him in an amendment or proposal for a further study.

Mr. BUMPERS. Mr. President, I am not going to belabor this. I shall take a couple minutes.

UP AMENDMENT NO. 924

Mr. President, I send to the desk a modified amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. BUMPERS. 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 so modified.

The modified amendment is as follows:

On page 20, line 11, insert the following:

"SEC. 15. Section 1007(g) of the Legal Services Corporation Act, 42 U.S.C. § 2996f (g), is amended to read as follows:

"The Corporation shall conduct a fair and impartial study of the relative advantages and disadvantages of the existing staff attorney method of delivering legal services as compared with other methods (or combinations of methods) including judicare, prepaid legal insurance, vouchers, and con-

tracts with private law firms, in order to determine whether and to what degree the existing staff attorney method should be supplanted by alternative methods of delivery. The Corporation shall consult with the National Science Foundation to insure that the study is impartial and that sufficient number of demonstration projects using alternative methods of delivery in both urban and rural settings shall be established nationwide to insure a valid comparison. Based on the results of such a study Corporation shall make recommendations to the President and the Congress not later than September 30, 1979, concerning improvements or changes in the methods of service delivery to render such delivery more economical, more effective, and more satisfying to clients.' "

Mr. BUMPERS. Mr. President, this modified amendment, which I hope the floor managers will see fit to accept, provides simply that the Legal Services Corporation will consult now with the National Science Foundation and solicit its suggestions and thoughts as to how to make sure that the study is an impartial study and not necessarily accept, but discuss with them, a suitable number of demonstration projects to be carried out to give the study at least some additional air of impartiality.

Mr. NELSON. I do not like, I must say, to appear to be uncooperative with the objective sought by the Senator from Arkansas. However, there are 38 projects authorized. That is the whole ball game. Now I do not know what they would consult about.

Mr. BUMPERS. Mr. President, will the Senator yield for a question?

Mr. NELSON. I yield.

Mr. BUMPERS. Are these projects authorized by Congress or are they authorized by the Legal Services Corporation?

Mr. NELSON. We authorized the projects in the legislation (sec. 1007(g)) and directed that such projects be conducted. Money was appropriated to implement this section of the Legal Services Corporation Act.

Mr. BUMPERS. Did the enabling authorization legislation provide for 38 projects?

Mr. NELSON. It did not name the numbers of projects. We did not name the number, but it is my understanding that the resources authorized in and appropriated are committed to these 38 projects, 19 of which were recently authorized. So, if there were 19 more to go that had not been authorized I would not have any objections at all. But I think we would be writing something into the statute that would not be helpful since there are no more projects to be authorized.

Mr. BUMPERS. That may be impossible, and if that were impossible, then I would not expect the Legal Service Corporation to authorize any more. But I think therein lies one of the problems, and that is the Legal Services Corporation is the one that designated the projects, the kind of projects they will be, geographical locations of the projects, and they may be suitable for an independent impartial determination of the kinds and quality of services and they may not.

But I tried to dilute the amendment as much as possible to make it acceptable in the hope that at least some outside independent party would be consulted because, under the present law and the way that the study is being conducted now, I personally, as an independent evaluator, could not possibly accept that as a fair test if it comes out the way it is, simply because it looks like it is just all fixed, as we say in Arkansas, "all saucered and blowed on the front end," to make sure the same kinds of service now being rendered will continue to be rendered for all time to come at least for the foreseeable future, and that may indeed be the best possible system of delivery of legal services to the poor. What I am saying is no one here will really trust the study and the way it is being conducted, and that is what I was trying to get at. But I am not going to force a vote on this issue because I have tried that before. I have debated issues before with two or three Senators in the chamber, and I know that the floor managers can beat just about any issue in that situation. But I honestly believe it is a good amendment. I think it is a good amendment, and I am sorry that the floor manager cannot accept it.

So I will withdraw the amendment.

Mr. MATHIAS. Mr. President, I make the point of order that a quorum is not present.

The PRESIDING OFFICER (Mr. ZORINSKY). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection it is so ordered. Under a previous order of the Senate, the Senator from Virginia is recognized.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request, so that a staff member may have floor privileges?

Mr. SCOTT. Mr. President, I ask unanimous consent that I may yield for that limited purpose, reserving the right to retain the floor.

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

Mr. DOMENICI. Mr. President, I ask unanimous consent that George Ramonis of my staff be granted the privilege of the floor.

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

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for a unanimous-consent request, under the same conditions?

Mr. SCOTT. I yield.

## ORDER FOR RECOGNITION OF SENATOR EAGLETON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the recognition of Mr. ALLEN, the Senator from Missouri (Mr. EAGLETON) be recognized for not to exceed 15 minutes.

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

## LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1977

The Senate continued with the consideration of S. 1303.

Mr. McCLURE. Mr. President, will the Senator yield to me for a unanimous-consent request, on condition that he not lose his right to the floor?

Mr. SCOTT. I yield under the same conditions.

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

Mr. McCLURE. Mr. President, I ask unanimous consent that Tom Hill, of my staff, may have floor privileges at all stages of the proceedings on this legislation.

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

Mr. McCLURE. I thank the Senator from Virginia for yielding. Mr. President, I suggest the absence of a quorum, with the understanding that the Senator from Virginia will have the floor upon the resumption of business.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

(Remarks made by Mr. SCOTT at this point are printed following his earlier remarks, pursuant to unanimous consent.)

Mr. NELSON. Mr. President, as I see no one prepared to call up any amendments at this time, 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. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## ORDER OF PROCEDURE

Mr. GRIFFIN. Mr. President, I see the distinguished assistant majority leader on the floor. This Senator is growing a little bit impatient wondering what the future holds. I wonder if there is any reason why, as long as we are not doing anything with respect to the legal services bill, we could not set it aside for an hour or so and take up the resolution of disapproval of the air bag rule?

Mr. CRANSTON. I believe that negotiations are under way seeking to work out a time agreement so we can deal with both air bags and legal services, with an understanding of when votes can be brought to a head on them, and that the effort is to get a time agreement on the air bag matter that would permit a vote tomorrow, if that can be done.

Mr. GRIFFIN. I know of no reason why we could not take it up now. We are not doing anything.

Mr. CRANSTON. We are doing something. We are negotiating. I am not negotiating but others are.

Mr. GRIFFIN. I take it if I propounded a unanimous-consent request there would be an objection.

Mr. CRANSTON. The Senator from New Hampshire would, I believe, object.

Mr. DURKIN. That is correct.

Mr. NELSON. The pending business, as the Senator knows, is legal services.

Mr. GRIFFIN. If the Senate were doing anything, I could understand this great desire to continue to deliberate and debate legal services. But I point out to the leadership and to the Senate that we are not doing anything on that legislation. We have been sitting here doing nothing for at least 45 minutes.

Mr. NELSON. We have been sitting here——

Mr. GRIFFIN. Longer than that.

Mr. NELSON. For 5 hours awaiting agreement.

Mr. GRIFFIN. The fact is, as everybody knows, we are under a statutory deadline with respect to the air bag matter. If the Senate and House do not act by Friday, then by default, inaction, the order of the Secretary of Transportation will go into effect. So, obviously, regardless of what happens with respect to legal services, if we are going to act on the air bag matter we need to act very soon.

The Senate, of course, can make its decision by inaction. I think the Senate will be just as responsible whether we vote or we do not vote. But I would think that all Senators, including the Senator from New Hampshire, would want to be on record on this. If he is for the air bag—and I can understand that he might be—I fail to understand why he would not want to vote on it.

Mr. DURKIN. Mr. President, if the Senator will yield, I call attention to my vote in the subcommittee, which was five to nothing in disapproval, and I call attention to my vote in the full committee against the air bag. So the Senator from New Hampshire is recorded twice, and if——

Mr. GRIFFIN. Why is he determined to prevent the Senate from voting on it then?

Mr. DURKIN. Well, the Senator from New Hampshire is not determined to prevent the Senate from voting on it.

Mr. GRIFFIN. I am glad to hear that. Why would he object then if we could have some agreement to take it up tonight and vote on it?

Mr. DURKIN. I am not opposed—as the distinguished majority whip indicated, the majority leader is now trying to work out a birdcage where both the legal services and the matter the Senator from Michigan is interested in can be the subject of time agreements.

And as I have said before, if that cannot be worked out, I can assure that there will be a long weekend because we will discuss passive restraints until the clock runs out, but that may well not be necessary. In fact, the Senate saw the majority leader walk off the floor. He is now trying to work out an arrangement, a unanimous-consent agreement, a "bird cage," whatever you want to call it.

Mr. GRIFFIN. I personally hope that the majority leader is successful and that he can get an agreement to vote at a time certain on the Legal Services Corporation.

This Senator is certainly anxious to have that legislation disposed of. But whether or not an agreement can be reached with respect to the legal services bill, I see no reason why it should have any effect upon the ability of the Senate to take action with respect to the air bag resolution.

Mr. CRANSTON. If I may comment or behalf of the leadership, I spent the last hour and a half working on efforts leading to a time agreement that would permit a vote on the air bag resolution tomorrow and on legal services with some kind of a time agreement. That is what the majority leader has been doing. We are doing this because we are aware that otherwise there will be an objection and we will not get to the matter. I wish to see us get to the matter and the Senate make a decision one way or the other. As the Senator well knows, much of the work of the Senate is done off the Senate floor, and as the Senator well knows often quorum calls are entered for that purpose and no business is conducted on the Senate floor while we are trying to work out things trying to expedite the Senate business.

I assure the Senator that is what I have been seeking to do and what Senator ROBERT C. BYRD has been seeking to do.

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

Mr. CRANSTON. I yield.

Mr. STEVENS. Although I voted against the resolution disapproving the use of airbags and other passive restraints in the Commerce Committee, I was present in committee at the time it was determined that the procedure we would follow would be to insure a congressional review period on any decision concerning airbags. I think it is highly important that we get a decision in the Senate and that all Senators go on record with regard to this issue. It is related to the seatbelt interlock issue. It is something that I think cannot be allowed to sneak up on the American public. We must take a firm stand here and go on record as to what we desire to happen with regard to airbags and other passive restraints.

I would hope that this vote on the disapproval resolution that the Senator from Michigan seeks, the substance of which he knows I will oppose, will not be held hostage to the Legal Services Corporation maneuvering that is taking place now. There is a time frame involved, and I might say, as one of the committee at the time, we made a mistake in not assuring that this was a privileged matter. I do not think that will happen again in any of these oversight functions as far as actions such as regulations that the Secretary of Transportation has promulgated in this regard.

At least as far as I am concerned, I intend to keep my eyes open for this type of circumstance again.

Mr. GRIFFIN. I appreciate those remarks by the distinguished minority whip. Unfortunately despite his hope, I think it is obvious that this airbag resolution is being held hostage to the legal services bill, and to demonstrate that point, I ask unanimous consent, Mr. President, that we set aside the Legal Services Corporation Act and proceed to the consideration of Senate Concurrent Resolution 31 for 1 hour and then proceed to vote thereon.

The PRESIDING OFFICER. Is there objection?

Mr NELSON. I object.

The PRESIDING OFFICER. Objection is heard.

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

Mr NELSON. I wish to explain my objection. I would guess that when the roll is called, we will have a minimum of 80 votes in favor of the legal services legislation, maybe 90. It is a program that has been in existence for many years. I am not sure, the way I see things developing, that if we do not stay on the bill we are going to get an extension of the authorization. I just want to point this out.

However, I think we should vote on the air bag question.

Mr. GRIFFIN. When does the Senator wish to vote on it?

Mr. NELSON. As soon as we get a time agreement and finish the legal service legislation.

Mr. GRIFFIN. What if we cannot get an agreement?

Mr. NELSON. Legal services is in exactly the same position. The authorization expires at the end of this month. We can settle the issue with a time agreement very easily.

I might say the passive restraint question is probably a debate over nothing anyway because the House of Representatives has the resolution blocked in committee thus far, and it probably is not coming out of committee in the House. No matter what we do here it is likely to make no difference at all.

Mr. GRIFFIN. Of course, if this can be stalled along another day or so then the Senator will have a very much stronger argument in that respect, will he not?

Mr. NELSON. In what respect?

Mr. GRIFFIN. As far as the House being unable to act. But if the Senate would act tonight and send it over to the House, they would have more time to do something with it.

Mr. CRANSTON. If I could speak for one moment, I wish to say that it is by no means entirely—it may be in part—an effort related to legal services that causes objections. I believe the objections stem primarily from those interested on the pro side of air bags and not from their concerns about legal services which is quite secondary in their thinking. Nonetheless, I hope very much that we can work out an agreement and get an up and down vote on that.

Mr. GRIFFIN. When do those people who are for air bags want to vote?

Mr. NELSON. They will have to speak for themselves on that. They have been objecting up to now to our efforts to achieve a time agreement. I think we can accomplish one shortly.

Mr. GRIFFIN. If we are not going to adjourn, why can we not take up the air bag resolution now?

Mr. FORD. Let me make a point or two if I may. I am entirely in agreement with

the Senator from Alaska. We had a long discussion in regard to this procedure, and he gave me some insight from his past experience that was very valuable, and I appreciated that very much.

The Senator from Michigan is not fooling anyone here. The Senator from Michigan had been involved in trying to work out time agreements when he was a minority whip. He understands what the procedure is we are going through now, and I also remind the distinguished Senator from Michigan that we are not voting for or against air bags. We are voting on a passive restraint regulation as submitted to this Congress by the Secretary of Transportation. It has gotten into the position where everyone refers to it pro or con air bag, but actually it is a passive restraint regulation that has been presented by the Secretary of Transportation.

I assure both Senators who are on their feet that we are working and at least we have hopes of working things out, and I am not going to do anything to prohibit the distinguished Senator from Wisconsin from trying to do what he thinks is right also. I think we have an air of attempt at cooperation, and I hope, and I wish the Senator would quit pushing so much. I understand his position. But we are also pushing, and I have told him I was making an effort to work it out.

Mr. ROBERT C. BYRD. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Michigan does.

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

Mr. GRIFFIN. Yes, but first I want to make it clear that I understand and appreciate the difficulties of the majority leader. He has been trying to work out an agreement and I understand that. It is my background and experience, I guess, that also makes it clear to me what is going on here. Although the majority leader is trying to get an agreement there is a strong likelihood that he will not get an agreement with respect to the legal services legislation. If that is the case then it is quite obvious that this is being used by others as a convenient way of avoiding a meaningful vote altogether on the air bag issue.

They can do that if they want to. I just want to be sure that everyone knows that is what they are doing.

I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished Senator very much.

Mr. President, the legal services bill is the unfinished business, and earlier today I secured an order providing for going to—I will refer to it as the air bag matter upon the disposition of the legal services legislation.

Throughout the afternoon I have been trying to work out an agreement. Various Members on my side of the aisle have been assisting in the matter, and I have just left the minority leader's office, where I stated to the minority leader that I could give an agreement on the air bag matter of 1 hour for debate for the tabling motion which would probably be made, but if the tabling motion failed, assuring that there would be an up-or-down vote on the air bag issue. Also, I expressed the hope that we could get an agreement on the legal services bill, because I think that is tied in with the air bag issue.

May I say to the Senator that as far as the air bag issue is concerned, we are ready to get an agreement on that for an up-or-down vote tomorrow, and hopefully we can also get an agreement on the legal services bill that would allow us to dispose of both issues tomorrow.

Mr. GRIFFIN. Is the majority leader, then, ready to propound the request that we vote on the air bag resolution tomorrow?

Mr. ROBERT C. BYRD. No, I am waiting for the minority leader. He had some other Senators he wished to consult.

Mr. GRIFFIN. If the majority leader wishes, he could go ahead and get an agreement that when the air bag issue is taken up, there will be a limitation of 1 hour on the motion to table.

Mr. ROBERT C. BYRD. If the distinguished Senator will permit me, I would rather await the minority leader having an opportunity to finish his consultations, so we can wrap up both matters in one package.

Mr. GRIFFIN. I would wish very much that could be done, but I have dropped in on some of the sessions, and my impression is that it could take weeks.

I think the question I am raising here is, what do we do about the air bag resolution if such an agreement is not reached?

Mr. ROBERT C. BYRD. I still hope we can reach an agreement on both.

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

Mr. GRIFFIN. Yes; I am happy to yield to the Senator from Wisconsin.

Mr. NELSON. I just want to say for clarification, for the record, that I am ready to vote on air bags at any time.

Mr. FORD. I thank the Senator very much.

Mr. NELSON. I do want the record to show, though, that the Legal Services Corporation Act amendments of 1977, which was finally brought up yesterday, was reported out of the Human Resources Committee some 5 months ago; so it was at that desk for some 5 months. We tried and tried to get this legislation considered by the Senate but we were always told, "Oh, no, we cannot get an agreement as to time, we cannot get it brought up."

Time went on, and all of a sudden it was the August recess, and we could not take it up then for fear it would interfere with that. We went on through the August recess, and finally we have it up before the Senate, after 5 months. It is not anything more than an authorization for the Legal Services Corporation. As a matter of fact, the money for the Corporation has already been appropriated for fiscal year 1978, the money that is to be authorized in this bill. Appropriated funds are already being spent for fiscal 1978 to support the Legal Services Corporation.

So I think it is necessary and important that we continue until we finish this bill, even if that busts up our intended time to adjourn. I do not like that, but it is a very important matter, and I think after 5 months of delay in getting it brought before the Senate, that it is not unreasonable for me, as the manager of the bill, to say, "Let us keep on it until we finish it."

Mr. GRIFFIN. Mr. President, if the distinguished Senator from Wisconsin will just stand by, because he may want to respond, it having been indicated that 1 hour would be an adequate time to debate this matter, I ask unanimous consent that at 1 o'clock tomorrow the Senate take up Senate Concurrent Resolution 31.

Several Senators addressed the Chair.

Mr. NELSON. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. NELSON. Mr. President, I will amend that unanimous-consent request to take care of all this. I ask unanimous consent that a time limitation of 5 hours on all amendments to the legal services bill be established, and that as soon as that expires, there be 1 hour on the passive restraints measure, and that we finish them both in 6 hours.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, I am constrained to object in behalf of absent Senators.

The PRESIDING OFFICER. Objection is heard.

Mr. JAVITS. Mr. President, Senator STEVENS should not have to bear that burden. I am strongly for the bill, and I would object, because there are absent Senators who would object had they known this request would be made.

The PRESIDING OFFICER. Objection is heard.

Mr. NELSON. Does the Senator from Michigan yield the floor?

Mr. GRIFFIN. Let me yield to the majority leader.

Mr. ROBERT C. BYRD. I was going to suggest the absence of a quorum, so we could continue in our efforts to arrange an agreement on both bills.

Mr. STEVENS. Mr. President, if the Senator will allow me to make a statement? We have obtained a commitment from the insurance industry on the way air bag repacking will be handled by that industry. I think it is imperative that this be stated for the record so that the public understands it. I think it is also imperative for the public to realize that the 1979 and 1980 models of American-built motor vehicles will not have air bags or passive restraints. The requirement for this safety standard does not become effective until 1981.

I think every Senator ought to understand the possible ramifications of this issue. Even though I disagree with my friend from Michigan, I feel compelled to warn him that if we vote to disapprove the requirement for air bags, we are going to get a lot of mail from people who have been injured, asking, "Where were the air bags or passive restraints? I thought the Senate mandated them."

We are passing legislation mandating passive restraints in the future but the public is not going to understand why we are taking this action unless it is fully

explained here. I think our reasons should be made clear, and I think the commitment of the insurance industry to handle the repacking costs should be made known and put on the record for the information of everyone concerned. The availability of this information is necessary for the protection of the public.

So I think it is imperative that we get this matter before the full Senate and, therefore, have an opportunity to discuss the problems involved. Even though, as I say, I disagree with the Senator from Michigan, I think it is time we try this safety feature, and I think we ought to stress that that is just what we are doing, trying it, because no one has proved for certain that this feature will work.

Mr. GRIFFIN. Mr. President, at the suggestion of the majority leader, I make the point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

## NOBEL PEACE PRIZES FOR 1976 AND 1977

Mr. KENNEDY. Mr. President, all of us who share the desire for world peace and human rights welcomed yesterday's news of the award of the Nobel Peace Prizes for 1976 and 1977 to Betty Williams and Mairead Corrigan of the Northern Ireland Peace People and to Amnesty International.

The rise of the Women's Peace Movement in Northern Ireland last year was one of the most significant developments in recent years in the search for peace in Northern Ireland. It began as a cry from the heart of two courageous Catholic women against the horror of the daily violence in their lives.

The rapid and spontaneous growth of the peace movement was a dramatic symbol of the enormous grassroots desire for peace among the ordinary citizens of Northern Ireland. The movement drew broad support from both parts of the community in Northern Ireland, Protestant and Catholic, and it demonstrated the vast reservoir of hope for peace that cuts across sectarian lines in that troubled province.

Because of the peace movement and the efforts of Betty Williams and Mairead Corrigan, political leaders on both sides in Northern Ireland, the governments in London and Dublin, and people throughout the world are now more aware of the basic desire of ordinary citizens for peace and an end to the violence that has gone on so long.

As we congratulate these two courageous women for the outstanding honor they have received, we also hope that their award will bring new encouragement to their own efforts and the efforts of many others in the ongoing search for peace.

Mr. President, we also commend Amnesty International for the Nobel Peace Prize it has received. Its tireless efforts around the globe have brought hope for many victims of political oppression and injustice in many different lands. Because of the work of this outstanding organization, the goal we share of bringing freedom and human rights to all peoples in all nations is closer to reality.

Mr. President, the two Nobel Peace Prizes awarded yesterday share a common theme, the power of individual human beings, acting together as private citizens, to make a difference in their own communities and in the world around them. As my brother Robert Kennedy told the students at the University of Capetown on his visit to South Africa in 1966:

> Each time a person stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.

The ripples of hope sent forth by the Peace Women of Northern Ireland and Amnesty International have helped to bring the world closer to peace and human rights. We honor them now for the prizes they have received and for the great recognition they have earned.

Mr. President, I ask unanimous consent that a collection of news articles and editorials on this year's Nobel Peace Prizes may be printed in the RECORD.

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

[From the New York Times, Oct. 11, 1977]

### NOBELS GO TO TWO ULSTER WOMEN AND TO AMNESTY INTERNATIONAL

(By Robert D. Hershey, Jr.)

OSLO, October 10.—Two women who ignored danger in campaigning for peace in Northern Ireland were today belatedly named winners of the 1976 Nobel Peace Prize. At the same time, Amnesty International was named winner of the 1977 prize.

The two Northern Ireland women, Mairead Corrigan and Betty Williams, were awarded the 1976 prize jointly for their movement to end the violence between Roman Catholics and Protestants in the British province.

"Their initiative," the Nobel Peace Committee said, "paved the way for the strong resistance against violence and misuse of power which was present in broad circles of the people. Mairead Corrigan and Betty Williams acted from a deep conviction that the individual person can make a meaningful contribution for peace through constructive reconciliation."

Amnesty International, the London-based human-rights organization, was cited as a "bulwark" against increased brutality and the internationalization of violence and terrorism.

"Its efforts on behalf of defending human dignity against violence and subjugation have proved that the basis for peace in the world must be justice for all human beings," the committee said.

Mrs. Williams, 34 years old, and Miss Corrigan, 33, were understood to have been favored by the five-member selection committee last year but they could not be given the prize then because they had begun their peace-campaign several months after the Feb. 1 deadline for nominations.

Instead, 22 Norwegian newspapers raised $325,000 and awarded it to the women as a so-called "People's Peace Prize." They used the money to set up a trust fund to provide care for orphans, create jobs and begin other community projects to ease the effects of the Ulster fighting.

Mrs. Williams and Miss Corrigan, who will share a prize of $142,000, launched their peace movement after seeing three children killed by the getaway car of fleeing Irish Republican Army guerrillas in Belfast. Miss Corrigan was an aunt of the dead children.

The campaign met with widespread support in Northern Ireland, where sectarian strife has claimed more than 1,700 lives since 1969, and also attracted a tide of international sympathy.

Not since 1946, when Emily Balch, an American pacifist leader, shared it, has a woman won the Nobel Peace Prize. The prizes were established under the will of the Swedish chemist Alfred B. Nobel, the inventor of dynamite.

This is the first time since the early 1960's that two Peace Prizes have been announced at the same time. Dr. Linus C. Pauling was given the 1962 prize in 1963, when the International Red Cross was also named.

Today's announcement was made in the old Nobel Institute, near the heart of Oslo, by Aase Lionaes, chairman of the committee. She read the two brief citations in Norwegian, then a shortened English translation.

Mrs. Lionaes said the award to Amnesty International was intended to mark 1977 as prisoner of conscience year.

"In a world of increasing brutality, internationalization of violence, terrorism and torture, Amnesty International used its forces for the protection of human values," the citation said.

Amnesty International, which was founded 16 years ago in London as a voluntary group to assure human rights around the world, now has 100,000 members in 33 countries who seek to promote human rights through public reports citing violations of those rights.

A Nobel official, asked whether the committee had planned for over a year to give the 1976 award to Mrs. Williams and Miss Corrigan, said, "It's easy to assume so."

The Peace Prize and the Prize in Literature have been the most controversial of the five prizes awarded since 1901. The award of a sixth, for economics, was begun in 1969.

In 1973 two members of Norway's Parliament resigned in protest from the committee that selected Henry A. Kissinger and Le Duc Tho of North Vietnam. Parliament agreed then to study the possibility of reorganizing the peace prize committee, which until this year consisted mostly or entirely of members of Parliament.

Mrs. Lionaes said today, however, that the only change was to rename the committee last year the Norwegian Nobel Committee from the Nobel Committee of the Norwegian Parliament.

#### COMMITTEE "ABSOLUTELY INDEPENDENT"

"People have accepted the fact that the committee is absolutely independent of Parliament," Mrs. Lionaes declared. Since the last announcement of a peace prize, to Andrei S. Sakharov in 1975, two committee members have left Parliament, with the result that today's winners were the first picked by a committee with no parliamentary members. All but Mrs. Lionaes are men.

The presentation of the peace prices will be in Oslo. All the others are made in Stockholm on Dec. 10, the anniversary of Nobel's death in 1896.

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[From the New York Times, Oct. 11, 1977]

### TWO BATTLERS FOR PEACE: MAIREAD CORRIGAN AND BETTY WILLIAMS

(By Roy Reed)

LONDON, October 19.—Mairead Corrigan and Betty Williams now look like a match made in heaven, but they were a distinct long

shot for the Nobel Peace Prize when they met 14 months ago in Belfast.

Miss Corrigan, now 33 years old, was a quiet young woman working as a secretary. She was a deeply religious Roman Catholic and was known as a good family person, attentive to the people closest to her. Mrs. Williams, now 34, had two children and was married to a merchant seaman. She had no outside work and was also known as a family person. Neither had ever been involved in any public activity beyond church, school and home.

On Aug. 10, 1976, a British soldier shot the driver of an Irish Republican Army getaway car in the Andersonstown section of Belfast, not far from the Williams home. The car veered and struck three children, killing them. They were the children of Mairead Corrigan's sister.

Mrs. Williams made the first move that was to bring the two women together and ignite a movement. She went into Andersonstown, a stronghold of the I.R.A., and began asking strangers to sign a petition for peace and an end to the killing that had taken hundreds of lives on both sides since the late 1960's.

FIRST MARCH ATTRACTED 200

As part of the petition drive, she and some friends organized a small peace march. It attracted about 200 women.

Miss Corrigan saw it pass her house. She joined it, and she and Betty Williams that day became the joint leaders of a virtually spontaneous mass movement.

Ten thousand people marched with the two women the Saturday after the children were killed, and 20,000 a week after. Almost overnight, the "Peace Women" became a phenomenon. People all over the British Isles and in many other European countries sent money, letters and encouragement. Today, in Oslo, they received their greatest encouragement yet, the Nobel Peace Prize for 1976.

It was perhaps predictable that Mrs. Williams would have acted first. She is outgoing, emotional and aggressive. She is not ashamed to weep in public when her feelings overflow.

Mrs. Williams was also somewhat more conditioned to hatred than Miss Corrigan, who as a Catholic was a member of a religious and political minority in Northern Ireland. But Mrs. Williams was part of a smaller and even more despised minority. She was a Catholic married to a Protestant. Many on both sides consider mixed marriage almost treasonous.

FORMIDABLE PLATFORM PERFORMANCE

Miss Corrigan is as quiet as Mrs. Williams is talkative; she is spiritual and reserved. They make a formidable pair on the platform, the tall Mrs. Williams exhorting the crowd and the slight Miss Corrigan inspiring it.

How effective they have been in Northern Ireland is a matter of continuing debate. The Community of Peace People, as their organization is now known, is cautious about taking credit for the somewhat improved security situation in the province.

Mrs. Williams said at a meeting in London today, "During the 14 months since the movement started violent deaths in Northern Ireland have dropped by 54 percent. We hope this has something to do with our movement. We have not yet brought peace to Northern Ireland. We have created a climate for peace to become respectable."

The movement has seemed in recent months to be searching for direction. The two women have continued to travel widely, in and out of Northern Ireland, speaking to various groups and raising money. But at home the organization has shown signs of uncertainty.

PARTY INVOLVEMENT AVOIDED

The third major force in the movement is a former journalist named Cieran McKeown, who is recognized as the ideological leader. With the backing of Miss Corrigan and Mrs. Williams, Mr. McKeown has tried to steer the peace organization into what they call "community politics." They avoid party involvement, which would immediately cost them support from one side or the other in the conflict, but the mere mention of "community politics" has made many people skittish.

Organizational policy was fiercely debated at a meeting last weekend in Belfast before the 200 delegates ended with what one newspaper called a "woolly compromise" that essentially left the matter open.

Among other things, the organization has to decide how to spend the $140,000 of Nobel Prize money and an other $340,000 from the Norwegian Peace Prize that it won earlier. It has bought a headquarters, started a few dozen local chapters around the province and invested in some small community-center buildings. It has tried to help former terrorists find new lives in other countries, but it won't say how many it has helped so far. It sponsors gatherings to let Catholics and Protestants get acquainted.

There was some surprise in Belfast that the two women had won the Nobel Prize. Their organization has not been nearly so active recently as it was last year. The leaders said last spring that the group still had some 7,000 to 8,000 active adherents; the figure probably has decreased since then.

NEW CAMPAIGN IS PLANNED

Mrs. Williams said last weekend that some feared the peace movement was dying. "Well, I won't let that happen," she said.

The delegates voted to start a new door-knocking campaign to win peace recruits.

Miss Corrigan said today in Belfast that she would like to see some of the prize money go to other troubled countries, especially in furthering nonviolence.

"Other places are far worse off than we are," she said. "We have our problems but there are peop'e starving elsewhere. The world has been generous to us and let us be generous to the world."

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[From the New York Times, Oct. 11, 1977]

AMNESTY UNIT, 16 YEARS OLD, USES BOTH PRESSURE AND PUBLICITY

(By Tom Goldstein)

Amnesty International, the London-based group that won the 1977 Nobel Peace Prize, began with a newspaper article 16 years ago calling for formation of such an organization.

"Pressure of opinion a hundred years ago brought about the emancipation of the slaves," wrote Peter Benenson, a lawyer, in The Observer. "It is now for man to insist upon the same freedom for his mind as he won for his body."

In founding the organization, Mr. Benenson had powerful allies, including David Astor, publisher of The Observer, and Conservative, Liberal and Labor Members of Parliament.

Since its establishment, Amnesty, which presses for the release of individuals imprisoned for their political or religious beliefs, has grown into the world's large human rights organization, with more than 10,000 dues-paying volunteers in 78 countries.

But it has only a modest staff of researchers and investigators working on a yearly budget of $500,000, and so it has relied heavily on publicity in trying to shape opinion.

From headquarters that resemble an election campaign office in central London, the staff issues a continual stream of reports on human rights violations in individual countries and affecting groups of individuals, around the world. It has also issued reports alleging torture in Israel, Brazil and Chile and by the British in Northern Ireland.

It has "adopted" and worked for the release of thousands of prisoners in Communist countries, has intervened for dissenters in the Soviet Union, and has published an English translation of The Chronicle of Current Events, an underground publication written by Soviet dissidents.

A favorite technique of the group is a mass mailing campaign to a regime holding a prisoner the group "adopted."

"The avalanche of mail bags is still the biggest annoyance to most governments," said Sean MacBride, a founder of Amnesty and former Foreign Minister of Ireland, a few years ago.

"Mail piles up," said Mr. MacBride, who won a Nobel Peace Prize himself in 1974. "It's a nuisance. Sooner or later the matter is at Cabinet level and everyone is wondering whether the prisoner is worth all this trouble. The answer frequently is no."

According to the group, in the last seven years it has involved itself in cases of more than 15,000 political prisoners and helped gain the release of more than half of them.

DISAPPROVAL OF VIOLENT METHODS

From the start, the group has declined to adopt prisoners who use or advocate violence.

In its campaigns to help free political prisoners and to end torture, the group has not escaped criticism.

It has been called imperialistic by the Soviet Union, politically motivated by South Africa and meddlesome by Argentina.

Earlier this year, an animal-protection group accused Amnesty of conducting "horrendous and disgusting" experiments on hogs. Jon Evans, president of the Association Against Painful Experiments on Animals, said the tests, which involved electric shocks and red-hot metal rods, were "valueless, serving no practical purpose at all."

Martin Ennals, general secretary of Amnesty, said the experiments were carried out on anesthetized hogs to determine whether torture inflicted with cattle prods would leave any marks. He said the experiments, which were conducted in Denmark, were necessary as a test of human torture techniques.

But generally, the work of the group is well received. Its research staff, whose members can work in 21 languages, collect and analyze data culled from many sources, including visits to prisons and interviews with the families of victims.

"CLUSTERS" OF EVIDENCE ASSEMBLED

Amnesty considers that it has verified information only when it has used a "cluster of evidence," Anthony Blane, a professor at the City University of New York and the first American to serve on the group's nine-member executive committee, said recently.

Some of its findings, such as an estimate of 50,000 prisoners in Indonesia, have been criticized as exaggerated by the State Department, but its report that torture is practiced as government policy in more than 60 countries is generally believed.

In London yesterday, Mr. Ennals said: "What we would like to be is nonexistent—unemployed. But torture is now widely practiced and is becoming more systematic, although world opinion is now much more hostile to it."

In Stockholm, Thomas Hammarberg, a Swedish journalist and chairman of Amnesty, said the prize money of $145,000 would be used to expand its work in "countries where we are weak, including parts of Asia and Latin America where there is a great demand for our help."

The award coincided with the annual "Amnesty Week," when the organization presents a summary of its work on behalf of political prisoners in dozens of countries.

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[From the New York Times, October 11, 1977]

AMNESTY CHIEF FOR U.S. SEES LONG STRUGGLE

(By Pranay Gupte)

He had fully intended to take Columbus Day off, David Hawk was saying yesterday,

and then someone called with the news that Amnesty International had been awarded the 1977 Nobel Peace Prize.

"It was imposible to stay home after that, of course," said Mr. Hawk, Amnesty's executive director in the United States. "My staff of nine and I rushed to the office and it has been one telephone call after another."

"We're honored and very moved at the prize," he said. "But we're not celebrating. The time when we're going to celebrate is when there is no more torture and atrocities committed by governments around the world."

He and his London-based organization may have a long wait, considering the continuing allegations of mistreatment of political prisoners in such countries as Uganda and Chile, among others. But the intensity and passion with which Mr. Hawk delivered that remark have characterized his work, and that of his staff here, for several years.

MESSAGES ARE GRIM

Like Mr. Hawk, the staff members are young, mostly in their late 20's or early 30's. They work out of fourth-floor offices at 2112 Broadway, near West 74th Street. Colorful posters decorate the walls, but their messages are grim since they all illustrate the violation of human rights in many parts of the world.

"You know," Mr. Hawk said, "we really want to go out of business some day, when torture stops, but for now we are building up a grass-roots movement to marshal American public opinion."

The American Amnesty organization consists of 115 chapters in 32 states with an annual budget of $750,000, of which about $150,000 is channeled to Amnesty's headquarters in London, where most of the research on political prisoners is conducted.

Amnesty's tactics in this country largely involve getting sympathizers to send telegrams and letters to representatives of governments charged with violating human rights. These protests are directed to officials of the governments based in the United States and in foreign capitals.

UNFAVORABLE REACTION

The Chilean Government is a frequent target of Amnesty International, and yesterday Chile's representatives at the United Nations said they were not favorably impressed by the award of the Nobel Prize to the organization.

"Amnesty is always picking on us," a Chilean diplomat said sourly, adding that the organization did not focus "enough" on the Soviet Union and Eastern European countries.

The representative of one Eastern European country, Czechoslovakia, was not pleased with the award either. The prize, he said, was much too "Western-oriented."

But the reaction of Western diplomats at the United Nations yesterday reflected both surprise and delight.

"It's a clear signal that human rights is now a dominant issue in the global community," a Western European diplomat said.

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[From the Washington Post, Oct. 11, 1977]

AMNESTY GROUP, ULSTER WOMEN WIN NOBEL PRIZES

(By Bernard D. Nossiter)

LONDON, October 10.—The human-rights lobby Amnesty International was awarded the 1977 Nobel Peace Prize today. The Nobel committee also awarded the 1976 prize retroactively to two Catholic women who led a peace movement in Northern Ireland.

Amnesty, a London-based volunteer group that turns a spotlight on political prisoners and torture in all corners of the world, was cited for its defense of human values against degradation.

The two women were honored for their attempt to waken the conscience of Northern Ireland against the campaign of bombings and shootings that has lasted there for more than eight years.

The prizes—700,000 Swedish Kroner or about $145,000 each—were announced by the Nobel committee of the Norwegian Parliament in Oslo. The committee made no award last year in order to keep the prize open for the pair, Mairead Corrigan and Betty Williams, whose nominations had arrived late.

The two women expressed surprise and joy. Corrigan, 33, said through her tears, "I am absolutely stunned and delighted. I feel very humble. I accept the prize on behalf of everyone throughout the world who works and longs for peace."

Williams, 34, was at a Savoy Hotel luncheon here to honor the peace movement when she heard the news.

"Words fail you," she said. "I felt deep down in my heart we don't deserve this. We've only been going 14 months and other people have been going for years. But I know how hard we worked and perhaps after all we have earned it."

Their movement, which they call the Peace People, was launched in August 1976 when Williams saw three children run over and killed by a runaway car. Its driver, described as an Irish Republican Army gunman, had been shot by British soldiers. Corrigan, who had once thought of joining the IRA herself, was the three children's aunt. She joined Williams' appeal to Catholics and Protestants alike to stop supporting the violence and work for peace.

For several months, the pair caught the imagination of Ulster and the world. They drew as many as 20,000 marchers, Catholic and Protestant, for one rally alone. Nearly $1 million poured in on them from West Germany, Norway and elsewhere.

The movement has never been clear about how peace should be achieved, however, and its stated aim—an end to violence—is shared even by gunmen in Ulster. Williams, Corrigan and their chief ally—a former journalist, Ciaran McKeown—have toyed with the idea of non-sectarian politics, of creating local community peace organizations to compete with existing politicians. But this proposal has divided the movement.

Sophisticated observers in Ulster agree that the movement is now irrelevant, taken seriously only in the outside world. The movement, they say, has become futile because it refuses to come to grips with the questions of politics and power that lie behind Ulster's violence—Protestant demands for preponderant influence, Catholic insistence on equal rights; the debate over whether Ulster shall stay in the United Kingdom, join the Irish Republic or go independent.

Since the peace movement began, there has been a murder almost every other day and more than one bombing each day, but the curve is declining. Comparing the first eight months this year with the same period last year, killings have gone down from 222 to 96, shootings from 1,327 to 892 and bombings from 464 to 225.

In private, British authorities give Corrigan and Williams some credit, saying that more citizens are now giving information to the police and army.

Their Nobel citation says they "acted out of a deep conviction that individual people can do meaningful efforts for peace through conciliatory work."

There is less question over the effectiveness of Amnesty, especially in a year when President Carter has insisted on human rights as a major foreign policy issue.

Amnesty, started in 1961, "adopts" the cause of political prisoners throughout the world. Last year, it was championed 3,650 prisoners in 107 different countries.

The organization campaigns strenuously for the prisoners' release and has not hesitated to publicize the torture to which many are subjected. Its files and contacts are so highly valued that several attempts have been made to break into Amnesty's offices, probably by intelligence agencies.

The organization's strength lies in its accuracy and its political impartiality. It fights abuses in Western and Eastern Europe, in the developed and the so-called developing world. It has attacked repression in Brazil and Bulgaria, Chile and the Soviet Union, South Korea and Guatemala. One report condemned British interrogation practices, since abandoned, in Ulster.

Human rights has enjoyed a great boom his year and Amnesty has benefitted. Its organization in the United States has expanded rapidly, and its London budget has almost doubled to $1,225,000.

A year ago, Amnesty's 66 full-time workers labored in a grimy loft. Now the staff has grown to more than 100 enjoying more spacious offices.

Amnesty can point to hundreds of its adopted prisoners who have been freed, although no one knows how much its pressure has counted. It is not thought likely that torture is on the wane, but Amnesty has at least embarrassed several governments.

In a sense, this is the second time that Amnesty has been honored by the Nobel committee. Sean MacBride, the organization's former director, won the Peace Prize in 1974.

Martin Ennals, Amnesty's secretary-general, called the prize "an award for human rights," adding: "People in political prisons and peace are similar and linked."

The prize committee noted that 1977 is "the year dedicated to prisoners of conscience" and said that Amnesty is trying "to protect this group of prisoners against treatment contrary to human rights.

"With its activities to defend human values against degradation, violence and torture. Amnesty International has contributed to safeguard the foundation for freedom and justice and thereby also our peace in the world."

*Reuter reported from Oslo:*

The two prizes, which include Nobel gold medals and diplomas as well as the money, will be presented at a ceremony in Oslo Dec. 10, the anniversary of the death in 1896 of Alfred Nobel, the Swedish inventor of dynamite who endowed the awards.

Following announcement of the award, Amnesty issued a call to governments to release all prisoners of conscience and to abolish torture and the death penalty.

The award to Amnesty was hailed by Soviet dissident Andrei Sakharov, who said the organization was a major international influence due to its "fearless defense of human rights." Sakharov won the Peace Prize in 1975.

The Swedish Royal Academy of Sciences will announce the winners of the 1977 Nobel prizes for physics and for chemistry in Stockholm on Tuesday.

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[From the Washington Star, Oct. 11, 1977]

ULSTER WOMEN, AMNESTY GROUP AWARDED NOBEL PRIZES FOR PEACE

OSLO, NORWAY.—Nobel Peace prizes have been awarded to two "grassroots" peace movements—two Catholic women working to halt violence in Northern Ireland and an international group fighting human rights violations.

The Nobel committee awarded the 1977 Peace prize to Amnesty International yesterday because its work for political prisoners around the world helped "protect the value of human life."

Betty Williams and Mairead Corrigan won the 1976 prize for the Women's Peace Movement they formed in Northern Ireland. They Nobel committee had said last year that the 1976 Peace prize could be awarded this year.

Peace prizes in previous years have gone to controversial figures such as Henry Kis-

singer and North Vietnam's Le Duc Tho. But Nobel officials said the 1976 and 1977 winners "are grassroots movements which should be backed by most people."

Thomas Hammarberg, chairman of the International Executive Committee on Amnesty International, said the group would use the $145,000 prize money to build up its organization.

"Our work is important because there are political prisoners in 60–70 countries. In more than 40 countries people are tortured and in more than 120 countries there still is the death penalty, increasingly used for political crimes," he said.

Hammarberg said Amnesty International has 180,000 members in 107 countries. The group was formed 16 years ago by British lawyer Peter Berenson.

In Belfast, Corrigan wept when told she and Williams, both Catholics from Belfast, had won the 1976 prize worth about $142,000.

"There were so many people that deserved it that the prize came as a total surprise," she said. "It is a great honor and a tremendous responsibility for us to show the world that we can win the battle for peace in Northern Ireland."

The Nobel committee said the two women "acted from a deep conviction that the individual person can make a meaningful contribution for peace through constructive conciliation work."

The award to Williams and Corrigan has put their peace movement back in the headlines, but it could heighten jealousies and divisions within the 14-month-old crusade.

The delayed award to the two founders of Northern Ireland's Peace People underlined that the organization is more popular and respected abroad than it is at home.

Williams, 34, and Corrigan, 32, are considered heroines in the United States and in Western Europe. But in Northern Ireland their campaign to end eight years of warfare is beset by ideological squabbles, dwindling support and criticism of the women's leadership.

A hard-core membership of 8,000 doggedly press on, braying terrorist threats and abuse to try to bring the warring Roman Catholics and Protestants together. But much of the crusade's early support has fizzled out.

"We haven't really stopped the violence and we've hardly dented sectarianism at all," one peace worker commented bitterly. "But we stick to it because the only alternative is continuing violence and the rule of the gun."

The movement was launched Aug. 10, 1976, after a guerrilla's runaway automobile killed three small Catholic children in Belfast. Their deaths set off an emotional tidal wave that brought thousands of Protestants and Catholics together for the first time in years. Though the violence continues, the fervor has gradually diminished.

Foreign tours by Williams and Corrigan made them media superstars. But local critics said they should travel and work more on the grim realities at home. Leaders of less publicized peace groups were angered.

The women launched the campaign more than six months after the February 1 deadline for peace prize nominations last year, when all 50 candidates were rejected and no award was given. A Soviet dissident, Andrei Sakharov, won it in 1975.

Mrs. Williams said in London: "We've only been going 14 months and other people have been going for years. But I know how hard we worked and perhaps after all we have earned it."

Miss Corrigan, moved to tears by the news, said in Belfast: "I accept the prize on behalf of everyone throughout the world who works and longs for peace [and] the many people who have suffered and have been jailed in the interests of promoting peace."

The prizes are worth $141,600 to Mrs. Williams and Miss Corrigan and $145,000 to Amnesty International.

Amnesty was the 10th organization to win the peace prize. In selecting it over 53 other candidates, the Nobel committee called 1977 "the year dedicated to prisoners of conscience."

The organization, it said, "has given practical, humanitarian and unpartial support to people imprisoned because of their racial, religious or political beliefs."

Amnesty was founded in 1961 by a British attorney, Peter Benenson. Sean MacBride, of Ireland, a former peace prize winner, once served as its chairman. It claims to be the largest human rights organization in the world, with about 50,000 members in more than 60 countries and a file of 15,000 cases.

The organization attempts to win freedom for political prisoners through publicity and lobbying, sends them comforts and letters, cares for their families, and hires lawyers and keeps watch on their court cases.

An Amnesty spokesman said: "We are delighted to win the Nobel Peace Prize. We knew our name had been put forward, but we had no inkling that we would win."

The Nobel committee cited the Ulster women's "initiative to end the violence which has marked the unfortunate disintegration in Northern Ireland, and which has cost so many lives."

"Mairead Corrigan and Betty Williams acted out of a deep conviction that individual people can do meaningful efforts for peace through conciliatory work," it said.

The two Catholic women launched their movement in August, 1976, after Mrs. Williams saw three children killed by a runaway car whose guerrilla driver had been shot by British soldiers in Belfast. Miss Corrigan was the aunt of the slain children.

Braving threats on their lives by extremists, they organized peaceful marches by thousands of Protestants and Catholics in Northern Ireland, the Irish Republic and England. Last year they traveled to the United States to urge Americans to stop sending money to the combatants.

So widespread was the sentiment in Norway for honoring them last year that Norwegian newspapers raised $325,000 and gave it to them as a "People's Peace Prize." They used the money for a trust fund to create jobs, care for orphans and repair the devastation in Ulster.

In a recent interview, Mrs. Williams said the peace campaign had passed "out of the limelight" and become a "grassroots" effort by more than 100 peace groups.

The women were the seventh and eighth Britons to win the peace prize and the first from Northern Ireland. Mr. MacBride shared the prize with Japan's Eisaku Sato in 1974.

Sixteen Americans have won the peace prize. The last was Henry A. Kissinger, who shared it in 1973 with his North Vietnamese negotiating partner, Le Duc Tho, for arranging a cease-fire in Vietnam. Le Duc Tho refused to accept the award.

[From the Baltimore Sun, Oct. 11, 1977]

AMNESTY GROUP, TWO WOMEN IN ULSTER WIN NOBEL PRIZES

OSLO.—Amnesty International, the London-based organization that works for political prisoners, and two women anti-war activists in Northern Ireland won Nobel Peace Prizes yesterday.

The Nobel committee of the Norwegian parliament awarded the 1977 prize to Amnesty International for 16 years of effort on behalf of "prisoners of conscience" and against torture and the death penalty.

It gave the 1976 prize to Betty Williams, 33, and Mairead Corrigan 32, for organizing a broad-based "Peace People's' movement to end eight years of fighting in their homeland between Protestant and Catholic extremists.

[From the New York Times, Oct. 11, 1977]

TWO NOBEL AWARDS

The Nobel Peace Prize is, most often, given for battles not won, for controversies not resolved, for struggles not over. That is the case for the awards announced yesterday—the 1976 prize to Mairead Corrigan and Betty Williams, the leaders of Northern Ireland's largest peace movement, and the 1977 prize to Amnesty International, the London-based worldwide organization devoted to securing freedom for "prisoners of conscience" in all lands.

The awards committee did well to name winners for both years. It named no winner last year because it found no nominee of sufficient stature. The Peace People—the grass-roots movement of Protestants and Catholics to end the civil war in Northern Ireland had only just started last year and the two women were nominated after the committee's deadline. It is right that they receive recognition now. But it is right, also, that in a year in which the issue of human rights has received wider attention than ever before, the award to Amnesty International should not be delayed.

The example of Miss Corrigan and Mrs. Williams and their supporters has given thousands—Protestants and Catholics—the courage to stand up aaginst extremists. Likewise, Amnesty International has brought hope to thousands, imprisoned and tortured for their political beliefs. The list would be very much longer but for the work of this genuinely international movement.

The war in Northern Ireland is not ended. Unjust imprisonment and torture probably will never end. But what the Nobel awards celebrate is the equal possibility that courage and decency, also, will endure.

[From the Washington Post, Oct. 11, 1977]

NOBILITY AND THE NOBEL AWARDS

This year the committee that selects the winners of the Nobel Peace Prize did its work exceptionally well. It awarded the 1976 prize, which had not been awarded last year, to Betty Williams and Mairead Corrigan, the young Ulster women who inspired the formation of the Northern Ireland Peace Movement. It awarded this year's prize to Amnesty International, the 16-year-old organization that works for the release of "prisoners of conscience" all over the world. There is something very fitting about the conjunction of these two awards. The recipients have a great deal in common, and in important ways they also complement each other.

What Amnesty International and the Northern Ireland Peace Movement have in common is founders, leaders and members who have no use for the abstract and the grandiose in their work, but who are given instead to modest, practical and—yes—heroic here-and-now efforts. They are dedicated to relieving human anguish in the situations they have chosen to address. They are each, in slightly different senses, apolitical, insisting that neither armed violence in the one case, nor political repression in the other, is an acceptable instrument of policy—irrespective of whether you happen to share the goals of the policy or not.

The two newly honored groups also have this in common: What success they have achieved is a tribute to the capacity of ordinary individual citizens to make a difference. The Nobel committee underscored the point in giving the 1976 award to the two Irish women whose revulsion against violence in Ulster was brought into focus by the death of three Belfast children, hit by a careening IRA car whose driver had just been killed by British bullets. "Mairead Corrigan and Betty Williams," the committee said, "acted from a deep conviction that the individual person can make a meaningful contribution for peace. . . ."

Amnesty International likewise had its origin in the determination of a few hardy souls to do something about the plight of people who were suffering at the hands of various governments for their political or religious views or because of their rate or ethnic background. In 16 years it has ac-

quired over 100,000 members, is represented in almost 80 countries and has managed, to its credit, to get on all the right enemies-lists—those of repressor governments of every political stripe in every part of the world. But in the course of this expansion, it has made a point of remaining faithful to its simple, direct techniques, a kind of human-rights "buddy system" whereby individual members accept responsibility for a few individual prisoners and organize the work in their behalf. .

So you could say that these two organizations share a special spirit and a special outlook. But there is a difference, too. The Irish group is above all else—as it must be—the sworn enemy of physical violence, Amnesty International the sworn enemy of political repression. Yes, the lines do cross, and neither group is indifferent to the principal concern of the other. We observe this distinction only by way of noting that the Nobel Committee, by this particular choice of recipients, has made an important statement of its own. It has said that peace is more than the absence of conventional war and that tranquillity achieved by locking up dissidents is no peace at all.

[From the Baltimore Sun, Oct. 11, 1977]

PEACE PRIZES

September was the first month in six years in which no violent civilian death occurred in Northern Ireland. The governments of Europe and North America are solemnly engaged at Belgrade in measuring human rights. Betty Williams and Mairead Corrigan contributed much to the first fact, and Amnesty International to the second.

The Nobel Peace Prize now awarded for 1976 honors ordinary persons struggling to bring peace to their own community. The 1977 prize, honoring those who toil for the rights of strangers, is not for peace at all but a human rights prize in this human rights year.

When the Norwegian Nobel Peace Prize committee awarded no prize last year, Norway's newspapers and people collected a "People's Peace Prize" for Mrs. Williams and Miss Corrigan. In fairness to the committee, the Northern Ireland Peace Movement was then barely two months old. Honoring the young who have decades left in which to disgrace the honor is always incautious. The delayed prize this year is a considered endorsement of a popular choice.

Amnesty International is not a mass movement but a lawyers' and researchers' pressure group, now 16 years old. Its concerns are to free those imprisoned for political religious views or ethnic origin, and to end torture of anyone imprisoned. Its weapons are fact and publicity. Sometimes its selections of cases have seemed to reflect political bias. Always it has the difficulty of establishing information that governments hide. With its steadily growing reach to all countries, Amnesty International's reputation as an authority has grown steadily and should continue to do so.

Mrs. Williams and Miss Corrigan braved death to bring women and men, Catholics and Protestants, into the streets together to repudiate the terrorists of Northern Ireland. Ciaran McKeown turned their emotional appeal into an organization. He deserves a share of their prize to the extent that personalities deserve it at all. The Peace People do not draw the crowds of last year, but their viewpoint is more widely expressed, and tolerance for terrorism is diminishing. The movement has wisely decided never to become a political party, but to stress the unity of its adherents and not their differences.

The Northern Ireland Peace Movement and Amnesty International are human institutions working to better the world, composed of imperfect people trying to do the jobs of saints when the saints cannot be found. They deserve all the help they can get, including help to maintain the purity of their objectives. The Nobel Prize is just what each needs.

## PRIVILEGE OF THE FLOOR

Mr. DURKIN. Mr. President, I ask unanimous consent that during the debate and motions and votes on the legal services bill as well as Senate Concurrent Resolution 31, the following staff members may have the privilege of the floor: Ed Merlis, Tom Allison, Don Jaffe, Mike Brownlee, and Reid Ashinoff.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## 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, at 7:09 p.m. the Senate recessed, subject to the call of the Chair.

The Senate reassembled at 7:14 p.m., when called to order by the Presiding Officer (Mr. DURKIN).

## TIME-LIMITATION AGREEMENT—S. 457

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 433, S. 457, is made the pending business before the Senate, there be a time agreement thereon as follows: Two hours for debate to be equally divided between Mr. CRANSTON and Mr. STAFFORD; that there be a time limitation on any amendment of 1 hour; a time limitation on any debatable motion, appeal or point of order of 20 minutes; and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, that request is fully cleared on this side, and we have no objection to it.

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

The text of the agreement is as follows:

Ordered, That when the Senate proceeds to the consideration of S. 457 (Order No. 433), a bill to amend sec. 1662(a) of title 38, United States Code, to extend the delimiting period for completion for certain veterans and under certain conditions, debate on any amendment shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: Provided, That in he event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: Provided further, that no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 2 hours, to be equally divided and controlled, respectively, by the Chairman of the Veterans' Affairs Committee and the ranking minority member, or their designees: Provided, That the said Senators, or either of them, may, from the time under control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

## TIME-LIMITATION AGREEMENT—H.R. 3387

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as Calendar Order No. 421, H.R. 3387, is called up and made the pending business before the Senate, there be a time agreement thereon as follows: Two hours for debate divided between Mr. LONG and Mr. CURTIS; provided, further, that there be a time limitation on any amendment of 1 hour; a time limitation on an amendment by Mr. JAVITS of 2 hours: Provided further, there be a time limitation on an amendment by Mr. DOMENICI of 1½ hours; and provided further, that there be a time limitation on any debatable motion, appeal or point of order of 20 minutes, and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, there is no objection on this side.

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

The text of the agreement is a follows:

*Ordered*, That when the Senate proceeds to the consideration of H.R. 3387 (Order No. 421), an act to continue until the close of June 30, 1979, the existing suspension of duty on synthetic rutile debate on any amendment (except one to be offered by the Senator from New York (Mr. JAVITS), on which there shall be 2 hours, and one to be offered by the Senator from New Mexico (Mr. DOMENICI), on which there shall be 1½ hours) shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill, and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

*Ordered further*, That on the question of final passage of the said bill, debate shall be limited to 2 hours, to be equally divided and controlled, respectively, by the Senator from Louisiana (Mr. LONG), and the Senator from Nebraska (Mr. CURTIS):

*Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot

additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

## BUDGET ACT WAIVER

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the Budget Act waiver which is at the desk on S. 1582. It has reference to Calendar Order 425.

The PRESIDING OFFICER. Is there objection? The Chair hears none. The clerk will state the resolution by title.

The assistant legislative clerk read as follows:

Senate Resolution 274, waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1582.

The Senate proceeded to the consideration of the resolution, which was agreed to as follows:

*Resolved*, That pursuant to section 402(c) of the Congressional Budget Act of 1972, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1582. Such waiver is necessary because it would provide relief for the emergency water crisis facing the Ak-Chin Indian Community. The waiver would only be required for the sum of $500,000 for the engineering and hydrological studies. It is crucial that the studies start in fiscal year 1978 to begin the process in time to deliver water to the Ak-Chin Reservation before their aquifier is depleted.

The Ak-Chin rely on farming for their economic sustenance. The farming is dependent upon ground water from wells. Non-Indians surrounding the reservation are pumping from the same water basin. Because of the extensive pumping, the aquifer cannot sufficiently recharge itself, and the water level is declining at a rate which will prohibit farming on the reservation within the next few years. Starting now it will take at least two years to undertake the proper feasibility studies and construct the Federal well field and water delivery system needed by the Ak-Chin Indians.

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

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

The motion to lay on the table was agreed to.

## SETTLEMENT OF AK-CHIN INDIAN CLAIMS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration now of Calendar Order No. 325 on the Unanimous Consent Calendar.

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

The Senate proceeded to consider the bill (S. 1582) relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States, which had been reported from the Select Committee on Indian Affairs with an amendment to strike all after the enacting clause and insert the following:

That (a) the Congress hereby declares that it is the policy of Congress to resolve, without costly and lengthy litigation, the claims of the Ak-Chin Indian community for water based upon failure of the United States to meet its trust responsibility to the Indian people provided reasonable settlement can be reached.

(b) The Congress hereby finds and declares that—

(1) the Ak-Chin Indian community relies for its economic sustenance on farming, and that ground water, necessary thereto, is declining at a rate which will make it uneconomical to farm within the next few years;

(2) at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, and such obligation remains unfulfilled;

(3) it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined by nearby non-Indians;

(4) there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of surface water can be delivered;

(5) this Act is proposed to settle the Ak-Chin Indian community's claim for water by temporarily meeting the emergency needs of the Ak-Chin community through construction of a well-field and water delivery system from nearby Federal lands and obligating the United States to meet the Ak-Chin community's needs for permanent supply of water for a fixed amount to be available upon a date certain in exchange for a release of all claims such community has against the United States for failing to act consistently with its trust responsibility in the protection and delivery of the water resources of the community; and

(6) that it is the intention of this Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligation of the United States toward the Ak-Chin Indian community.

SEC. 2. (a) For the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall undertake engineering and hydrological studies as may be necessary to determine whether there exists, on Federal lands near the Ak-Chin Indian Reservation, a source of ground water which could be taken, on an annual basis, for use in connection with any contract entered into pursuant to subsection (b) of this section, subject to the provisions in (c)(2). Such studies shall be completed and a report with respect thereto submitted to the Congress within twelve months after the date of the enactment of this Act.

(b) Within one hundred and eighty days following the submission to the Congress of the report referred to in subsection (a), the Secretary, if he determines that there exists a source of ground water which can be so taken on an annual basis, shall agree to enter into a contract or other agreement with the Ak-Chin Indian community pursuant to which the Secretary shall agree, on behalf of the United States, to—

(1) furnish, subject to the provisions of clause (2) of subsection (c) of this section, to the Ak-Chin Indian community, commencing as soon as possible following the completion of the necessary facilities under clause (2) of this subsection but in no event later tha sixty days following such completion, the delivery to the southeast corner of the lands comprising the Ak-Chin Indian Reservation, on an annual basis, of eighty-five thousand acre-feet of ground water from nearby Federal lands covered by such studies;

(2) take such action as may be necessary, to begin within sixty days following the date of such contract, to drill, construct, equip, maintain, repair, reconstruct, and operate a well field on such Federal lands, and to construct and maintain a delivery system, including canals, pumping stations, and other appurtenant works, sufficient to provide for the delivery of such ground water from such Federal lands to the southeast corner of the lands comprising the Ak-Chin Indian Reservation.

(c)(1) The delivery of ground water under clause (1) of subsection (b) shall continue until such time as the permanent surface water required under section (3) is delivered to the Ak-Chin Reservation except that the obligation to deliver such ground water during any year shall be reduced for that year by an amount equal to the amount of surface water delivered to such community pursuant to such contract during such year.

(2) Notwithstanding the provisions of clause (1) of subsection (b) of this section, the Secretary, if he determines that pumping eighty-five thousand acre-feet of ground water annually from nearby Federal lands to the Ak-Chin community would (A) not be hydrologically feasible; (B) diminish the ground water basin thereby causing severe damage to other water users; may deliver a lesser amount.

(d) The Secretary is authorized to receive, consider, and pay any claims arising under this Act from water users other than the Ak-Chin Indian community for compensation for any losses or other expenses incurred by such users by reason of the enactment of this Act.

(e) Notwithstanding any other provision of this Act, if the Secretary determines, on the basis of studies conducted pursuant to subsection (a) of this section that the pumping on an annual basis of any such ground water pursuant to clause (1) of subsection (b) of this section in excess of sixty thousand acre-feet is not possible, and the Ak-Chin Indian community does not agree to contract for such lesser amount, the Secretary shall report to the Congress an alternative plan for meeting the emergency needs of the Ak-Chin Indian community. Such alternative plan shall be submitted to the Congress within one hundred and eighty days following the submission of the report referred to in subsection (a).

SEC. 3. In addition, within two years following enactment of this Act, the Secretary shall agree to enter into a contract or other agreement with the Ak-Chin Indian community, commencing as soon as possible, but in no event later than the expiration of the twenty-five year period following the date of the enactment of this Act, the permanent delivery, on an annual basis, to the land comprising the Ak-Chin Indian Reservation, of up to eighty-five thousand acre-feet of surface water, but in no event less than sixty thousand acre-feet.

SEC. 4. As consideration on the part of the Ak-Chin Indian community for entering into any contract or other agreement pursuant to section (3), the Ak-Chin Indian community shall agree to waive, in a manner satisfactory to the Secretary, any and all claims of the Ak-Chin Indian community which it might have against the United States, the State of Arizona or agency thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona, concerning water rights of the Ak-Chin Indian community, including both ground water and surface water from time immemorial to the present.

SEC. 5. There are authorized to be appropriated for the fiscal year ending September 30, 1978, the sum of $500,000, for the fiscal year ending September 30, 1979, the sum of $42,500,000, for carrying out the purposes of section 2 of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–460), explaining the purposes of the measure.

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

PURPOSE OF THE MEASURE

S. 1582, as amended, would authorize a feasibility study and, based on its findings, construction of a Federal wellfield and pipeline to the Ak-Chin Reservation from nearby Federal land. The water delivery would provide emergency relief on a temporary basis to the Ak-Chin water crisis.

The water delivered under S. 1582 will be reduced annually by the amount Ak-Chin receives from its permanent supply. S. 1582 also reaffirms the obligation of the United States to meet the Ak-Chin Indian Community's needs for a permanent supply of water and establishes a fixed amount to be made available upon a date certain. By itself, S. 1582 does not mandate the sources for the permanent supply of water. No reallocation of the Central Arizona Project or other measure is required. Rather, S. 1582 is a statement of the Ak-Chin water entitlement and the government's obligation to fulfill that entitlement. It looks forward to the permanent delivery of water by future legislative and administrative actions. In exchange, the United States would receive a waiver of all claims against it for failing to act consistently with its trust responsibility in the protection and delivery of the water resources of the Ak-Chin Indian Community. The Ak-Chin would also waive their legal claims relating to water rights against the State of Arizona and other persons.

A central purpose of this legislation is to devise a settlement of the issues growing out of the water right claims advanced by the Ak-Chin Indian Community that is as equitable as possible to all parties concerned. The Committee understands that the Ak-Chin Community has expressed its willingness, not only to waive all claims for past damages in this connection, but to forgo any further claims of this nature so long as water is received under the terms and conditions of the contract authorized by this Act, and that such water shall be in lieu of any and all other water rights of the Ak-Chin Indian Community.

BACKGROUND

Prior to the last twenty (20) years, the Ak-Chin Tribe has had to contend with severe poverty. By 1961, the Ak-Chin Indian Community has discontinued the practice of leasing its farm lands to non-Indians and had decided to farm the land for itself. Careful planning and financing enabled the community to farm 4,900 acres in 1964. In the years since their profits have risen from a low of $21,353 in 1964 to over $1 million in 1976, while farming less than 5,000 acres. Because of this amazing story of growth from Federal dependency to self-sufficiency, the Ak-Chin Tribe has been able to build many modern homes for its members and improve their quality of life.

The reservation located entirely within Pinal County, Arizona, is approximately 30 miles south of Phoenix. It consists of 21,840 acres of land all of which is suitable for agriculture, with class A–1 or B–1 soil. Allowing for roads, homes, etc., the Interior Department in the past has estimated there are 19,656 arable, practically irrigable acres on the Ak-Chin Reservation, with *Winters* rights of about 90,000 acre-feet of water.

Despite an Executive action of June 8, 1912, ten (10) days after the creation of the reservation when the United States filed notice of appropriation of 70,000 acre-feet per year for the Ak-Chin Reservation, none was delivered. Today, because of dams and other construction, the reservation has no surface water supply from which to satisfy its *Winters* rights. To farm, the Tribe has had to pump groundwater from the aquifer beneath it.

Non-Indians surrounding the reservation also rely on the groundwater and mine it by intensive pumping. The aquifer has not been able to recharge at the rate of pumped water. The water table at Ak-Chin is dropping twenty feet each year. A secondary effect of the drop is that the land on the reservation has buckled.

NEED

S. 1582 is needed to fulfill the historic and legal obligation of the United States toward the Ak-Chin Indian Community. At the time of the establishment of the reservation, it was the obligation and intention of the United States to secure water for the Ak-Chin Indian Reservation. Despite the government action of filing notice of intent to appropriate water in 1912, no water was actually delivered and the obligation remains unfulfilled. It is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined by nearby non-Indian farmers to the extent that the supply has been severely adminished.

However, beyond the historical and legal problems, S. 1582 is an emergency measure. The Select Committee on Indian Affairs has legislation before it to resolve the long standing water resource problems for all five central Arizona Tribes. Further, there are both litigation and executive actions being contemplated. But the water supply at Ak-Chin is critical. There is not sufficient economically recoverable groundwater beneath the reservation to sustain a farming operation until a permanent source of surface water can be delivered.

The Ak-Chin Indian Community relies for its economic sustenance on farming for which the necessary groundwater is declining at a rate which will make it uneconomical to farm within the next few years. Because of success at farming, a traditional occupation of the Pima and Papago, they receive no appreciable welfare or social assistance benefits. Should the principal ecnomic base of the reservation collapse there would be a drastic increase in all the major forms of Federal social assistance and benefits normally provided where no economic base exists.

Estimates provided by the Bureau of Indian Affairs indicates that their annual costs for providing services, now provided by the Community, would be a minimum of $200,000 using low categorical assistance figures. An aditional one million two hundred thousand (1,200,000) would be needed for employment training and assistance to try to integrate tribal farm workers into the area labor force. These figures do not include other Federal and State aid which might be necessary. As to the costs of unemployment, increased crime rate or other secondary social failures, the information available is imprecise. But the estimated unemployment rate caused by the loss of the tribal farming enterprise would be 40 percent.

Finally, S. 1582 is needed as a legislative settlement to avoid the costly social and economic disruption of litigation. The Department of Interior has requested the Department of Justice to institute litigation by the United States on behalf of the Ak-Chin Indian Community. Approximately 200 defendants have been identified in that action. If the litigation were to proceed, potentially all non-Indian pumping would be enjoined without compensation. The catastrophic economic consequences on the non-Indian farmer with no water or compensation would reverberate throughout the area. Defaults on loans and other obligations would create economic instability. Even if the Tribe were not to prevail the litigation could take years. during wihch all land having water rights would have a clouded title. Banks might be reluctant to capitalize development proposals. In an area where racial tensions are already high, litigation might increase racial animosity. All of these adverse affects would be avoided by enacting S. 1582.

## IMPROVEMENT OF ROBERTS FIELD, REDMOND, OREG.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 434.

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

The Senate proceeded to consider the bill (S. 2100) for the improvement of Roberts Field, Redmond, Oreg., which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert the following:

That, notwithstanding section 16 of the Federal Airport Act (as in effect on April 26, 1950), the Secretary of Transportation is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (50 App. U.S.C. 1622c), and the provisions of section 2 of this Act, to grant releases from any of the terms, conditions, reservations, and restrictions contained in Patent Number 1,128,955, dated April 26, 1950, by which the United States gave and granted a patent in certain property to the city of Redmond, Oregon, for airport purposes.

SEC. 2. Any release granted by the Secretary of Transportation under the first section of this Act shall be subject to the following conditions:

(1) The city of Redmond, Oregon, shall agree that in conveying any interest in the property which the United States granted the city by Patent Number 1,128,955, dated April 26, 1950, the city will receive an amount for such interest which is equal to the fair market value (as determined pursuant to regulations issued by such Secretary).

(2) Any such amount so received by the city shall be used by the city for the development, improvement, operation, or maintenance of a public airport.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–470), explaining the purposes of the measure.

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

SUMMARY AND PURPOSE

S. 2100 would remove the restrictive conditions imposed by section 16 of the Federal Airport Act (60 Stat. 179, repealed May 21,

1970, 84 Stat. 235), as they appear in the deed of conveyance dated April 26, 1950, under which the then Acting Secretary of Agriculture transferred to the city of Redmond, Oreg., approximately 1,820.55 acres to be used as a public airport. Such a release would and is intended to allow the airport property to be used for economic development.

BACKGROUND AND NEED

At the time of the above-mentioned conveyance, the U.S. Department of Agriculture was unable to convey nonairport surplus property for airport purposes without a reverter clause because of the conveyance authority contained in section 16 of the Federal Airport Act. Section 16 of the Federal Airport Act states in part:

"each such conveyance shall be on the condition that the property interest conveyed shall automatically be reverted to the United States in the event that the lands in question are not developed, or cease to be used, for airport purposes."

This inability of the Secretary to release certain of the lands conveyed pursuant to section 16 of the Federal Airport Act has in many instances been detrimental to the interests of civil aviation. In these instances more property was conveyed than was reasonably necessary for continued operation of the airport. The land not actually needed for airport purposes cannot be put to beneficial use due to existing restrictions. A release by the Secretary would allow the city of Redmond, Oreg., to use a portion of the acreage originally conveyed for purposes other than for which the land was originally conveyed.

Section 52(a) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 et seq.) repealed the Federal Airport Act effective June 30, 1970. However, section 52(c) contained a saving provision concerning such conveyances under the Federal Airport Act, giving rise to the need for S. 2100.

The purpose of this bill is to authorize and encourage the Secretary of Transportation to grant a release from the reversionary clause contained in the deed of conveyance so that the city of Redmond may proceed with the development of portions of the property for nonairport purposes. The bill contains a safeguard against abuse in that the Secretary's authority is made subject to the provisions of section 4 of the act of October 1, 1949 (50 App. U.S.C. 1622c).

Section 4 of the act of October 1, 1949, requires that before property is released for nonairport purposes it must be determined that the property is no longer necessary to accomplish the purpose for which it was originally conveyed and is not necessary to protect or advance U.S. civil aviation. It further provides that the Secretary may impose such conditions on the conveyance as he deems necessary so as to insure that any proceeds arising from nonairport use of the property will be used for the development and maintenance of the airport.

Comparable legislation was approved in the 94th Congress in connection with airport property in Elkhart, Kans., in 1976 (Public Law 94–221), approved February 27, 1976; and in Clarinda, Iowa, in 1966 (Public Law 89–649), approved October 13, 1966.

The committee believes that enactment of S. 2100 will not result in any additional costs to the United States. The Congressional Budget Office concurs with this as stated in the letter which follows, dated September 21, 1977.

## AUTHORITY FOR THE SECRETARY OF THE SENATE TO MAKE TECHNICAL AND CLERICAL CORRECTIONS—S. 695

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 695.

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

## 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 7:19 p.m., took a recess subject to the call of the Chair.

The Senate reassembled at 8:14 p.m. when called to order by the Presiding Officer (Mr. DURKIN).

## ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief 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 Senate by Mr. Chirdon, one of his secretaries.

## EXECUTIVE MESSAGE REFERRED

The PRESIDING OFFICER laid before the Senate a message from the President of the United States submitting the nomination of Robert E. White, of Massachusetts, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Paraguay, which was referred to the Committee on Foreign Relations.

## REPORT OF THE COUNCIL ON WAGE AND PRICE STABILITY—PM 122

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Banking, Housing, and Urban Affairs:

*To the Congress of the United States:*

In accordance with section 5 of the Council on Wage and Price Stability Act, as amended, I hereby transmit to the Congress the tenth quarterly report of the Council on Wage and Price Stability. This report contains a description of the Council activities during the first quarter of 1977 in monitoring both prices and wages in the private sector and various Federal Government activities that lead to higher costs and prices without creating commensurate benefits. It discusses in some detail the Council's studies of the outlook for collective bargaining negotiations for 1977, health care costs, automobiles, cement and the trends in industrial plant construction, as well as its filings before various Federal regulatory agencies.

During the remainder of 1977, the Council on Wage and Price Stability will continue to play an important role in supplementing fiscal and monetary policies by calling public attention to wage and price developments or actions by the Government that could be of concern to American consumers.

JIMMY CARTER.

THE WHITE HOUSE, *October 11, 1977.*

## APPROVAL OF BILLS

A message from the President of the United States announced that he had approved and signed the following bills:

*On October 7, 1977:*

S. 213. An act to amend the Accounting and Auditing Act of 1950 to provide for the audit, by the Comptroller General, of the Internal Revenue Service and of the Bureau of Alcohol, Tobacco, and Firearms.

*On October 8, 1977:*

S. 1307. An act to deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources:

Report of the Committee on Energy and Natural Resources pursuant to section 302(b of the Congressional Budget Act of 1974 (Rept. No. 95–486).

By Mr. MUSKIE, from the Committee on the Budget:

Without amendment:

S. Res. 286. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 897 (Rept. No. 95–487).

S. Res. 274. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1582 (Rept. No. 95–488).

By Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry:

Without amendment:

S. Res. 291. An original resolution authorizing supplemental expenditures by the Committee on Agriculture, Nutrition, and Forestry (Rept. No. 95–489). Referred to the Committee on Rules and Administration.

By Mr. CHURCH, from the Committee on Energy and Natural Resources:

With an amendment:

H.R. 3454. An act to designate certain endangered public lands for preservation as wilderness, to provide for the study of additional endangered public lands for such designation, to further the purposes of the Wilderness Act of 1964, and for other purposes (title amendment) (Rept. No. 95–490).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Charles P. Sifton, of New York, to be U.S. district judge for the eastern district of New York.

Thomas A. Ballentine, Jr., of Kentucky, to be U.S. district judge for the western district of Kentucky.

By Mr. SPARKMAN, from the Committee on Foreign Relations:

Carolyn R. Payton, of the District of Columbia, to be Director of the Peace Corps.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. CHURCH (for himself and Mr. WILLIAMS):

S. 2190. A bill to amend title XVIII of the Social Security Act to give the Secretary of Health, Education, and Welfare authority to waive all or part of an automatic increase in the inpatient hospital deductible; to the Committee on Finance.

By Mr. DOMENICI:

S. 2191. A bill for the relief of Federica Zangrando; to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD (for Mr. HUMPHREY):

S. 2192. A bill to authorize the Secretary of Housing and Urban Development to make grants to local agencies for converting surplus school facilities to efficient, alternate uses, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHURCH (for himself and Mr. WILLIAMS):

S. 2190. A bill to amend title XVIII of the Social Security Act to give the Secretary of Health, Education, and Welfare authority to waive all or part of an automatic increase in the inpatient hospital deductible; to the Committee on Finance.

Mr. CHURCH. Mr. President, on behalf of myself and Senator WILLIAMS, I introduce for appropriate reference a bill to give the Secretary of Health, Education, and Welfare authority to disapprove all or a portion of a scheduled increase in the part A hospital insurance deductible charge for medicare beneficiaries.

This proposal is prompted by a recent Department of Health, Education, and Welfare announcement that a 16-percent hike in the part A deductible, from $124 to $144, would become effective in January 1978.

As things now stand, this increase is mandatory, because the law requires the deductible to be adjusted annually according to changes in average per diem hospital costs covered by medicare.

In addition, the coinsurance charges for long-term hospital and skilled nursing homes stays, which are linked to the deductible, would also increase by about 16 percent.

Next year, a medicare beneficiary hospitalized from 61 to 90 days would pay $36 per day, compared to $31 now. Medicare patients who must draw upon their 60-day lifetime reserve would have their daily coinsurance charge boosted from $62 to $72. And for a posthospital stay of 21 to 100 days in a skilled nursing facility, the daily coinsurance charge would rise next January from $15.50 to $18.

Our bill would help to ease this situation for medicare patients by permitting the Secretary of Health, Education, and Welfare to declare a 1-year moratorium on the ever-increasing hospital deductible and coinsurance charges, or at least to defray a portion of the scheduled increases.

I recognize that the Congress will probably not have sufficient time to act on this proposal before adjournment. However, I hope that the Senate Finance Committee and the House Ways and Means Committee can consider this legislation early in 1978.

If our proposal is enacted into law, it would be possible for the Secretary of Health, Education, and Welfare to disapprove all or a portion of the scheduled in-patient hospital deductible increase in 1978 retroactively.

I sincerely hope that a joint effort by the administration and Congress to reduce the rapid rise in hospital charges will soon be successful. But until that occurs, we cannot turn our backs on millions of aged and disabled persons who will be hard hit by the scheduled increase next January for hospital and skilled nursing facility charges.

Our bill would provide welcome relief to more than 6 million aged and disabled medicare beneficiaries expected to be hospitalized in 1978. These individuals deserve and need all the help that they can receive.

If the scheduled 16-percent increase is allowed to stand, a medicare patient's deductible charge will increase by 210 percent since the program became effective in 1966.

An outlay of $144 for a hospital stay represents a formidable obstacle for an elderly person living on a limited income. The average social security benefit for a retired worker amounts to about $234 per month. In the case of an aged couple, the average benefit is $400.

Social security is, of course, the economic mainstay for most older Americans. It represents more than half the income for 7 out of 10 individual beneficiaries and one out of two aged couples.

For these reasons, I urge prompt and favorable action on this proposal.

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

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

S. 2190

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) section 1813(b)(2) of the Social Security Act is amended—

(1) by inserting "(A)" immediately after "(2)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) The Secretary may reduce or waive any increase in the inpatient hospital deductible as determined under subparagraph (A) in any case in which he determines that such increase would have a serious adverse impact on the economic well-being of individuals receiving benefits under this title.".

(b) The amendments made by this Act shall be effective with respect to adjustments of the inpatient hospital deductible determined for calendar years after 1977.

By Mr. ROBERT C. BYRD (for Mr. HUMPHREY):

S. 2192. A bill to authorize the Secretary of Housing and Urban Development to make grants to local agencies for converting surplus school facilities to efficient, alternate uses, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SURPLUS SCHOOL RECYCLING ACT

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Minnesota (Mr. HUMPHREY), introduce a bill cited as the Surplus School Recycling Act of 1977. I ask unanimous consent that a statement by Senator HUMPHREY, and the text of this bill, be printed in the RECORD.

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

STATEMENT BY SENATOR HUMPHREY

PUTTING EMPTY SCHOOLS TO GOOD USE

Today I am introducing the Surplus School Recycling Act of 1977.

The existence of vacant and partially unused schools is becoming a critical problem in many of our communities. Already elementary schools are suffering serious enrollment decreases, and population projections indicate this trend will continue, substantially affecting high schools in the early 1980s. The resulting unused school facilities represent valuable resources to our communities. But the burden of renovating and adapting this space is too great for many communities, which often are struggling to maintain just these school facilities that are presently required for educational purposes.

We have created for ourselves a throw away society. Our country bears the marks of wasteful disposal. It is time we shed that attitude that we can afford to throw away that which we deem no longer useful for its initial design. The Federal Government should take the lead in encouraging the use of existing resources to their full potential, for their full tenure. The bill I am introducing today is one opportunity for the Federal Government to assume such a role.

The Surplus School Recycling Act authorizes the Secretary of Housing and Urban Development to make grants to local agencies desiring to renovate and modify totally or partially empty school facilities for other uses. The Federal Government would make grants to qualifying local agencies in the amount of 80 percent of renovation costs, thus requiring some capital commitment from the agency to the actual facility in the amount of 20 percent. Qualifying local agencies would receive grants to convert school facilities to such uses as children's resource centers, senior citizen programs, and educational programs for adults or handicapped persons. Federal grants would cover renovation costs only, and not the purchase, maintenance or operation of a facility.

We need not be reminded of the potential hazard vacant buildings present—standing invitations to vandalism and rapid deterioration due to neglect. It is the shame of our communities not to make use of these valuable resources—resources that may later again be needed for the same educational purposes for which they initially were designed. It is far more difficult to revive a building that has gone unused for years, suffering extensive deterioration, than to reopen a school that has been minimally adapted, to function in some other capacity. Funding under this bill would facilitate the interim use of schools in communities that may later experience new surges in school enrollments, necessitating the reopening of former schools.

Besides addressing the problem of totally vacant schools, this bill provides alternate solutions to communities faced with imminent school consolidation as the answer to declining enrollments and rising operating costs. Throughout our history, the school has been a social center in every community. Mothers have found companionship, and a sense of involvement, through participating in the PTA, and acting as room mothers and teacher's aides. In many communities the local school has fulfilled a social purpose rivalled only perhaps by the local church. Efforts to consolidate schools are often met with great local bitterness and opposition. Parents, understandably, want their children to attend a school within walking distance. Communities do not want to give up the intimacy of their local schools. Consolidation brings a promise of broader-based control; a threat to a community's traditional range of local control. Under the Surplus School Recycling Act, the Federal Government will provide funds for renovation to local agencies desiring to occupy partially vacant schools, thus enabling local school districts to keep schools open through joint use and shared operating costs with other organizations.

This bill suggests, but does not limit, possible uses to which surplus school space could be adapted. I have a personal interest in seeing these schools used for senior citizen programs or as children's resource centers.

Too often our society has created its institutions to segregate the young from our senior citizens. Our young people are unnaturally shielded from healthy exposure to the process of aging. Senior citizens lack contact with our young people—a source of vitality throughout life regardless of one's age. Joint use of a school facility by senior citizens and students can be mutually rewarding to both groups. Large, bright classrooms are ideal for senior citizen social activities. And in schools where student lunch programs are in effect, minimal resources would be needed to expand these programs to provide lunches for senior citizens, thereby making full use of the facilities.

The existence of partially and fully vacant schools affords communities an opportunity to provide resources for children, that were excluded in past planning when demand for classroom space consumed most of a school building. During the first week of October, a children's museum—the Capital Children's Museum—formally opened very close to Capitol Hill itself. It is one of some six similar children's museums in our country. Activities at this museum re-enforce many basic concepts learned in the classroom. Children visit the museum with their class or youth group, and are able to experiment with, and experience many physical concepts that are impossible to fully illustrate within the limitations of a classroom. Public service institutions and business have contributed a fire alarm, clocks, and a small computer, which children cannot only observe, but operate or take apart as well. Children are able to experience various physical properties such as the effects of different lengthed levers on lifting a weight, and the action of a pulley.

The Capital Children's Museum occupies most of one floor in a school near the Capitol. Its location there has made it possible for the school, which is under-enrolled and was formerly under-utilized, to remain open. The school provides the museum with free space in the building, and covers the museum's utility and janitorial costs during school hours.

The Capital Children's Museum is testimony to what can be done, often with minimal funds, to revitalize vacant or partially vacant schools. It is a shameful waste to leave these school buildings unused when they could house potentially indispensable community programs. It is sad to see a community lose a cherished school because it has no affordable option to keep the school open and fully utilized by joint use with other organizations. It is up to the Federal Government to provide incentives, by funding renovation, to begin recycling these school buildings and extra space.

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S. 2192

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

That this Act may be cited as the "Surplus School Recycling Act of 1977".

Findings

(a) The Congress finds that—

(1) declining school enrollments and population migration have caused the closure or underutilization of school facilities at all levels throughout the country;

(2) the school facilities that have been closed or that are underutilized represent valuable resources to communities and should be recycled for other productive uses;

(3) local communities lack the necessary funds to adequately recycle surplus school facilities on their own; and

(4) the Federal Government should assist communities in recycling surplus school facilities with Federal funds.

(b) It is the purpose of this Act to provide grants to communities to enable these communities to recycle and convert, in the most efficient, creative, and economical manner possible, surplus school facilities for other productive purposes determined by the respective communities. Such other productive purposes shall be in the fields of educational and social services and may include, but shall not be limited to, any purpose described in section 3 (a) of this Act.

SEC. 2. As used in this Act, the term—

(1) "surplus school facility" means any building or structure or part thereof which has been used during any period as a school or as a classroom or related facility for educational or training purposes including athletics but, as of the date of application for a grant to renovate such building or structure under this Act, is not so used;

(2) "renovating" means any remodeling, altering or improving of a school facility for educational or social services other than those for which it is designed at the time of the request for a grant.

(3) "costs for renovating" includes expenses for preparing drawings and specifications, for remodeling, altering, or improving a facility, for materials and labor, and for inspecting and supervising construction;

(4) "elementary or secondary school facility" means any public school facility which provides elementary or secondary education, as determined under State law, except that such term does not include any education provided beyond grade 12 or its equivalent;

(5) "local agency" means any agency or other instrumentality of a State, county, city, parish, township, or other political subdivision of a State and includes an agency or other instrumentality of one or more such political subdivisions;

(6) "school year" means an academic year or its equivalent as defined by State law;

(7) "Secretary" means the Secretary of Housing and Urban Development; and

(8) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

SEC. 3. (a) The Secretary may make grants to local agencies, and such local agencies shall use the money received from such grants, to pay the costs of renovating surplus school facilities so that such facilities may be converted for use by such local agencies for productive educational and social service purposes including, but not limited to, any of the following such purposes—

(1) children's resource centers;
(2) senior citizen centers;
(3) community centers;
(4) recreational centers;
(5) vocational schools;
(6) community colleges;
(7) continuing education programs;
(8) schools for the handicapped;
(9) day care centers;
(10) preschools;
(11) walk-in centers for drug abuse or other counseling;
(12) medical facilities or centers;
(13) mental health clinics;
(14) dental facilities or centers; and
(15) recycling centers.

(b) A local agency desiring to receive a grant under this Act shall submit to the Secretary an application containing—

(1) a plan for renovating a surplus school facility and for using such facility after such renovation for educational and social service purposes;

(2) an estimate of the costs of such renovation;

(3) a statement evaluating the social and economic impact of the renovation and use of such facility for such purposes;

(4) a statement, if a program will occupy a school facility part of which is still being used as an elementary or secondary school, showing the compatibility of their joint use;

(5) such other information which demonstrates to the Secretary's satisfaction sufficient financial ability on the part of such local agency to carry out the provisions of such plan.

(c) The amount of a grant under this Act shall be 80 per centum of the estimated cost of renovation contained in the application submitted to the Secretary under subsection (b) of this section.

(d) If the amount of a grant under this Act is more than the actual cost of renovation under such grant, the local agency which received such grant shall return such surplus money to the Secretary, who shall use such surplus money to make other grants under this Act.

(e) Notwithstanding section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), the Secretary may advance public money to local agencies for grants under this Act.

SEC. 4. In approving applications for grants under this Act, the Secretary shall—

(1) give priority to an application for renovating a surplus school facility which is located in a school district whose current school enrollments have decreased by 10 per centum or more from the school enrollments of the previous school year as determined by the Secretary based on the most recent information available to the Commissioner of Education, except that an educational institution other than an elementary or secondary school facility shall not be given priority under this paragraph;

(2) give priority to an application for renovating a surplus school facility which is not on the date of such application being fully utilized for a productive educational and social service purpose (other than utilization as a storage facility);

(3) require assurances that the surplus school facility for which a grant is being applied for under this Act will not, after its renovation, be used primarily as a storage facility; and

(4) include in his consideration the following factors:

(A) the need of the local agency for a grant under this Act based upon the number of surplus school facilities located in the same school district as the surplus school facility for which the local agency is applying for a grant under this Act and upon the size of the population served by that school district;

(B) the suitability of such surplus school facility for renovation and conversion to its proposed use, including the value of such facility before renovation; and

(C) the value of such surplus school facility after renovation including the number of individuals who will use such facility, the number of different uses of such facility, and the length of time during which such facility will be so used.

SEC. 5. The Secretary shall prescribe reasonable regulations to carry out the provisions of this Act and to assure that a surplus school facility renovated under this Act shall be used by a local agency in accordance with the plan of that agency required under section 3(b)(1) of this Act.

SEC. 6. For any fiscal year, no more than 10 per centum of the funds appropriated by Congress for grants under this Act shall be granted to local agencies in any State.

SEC. 7. The Secretary shall serve as a national clearinghouse to local agencies by having available publications on alternative uses of surplus school facilities and by suggesting at the request of a local agency, how a surplus school facility can best be used for educational and social service purposes given such facility's unique location and design.

SEC. 8. For each fiscal year for which funds are appropriated under this Act, the Secretary shall prepare and submit, not later than ninety days after the end of such fiscal year, to the President and the Congress a report listing the local agencies that received grants under this Act during such fiscal year and the purposes for which such grants were made. The report for the third such fiscal year shall also include—

(1) a cost analysis of the effectiveness of grants made under this Act;

(2) the findings of a survey, which the Secretary shall conduct, on the extent of the problem of school closures and partial closures nationwide, including an analysis of where and why schools are closing;

(3) results of a study and cost analysis, which the Secretary shall conduct, on the impact declining school enrollments have on local communities; and

(4) an evaluation of whether grants under this Act are the most effective and economical way of recycling surplus school facilities.

## ADDITIONAL COSPONSORS

S. 247

At the request of Mr. GOLDWATER, the Senator from Oklahoma (Mr. BARTLETT) was added as a cosponsor of S. 247, a bill to provide recognition of the Women's Air Forces Service Pilots for their service to their country during World War II by deeming such service to have been active duty in the Armed Forces of the the United States for purposes of laws administered by the Veterans' Administration.

S. 2009

At the request of Mr. DOMENICI, the Senator from Michigan (Mr. RIEGLE) was added as a cosponsor of S. 2009, the home care services bill.

S. 2135

At the request of Mr. MCINTYRE, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 2135, a bill to regulate commerce by providing franchisors and franchisees with certain remedies to assure fairness, and to protect against overreaching, unjust enrichment, and unjustifiable termination, and for other purposes.

SENATE RESOLUTION 268

At the request of Mr. ROBERT C. BYRD, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. Res. 268, to provide for radio and television coverage of proceedings of the Senate during consideration of the Panama Canal Treaties.

## SENATE RESOLUTION 291—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES

(Referred to the Committee on Rules and Administration.)

Mr. TALMADGE, from the Committee on Agriculture, Nutrition, and Forestry, reported the following original resolution:

S. RES. 291

*Resolved*, That section 2 of Senate Resolution 144, 95th Congress, agreed to June 14 (legislative day, May 18), 1977, is amended by striking out "$300,300" and inserting in lieu thereof "$330,300".

## SENATE RESOLUTION 292—SUBMISSION OF A RESOLUTION RELATING TO ORDERLY MARKETING AGREEMENTS WITH JAPAN

(Referred to the Committee on Finance.)

Mr. SCHWEIKER submitted the following resolution:

S. RES. 292

Whereas, conditions within the American steel industry are becoming increasingly grave, as evidenced by the lay-offs of thousands of steelworkers in the past months and weeks;

Whereas, many of the problems of the steel industry can be directly traced to the high level of foreign imports;

Whereas, a significant percentage of the foreign steel imported by the United States is priced below the cost of production in the exporting country, as recently affirmed by the Department of the Treasury in its finding that Japan is dumping steel in the American market; and

Whereas, the American steel industry cannot modernize and expand as long as this situation exists:

Be it resolved, that the President immediately instruct the Special Representative for Trade Negotiations to initiate negotiations with Japan and the European Community in order to achieve Orderly Marketing Agreements providing for a level of steel imports significantly below those currently in effect.

Mr. SCHWEIKER. Mr. President, today I am submitting a resolution urging the President to direct the Special Representative for Trade Negotiations to negotiate orderly marketing agreements with Japan and with the European Community limiting the amount of foreign steel flooding our country to significantly less than at present.

Our steel industry is in serious trouble. Severe losses are being suffered. Thousands of steelworkers have already been laid off; the jobs of thousands more are threatened. We must move quickly to protect the jobs of American steelworkers, and we must move quickly to insure the survival of a basic American industry.

While the problems of the domestic steel industry cannot be traced entirely to unfair foreign competition, the impact of imports is growing increasingly severe. Currently, steel imports make up approximately 18 percent of the U.S. market—a sharp increase over last year's 14 percent. In addition, the Treasury Department has recently found that Japan is "dumping carbon steel products in the American market at a price below a fair market price. It is quite evident that our steel industry has been the victim of unfair trade practices, and will continue to be unless remedial action is taken. We cannot allow the situation to deteriorate further.

For this reason, I am urging the President to take immediate steps to limit steel imports. The negotiation of orderly marketing agreements with Japan and with the European Community, calling for an import level significantly below current levels, would provide the industry with needed relief, as well as give us time to consider other long-range remedies.

The plight of the steel industry does not require that we abandon the principles of freed trade, Mr. President. What we must do, however, is insure that our competitors comply with the principles of fair trade. The orderly marketing approach will help us achieve this goal.

## MOTIONS

Mr. SCOTT submitted the following motions, which were ordered to be printed and to lie on the table:

Mr. President: I move that the bill, S. 1303, "A bill to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes", be referred to the Committee on the Judiciary, with instructions to report that bill back to the Senate within 30 legislative days.

Mr. President: I move that the bill, S. 1303, "A bill to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes", be referred to the Committee on the Judiciary.

## AMENDMENTS SUBMITTED FOR PRINTING

### GI BILL IMPROVEMENT ACT—S. 457

AMENDMENT NO. 1433

(Ordered to be printed and to lie on the table.)

Mr. DURKIN. Mr. President, as we are all aware, the GI education bill has been, perhaps, the single most successful Federal program in the history of this Nation. However, the very aim of this program as a readjustment device was defeated for the estimated 483,000 veterans enrolled in educational programs who lost their entitlement to benefits in May 1976, as a result of the expiration of the 10-year "delimiting" period.

The amendment I am submitting with my colleagues, Senators CRANSTON, STONE, MATSUNAGA, EASTLAND, CANNON, WILLIAMS, MCINTYRE, ABOUREZK, ALLEN, CLARK, HATHAWAY, FORD, and RIEGLE, will extend the delimiting date for 2 years only for those veterans who were full-time students at the time their benefits expired, and who will continue in a full-time education program. Benefits will be provided at a rate of 50 percent in the first year of the extension and 33 percent in the second year. The only exception to the full-time requirement is where the

veteran is employed in a public safety occupation and is a part-time student in an LEAA education program.

This proposal is much more limited than my amendment which passed the Senate in the last session but died in the House. We stress that this is not a blanket 2-year extension of the delimiting date, but rather is designed to allow those who were full-time students to finish their education, those who would otherwise be unable to do so as a result of the expiration of their benefits.

Mr. President, I ask unanimous consent that the text of the amendment be printed in the RECORD.

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

AMENDMENT No. 1433

On page 14, insert "(a)" after "Sec. 203.", and between lines 16 and 17, insert the following new subsection:

(b) Section 1662 of title 38, United States Code, is amended by inserting "(1)" after "(a)" and inserting at the end of such section the following new paragraph:

"(2)(A) Notwithstanding the provisions of paragraph (1), any veteran shall be permitted to use any of such veteran's unused educational entitlement under this chapter after the delimiting date otherwise applicable to such veteran, as provided in paragraph (1), if such veteran was pursuing an approved program of education at the time of the expiration of such veteran's eligibility and such veteran was—

"(i) enrolled on a full-time basis, or

"(ii) on a part-time basis if such veteran was (aa) employed in a public safety occupation, (bb) receiving educational benefits, a loan, or compensation under any program provided for in the Omnibus Crime Control and Safe Streets Act of 1968, and (cc) enrolled under this chapter on not less than a half-time basis in a program of education appropriately related to such veteran's public safety occupation.

"(B) Notwithstanding any other provision of this chapter or chapter 36 of this title, any veteran whose delimiting period is extended under this paragraph—

"(i) may continue to use any unused entitlement under this paragraph as long as the veteran continues to be enrolled on a full-time basis (or on a part-time basis, but in no event less than a half-time basis, if such veteran was a part-time student at the time of expiration of such veteran's eligibility and was permitted to continue using such veteran's unused entitlement under the provisions of clause (ii) of subparagraph (A) of this paragraph) in pursuit of the approved program of education in which such veteran was enrolled at the time of expiration of such veteran's eligibility until such entitlement is exhausted, until the expiration of two years, or until such veteran has completed the approved program of education in which such veteran was enrolled at the end of the delimiting period referred to in paragraph (1), whichever occurs first;

"(ii) shall be entitled in the eleventh year of eligibility to an educational assistance allowance equal to one-half the amount of educational assistance allowance authorized for an eligible veteran whose delimiting period has not expired or been extended by this paragraph; and

"(iii) shall be entitled in the twelfth year of eligibility to an educational assistance allowance equal to one-third the amount of educational assistance allowance authorized for an eligible veteran whose delimiting period has not expired or been extended by this paragraph.".

(b) Section 1712 is amended by redesignating subsection (f) as (g) and inserting after subsection (e) the following new subsection:

"(f) Any eligible person shall be entitled to an additional period of eligibility beyond the maximum period provided for in this section pursuant to the same terms and conditions set forth with respect to an eligible veteran in section 1662(a)(2), except that the tenth year of eligibility for purposes of this subsection for such person shall be the last year of such person's period of eligibility and the eleventh and twelfth years shall be the first and second years, respectively, following such last year.".

## LEGAL SERVICES CORPORATION—S. 1303

AMENDMENTS NOS. 1434 THROUGH 1455

(Ordered to be printed and to lie on the table.)

Mr. SCOTT submitted 22 amendments 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.

## ADDITIONAL STATEMENTS

## LIBRARY OF CONGRESS REPORT ON EFFECTIVE TAX RATES PAID BY THE OIL AND GAS INDUSTRY

Mr. KENNEDY. Mr. President, on October 6, the Library of Congress completed a study I requested on the effective tax rates paid by the oil and gas industry.

The study employs a new method for assessing the generous Federal income tax subsidies available for oil and gas drilling. According to the study, the subsidies can result in a 3-percent "negative income tax" for some producers, and create extremely low effective tax rates for other producers—much lower than the effective tax rates paid by firms in other industries.

Mr. President, these figures dramatically demonstrate the enormous and unjustified Federal tax subsidies flowing to the oil and gas industry. Some of the wealthiest oil and gas producers in the country are actually receiving huge welfare payments from the Treasury every year. Instead of paying income tax to the Treasury, these millionaires are often paying no income tax at all on their operations, and may even be receiving extra income from the Treasury for their efforts.

It is the height of hypocrisy for these producers to be demanding even higher incentives for production, while reaping both the profit windfalls that high prices are already bringing and the tax windfalls that the Internal Revenue Code already bestows.

As part of the Energy Tax Act this year or the Tax Reform Act next year, Congress has the obligation to end these inequities. It is long past time the oil and gas industry paid its fair share of taxes.

Mr. President, the current study, prepared by the Congressional Research Service of the Library of Congress, indicates that, despite the partial repeal of the percentage depletion allowance for oil and gas by Congress in 1975, oil and gas production continues to benefit handsomely from large tax subsidies, at a time when high prices are already bringing high profits to the industry.

According to the calculations in the study, the effective tax rate on oil and gas drilling in the United States, even without the advantage of percentage depletion, is 17.2 percent, compared to the statutory Federal corporate tax rate of 48 percent and the estimated effective tax rates on corporations in other industries of about 30 to 35 percent.

In the case of oil and gas producers who also qualify for the percentage depletion allowance, the effective tax rate is actually below zero, resulting in a net Treasury payout to the producers, or a "negative income tax." The calculations in the study indicate that the net payout to such firms amounts to 3 percent of income.

The oil and gas industry has long received extremely favorable treatment under the income tax system. The best known tax advantage is percentage depletion, which allows a firm a deduction equal to 22 percent of the gross income from an oil or gas well.

In addition, producers are also allowed an immediate deduction for their "intangible" costs of drilling and development. Firms in other industries are required to "capitalize" such costs and deduct them gradually over the life of the investment. The immediate deduction for such drilling costs is available even for "development" wells, which involves drilling in proven reserves where little risk is present.

The rapid rise in oil prices and profits in 1974 automatically increased the value of the percentage depletion deduction, because the amount of the deduction was tied to the price of oil. In 1975, Congress repealed the percentage depletion deduction for the largest oil and gas producers. Under heavy lobbying pressure from independent producers, however, the deduction was retained for production not exceeding specified limits—currently 1,600 barrels a day, equivalent to over $6 million in oil revenues a year at current prices. The daily allowance will be reduced to 1,000 barrels by 1980, and the depletion percentage will be phased down to 15 percent by 1984. The 1975 legislation did not affect the deduction for intangible drilling costs.

According to estimates of the Congressional Budget Office, the cost to the Treasury of the tax subsidies for 1977 is $715 million for the intangible drilling deduction and $1.31 billion for percentage depletion. The total of the two tax subsidies is thus over $2 billion a year.

The Library of Congress study analyzes the tax breaks for oil and gas by converting the various tax provisions into effective tax rates. Basically, the study asks the following question: if each tax benefit were removed (for example, if intangible drilling costs were required to be capitalized, instead of being immediately deducted), how low a tax rate would have to be granted the firms in order to give them benefits equivalent to those available under the current tax provisions? Taking this approach, the following results were reached by the study:

Application of a 20.5-percent tax rate and capitalization of intangible costs would be equivalent to the current immediate deduction for intangible costs and the regular 48-percent corporate statutory tax rate. In other words, the immediate deduction, by itself, has the effect of reducing the 48-percent rate by more than half, to 20.5 percent.

When the 10-percent investment tax credit, available to firms in all industries for the purchase of equipment and machinery, is included in the calculation, the effective tax rate on oil and gas firms is reduced further, from 20.5 to 17.2 percent.

For producers also qualifying for the 22-percent depletion deduction an effective tax rate of minus 3 percent results from the cumulative effect of the depletion deduction and the deduction for intangible drilling costs. In other words, if these two tax benefits were eliminated, the Treasury would have to pay oil and gas producers 3 percent of their taxable income in order to maintain their equivalent tax position. The Treasury subsidy would be even greater if the investment credit were also taken into account.

Mr. President, the Library of Congress has performed a valuable service by undertaking this analysis, and I ask unanimous consent that the study be printed in the RECORD.

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

[The Library of Congress, Congressional Research Service]

TAX PROVISIONS AND EFFECTIVE TAX RATES IN THE OIL AND GAS INDUSTRY

(By Jane G. Gravelle, Analyst in Taxation and Fiscal Policy, Economics Division, October 6, 1977)

SUMMARY

Oil and gas production benefits from income tax treatment due to the expensing of dry hole costs and intangible drilling costs. In some cases, although not in the majority, benefits are also received in the form of percentage depletion and penalties are applied via the minimum tax.

This paper converts these tax provisions into an effective tax rate by use of a discounted cash flow model, allowing this effective rate to be compared with a standard tax rate of 48 percent and with effective rates which apply to other industries. The results indicate that oil and gas production is in a more favorable tax position (in an economic sense) than other industries on average, despite the repeal of percentage depletion in 1975. Further, those producers receiving percentage depletion benefits may actually be subject to what, in effect, amounts to a negative income tax. However, conclusions regarding provisions other than the expensing provisions are sensitive to the assumed rate of return, useful life and the decline rate of oil and gas wells.

The results of the calculations in this paper are summarized in the following tables. However, careful attention should be paid to the assumptions made in arriving at these effective tax rates, which are outlined in the paper.

TABLE 1.—*Summary of effective tax rates: total U.S. oil and gas drilling[1] under present law*

| | *Effective tax rate percent* |
|---|---|
| A. Expensing dry holes and intangible drilling costs | 20.5 |
| Plus minimum tax at full rates (applicable to individuals only) | 26.0 |
| B. Expensing dry holes and intangible drilling costs plus percentage depletion: | |
| At a percentage depletion rate of 22 percent | [2] −3.0 |
| At a percentage depletion rate of 15 percent | 5.5 |
| At a 22 percent depletion rate plus minimum tax on percentage depletion only | 4.3 |
| At a 15 percent depletion rate plus minimum tax on percentage depletion only | 10.3 |
| At a 22 percent depletion rate plus minimum tax on percentage depletion and intangibles (applicable to individuals only) | 12.0 |
| At a 15 percent depletion rate plus minimum tax on percentage depletion and intangibles (applicable to individuals only) | 17.7 |

[1] Note that all rates except the first (20.5) are sensitive to the price-cost ratio which depends on rate of return, useful life and decline rate.

[2] A negative tax rate means that oil and gas production actually receives a subsidy rather than being subject to any tax. This subsidy can be received by offsetting deductions against other income of the taxpayer.

TABLE 2.—*Summary of effective tax rates: Development drilling*[1]

| | *Effective tax rate percent* |
|---|---|
| With intangible drilling costs expensed | 29.0 |
| With intangible drilling costs expensed and a minimum tax on intangibles (applicable to individuals only) | 40.0 |
| With intangible drilling costs expensed and percentage depletion at 22 percent | 5.0 |
| With percentage depletion at 15 percent | 12.6 |
| With 22 percent depletion and minimum tax on depletion | 12.5 |
| With 15 percent depletion and minimum tax on depletion | 17.6 |
| With 22 percent depletion and minimum tax on both (applicable to individuals only) | 32.6 |

[1] Assuming a virtually certain drilling of a producing well.

TABLE 3.—*Effective rate from expensing provisions plus investment credit*

| (*Present law*) | *Percent* |
|---|---|
| All drilling | [1] 17.2 |
| Development drilling | [2] 21.7 |

[1] The effect of including the investment credit is to reduce the effective tax rate from 20.5% in Table 1 to 17.2%.

[2] The effect of including the investment credit is to reduce the effective tax rate from 29.0% in Table 2 to 21.7%.

I. ISSUE AND APPROACH

Oil and gas production has received favorable tax treatment for many years, although one major special provision, percentage depletion, was repealed for most oil and gas producers in 1975. Even without percentage depletion, however, a substantial portion of capital investment can be deducted when incurred, resulting in a lower actual effective tax rate than would application of a standard tax system.

A lower tax rate leads to a greater allocation of capital to the production of oil and gas than would occur under a neutral tax system. Such misallocation, in terms of economic efficiency, is sub-optimal unless there is a social reason to reallocate such resources. In the past, prior to the substantial price rises of foreign oil, a major reason advanced for special treatment of the petroleum industry (in tax policy and in other areas as well, such as important quotas) was national security, because foreign oil prices were relatively low and posed a threat to the existence of a domestic industry (vital in time of national emergency). However, foreign oil prices have increased substantially and the price of new domestic oil has increased substantially as a result.

The rise in domestic oil prices to substantially higher levels led to a substantial rise in profits in the oil industry. Following this effect in 1975 the Congress repealed, for the most part, one of the major tax provisions favorable to the oil industry, percentage depletion. However, some oil and gas is still eligible for percentage depletion. Furthermore, oil and gas production continues to be allowed expensing provisions. These expensing provisions, which allow current deduction of dry hole costs and intangible drilling costs, provide substantial tax reductions for oil and gas producers.

The purpose of this paper is to determine how these provisions affect the effective tax rate on oil production. This effect is difficult to determine because there is no publicly available data on oil production alone which would provide appropriate information. Financial data for each firm, even though now reconciled with tax liability for major firms through Securities and Exchange Commission reports, is inappropriate because it aggregates foreign and domestic income, aggregates income from production, refining, transportation, maketing and any other associated businesses, and reflects specific accounting procedures of the firms involved.

Using another approach, some economic studies have compared the benefits provided to oil and to other industries to try to examine the magnitude of these economic effects. For example, Gerard Brannon estimated that the expensing provisions plus percentage depletion resulted in the equivalent of 46 percent investment tax credit as compared to a rate of about 8 to 10 percent for other industries.[1] While conversion of tax benefits into credits is useful as an input into estimates of supply and demand and other economic relationships, it is difficult to interpret.

In order to examine the effect of these provisions and interpret them into terms which have a familiar reference point—the tax rate—this paper will examine the effect of various provisions on the effective tax rate, under a number of circumstances. This can be compared with the standard 48 percent tax rate, with general observed effective tax rates in other industries and with other provisions affecting business in general. To make these estimates, some assumptions must be made about costs and on occasion useful lives and discount rates. Fortunately, however, some of the most important results are independent of discount rates and useful lives.

II. A DESCRIPTION OF TAX PROVISIONS BENEFITING OIL AND GAS PRODUCTION

There are several special tax provisions, as well as some generally available ones, which act to reduce the effective tax rate of oil and gas production. In outlining these provisions, it is useful to examine the various types of costs incurred in acquiring a producing oil or gas property and how these provisions are treated in the tax law. An explanation of why

Footnotes at end of article.

various provisions favor oil and gas production will follow.

*A. Abandonment costs (dry hole costs)*

Expenditures, regardless of their nature, which are associated with dry properties and wells are allowed to be deducted in computing taxable income when incurred.[2] Current deduction of investment outlays allows the deferral of taxes and provides a benefit because of the time value of money. These costs may include drilling costs for exploratory and development wells which prove dry, lease acquisition costs for properties which prove dry and various other associated costs.

*B. Depletable costs*

Expenditures for lease acquisition and geological and geophysical expenditures which relate to producing properties and wells are generally recovered through cost depletion over the life of the property. Depletable costs are recovered via a unit of production method where the portion of costs deducted each year is equal to the proportion of reserves recovered each year. If reserves are correctly measured, cost depletion appropriately matches the decline in value of the property with income produced from the property.[3]

Prior to 1975, an alternative method of recovering these costs was generally allowed, termed percentage depletion. Percentage depletion was allowed at a rate equal to 22 percent of gross income (minus royalty) from the well but could not exceed 50 percent of net income (after all deductions other than depletion). Royalty recipients took percentage depletion on their royalty income.

Because percentage depletion was a deduction of a specified percentage of gross income, and exceeded actual costs, it constituted a tax benefit. This tax benefit was quite substantial since various estimates indicated that it allowed a recovery of depletable costs from 4 to 16 times original costs.[4]

In 1975 (as mentioned) percentage depletion was disallowed. However, an exemption from repeal was retained for independent producers for a certain portion of oil production. Percentage depletion was to be allowed for the first 2,000 barrels of oil a day with a phase down over a five-year period to 1,000 barrels of oil a day. Beginning in 1981 the rate on the exempt portion will be phased down to 20 percent in 1981, 18 percent in 1982, 16 percent in 1983 and 15 percent in 1984, where it will remain. Alternatively a producer may elect a rate of 22 percent on secondary and tertiary production until 1984. The deduction for depletion may not exceed 65 percent of the taxpayer's net income from all sources.

At the time of enactment, the exclusion apparently would have retained about 30 percent of the dollar amount of existing percentage depletion. As the exemption and rate fall, this proportion would be expected to fall.

*C. Intangible drilling costs*

Expenditures for intangible costs of drilling producing wells (such as labor supplies and repairs) are allowed to be deducted when incurred.

*D. Tangible drilling costs (depreciable costs)*

Expenses of tangible well equipment related to producing wells are recovered as depreciation. The rate and useful life may be that generally allowed in the tax law (including double declining balance and other forms of accelerated depreciation and shorter lives under the asset depreciation range system) or may be recovered based on unit of production. Like other investment, tangible well equipment is generally eligible for the investment tax credit, and recovery of costs may potentially benefit from accelerated depreciation—two generally available tax benefits.

In addition to these tax benefits, there are some penalties imposed which offset to some extent the advantages. Both intangible drilling costs (roughly in excess of amounts if capitalized) and percentage depletion in excess of cost depletion are included in the base of the minimum tax for individuals, currently imposed at a 15 percent rate. Percentage depletion is also included in the minimum tax for corporations.[5]

A standard tax on income from a capital investment would impose a tax on revenues minus operating costs and minus a deduction for the using up of the asset (for a machine through depreciation deductions). Such a treatment allows income from the asset to be matched with costs of producing that income. Compared to this standard, expensing of investment costs through dry hole deductions and intangible drilling costs provides a tax incentive because costs are deducted prior to recognition of income, and taxes are deferred. Percentage depletion provides a tax benefit because deductions are in excess of original costs. The investment credit provides a benefit through a net reduction in original investment cost.

With the exception of expensing of dry hole costs, all of these provisions are recognized generally as tax subsidies by inclusion in the tax expenditure budget.[6] (Although the tax expenditure budget clearly does not include all items which result in favorable tax rates on certain types of investment.)

The case of dry hole costs is somewhat more complicated to deal with and substantial confusion on the issue exists because most (although not all) firms expense dry holes in their financial accounts and most of the accounting profession favors such expensing treatment. Nevertheless there is a current discussion involving the use of full cost accounting for the petroleum industry in the accounting profession which would require the capitalization of dry holes and tracts.[7]

Understanding of this issue is complicated by the fact that losses are generally allowed to be deducted in the tax law (although this deduction generally occurs in most businesses when assets are sold at a loss). Because the allocative effect of expensing of dry holes is so essential to the remainder of this paper, the following discussion is presented to show why in an economic sense expensing of dry holes provides for a relatively lower effective tax rate and concomitant encouragement of oil and gas production beyond that which would occur with a neutral tax system. (A neutral tax system would lead to the same allocation of capital which would have occurred if the tax did not exist.)

Difficulty in assessing the impact of dry hole expensing occurs because oil and gas production is unusual in that there are a large proportion of dry holes and tracts which prove to be entirely worthless as single properties but which are nevertheless a necessary acquisition cost of producing properties and wells since in an exploratory drilling operation a producer can never be sure of drilling a producing well. Because of the importance of these expenses, the failure to tax under an accretion concept or to capitalize dry holes becomes important in terms of resource allocation. Unlike other industries the costs of projects which are unsuccessful constitute a significant portion of investment outlay in oil and gas production.

To illustrate this allocative effect, consider the following example:

In a no tax world, a manufacturer might spend $100,000 on a plant which will produce over time a 15 percent rate of return (and therefore its present value at a 15 percent discount rate is $100,000). Were the current tax applied, the basis of the asset ($100,000) would be depreciated over the useful life of the plant.

An oil driller might also be willing to spend $100,000 to produce an investment yielding a 15 percent rate of return. However, in this case, assume that he expects to drill 9 dry holes for every one producing hole. If the present value of a producing well is $100,000 he would be willing to spend no more than $10,000 per well. If his expectations hold, he will now have a $90,000 expenditure on dry holes and a $10,000 expenditure on a successful well. Were the current tax applied and the dry holes expensed he would take a $90,000 deduction and, assuming sufficient other income to offset it against, he would realize an immediate tax savings of $43,200 (at a 48 percent tax rate). He would have a basis of $10,000 to depreciate over the life of the well, and would thus have smaller depreciation deductions. However, the value of deducting those items now is greater than in the future because of the time value of money.

An investor faced with these two options would clearly prefer to invest in oil production after the imposition of the tax although the two investments yield an equal before tax rate of return.[8] A neutral tax on income would leave investors indifferent between the two options.

Not only is this effect allocationally nonneutral, but it can even be shown to be inconsistent within the tax structure itself. Consider two investors spending $100,000 each to invest in oil extraction, and each finding one out of ten holes producing with a present value of 3100,000. Investor A produces oil from his well, takes a $90,000 deduction for dry holes and deducts the remaining $10,000 over the life of the producing well. Investor B sells his producing well for $100,000 to C, deducts his $90,000 loss against his $90,000 gain,[9] for no income tax liability or net loss. C, now having an asset with a basis of $100,000, depreciates it over the life of the producing well. The latter case is equivalent to what would occur with capitalization of dry holes.

The two situations are equal in an economic sense but the tax law treats them differently. Clearly, the two different effects cannot be allocationally neutral.[10]

It is important to note that the fact a tax subsidy exists does not necessarily mean that it is socially undesirable. The legal complexities of capitalizing dry holes may be significant enough to justify the efficiency losses which occur. Furthermore, there is some argument that a tax subsidy should be provided for exploratory drilling because exploratory drilling yields benefits to society in general by providing information to other producers. This "social benefit" does not yield a rate of return to the exploratory driller, however, and in the absence of a subsidy the amount of exploratory drilling may be less than desirable, considered from the perspective of society as a whole. But the precise size of the optimal subsidy may or may not correspond with that implicit in expensing of dry holes.[11]

The economic effect of the various special tax provisions in the oil and gas industry has been widely analyzed,[12] although the economic analysis has primarily focused on percentage depletion and generally pre-dated both the repeal of percentage depletion in 1975 and the price increases which occurred in 1974.

The major points which have generally been made in this literature are:

(1) The special provisions may affect price, output, proved reserve levels, rate of return or suppliers of factors of production (the latter may be primarily increases in lease acquisition costs which increase income of landowners).

(2) Quantitative studies have raised questions about the efficiency of such provisions in increasing proved reserve levels or in achieving the goals of restricting dependence on foreign imports. Furthermore, the latter purpose has become less relevant given

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Footnotes at end of article.

the incentive effects of substantial price rises which should have encouraged domestic production and to which adjustment may still be taking place.

(3) Certain of these provisions, such as dry hole costs, are a far greater incentive to exploratory drilling. Intangible drilling cost deductions are a greater incentive to drilling in proved reservoirs.

In addition to these general points, it might also be noted that the current form of the allowance for percentage depletion, because it is restricted to a given level of production, may provide no incentive to new drilling for those firms whose production is and will be above the exempt limits of the amount of oil eligible for percentage depletion.

### III. EFFECT OF SPECIAL TAX PROVISIONS ON EFFECTIVE TAX RATE: ALL DRILLING

#### *A. Methodology*

In order to translate the value of the various tax benefits available to oil and gas production into equivalent effective tax rates, a discounted cash flow model will be used. This model is similar to the type used by the Federal Power Commission to set natural gas rates in the United States. The elements of this type of model are outlined in the Appendix (Section A). As shown in that derivation, a standard income tax rate of 48 percent can be converted into an effective tax rate by use of a standard formula which does not depend on useful life, decline rate (production rate) and rate of return, as long as the special tax provisions involve an expensing privilege. This is the case of the major provisions currently affecting oil and gas production.

The standard formula for an expensing provision (with a 48 percent tax rate) is:

$$\frac{.48(1-x)}{1-.48x} = \text{effective tax rate}$$

where x equals the percent of cost expensed.

In order to apply this formula, however, it is necessary to determine what portion of investments are expensed through dry hole costs and intangible drilling costs. Estimates of these amounts have been presented by the Treasury Department for oil and gas production and by the Federal Power Commission.

The Treasury estimates [13] indicated that approximately 42 percent of costs were recovered through dry hole expensing, 29 percent through intangible drilling cost deductions, 9 percent through depreciation and 20 percent through depletion. Since these estimates were provided in 1973, however, they may be substantially out of date and should accordingly be given less weight than more recent estimates.

The Federal Power Commission indicated the following rough proportions:

(1) Oil [14] (based on 1972 data):

45 percent dry hole costs, 22 percent intangible drilling costs, 7 percent depletion and 26 percent depreciation.

(2) Gas [15]

1973–1974 data:

51 percent dry hole costs, 24 percent intangible drilling costs, 6 percent depletion, 17 percent depreciation, 3 percent working capital.

1975–1976 data:

51.5 percent dry hole costs, 21.5 percent intangible drilling costs, 16 percent depreciation, 8 percent depletion, 3 percent working capital.

These ratios vary, although not substantially. There is a possibility that the Treasury data included some tangible equipment under depletion because such costs can be recovered via depletion. Further, discussions by the Federal Power Commission in both sources indicated a rising trend in the share that lease acquisition comprises of costs. Accordingly, the following ratios are assumed in analysis: [16] 50 percent, dry hole costs; 22 percent, intangible drilling costs; 18 percent, depreciation; 7 percent, depletion [17]; and 3 percent, working capital.

#### *B. Findings*

Using the formula developed in the Appendix, the effective tax rate which results from expensing dry hole and intangible drilling costs can be calculated as:

$$\frac{.48(1-.72)}{1-(.48)(.72)} = 20.5 \text{ percent}$$

In other words, the same effect could be achieved by capitalizing dry holes and intangible drilling costs and then reducing the Federal corporate tax rate on oil and gas production from 48 percent to 20.5 percent (ignoring for the moment any other tax provisions).

If expensing of dry holes were allowed but capitalizing of intangible drilling costs were required, only 50 percent of the costs would be expensed, with the resulting effective tax rate:

$$\frac{.48(1-.5)}{1-(.48)(.5)} = 31.6 \text{ percent}$$

In effect, capitalizing intangible drilling costs would increase effective tax rates on the production of oil and gas by about 10 percentage points; the remaining 16 + percentage points being attributable to dry hole expensing.

Conversely, if dry hole capitalization were required but intangible drilling costs deductions were still allowed (currently an unlikely prospect) the effective tax rate would be:

$$\frac{.48(.1-.22)}{1-(.48)(.22)} = 41.9 \text{ percent}$$

Capitalizing dry holes would add about 20 percentage points to the effective tax rate, with the remaining 6 + percentage points reflecting intangible drilling cost deductions.

Measuring the relative effects of dry hole expensing versus intangible drilling cost expensing depends on which is removed first; however, both examples illustrate the greater relative importance of expensing dry holes as compared to intangible drilling costs in reducing the effective tax rate on total drilling.

Although the minimum tax is unlikely to apply to most drilling in the United States its effects can roughly be measured, using an expensing credit or tax payment as described in Section B of the Appendix. Under present law, the minimum tax is applied at a rate of 15 percent on certain excess intangible drilling cost deductions.

As shown in the Appendix, separate effective tax rates on revenues versus return of costs must be computed in this case and from these results a single total effective tax rate can be derived. The general form of the rate on revenues is:

$$\frac{z(1-x)+wy}{1-zx+wy} = \text{effective tax rate}$$

and on costs:

$$\frac{z(1-x)}{1-zx+wy} = \text{effective tax rate}$$

where x equals percent of costs expensed, z equals the regular tax rate, w equals the rate of the minimum tax and y the portion of cost to which the minimum tax applies.

Assuming, as a polar case, that full 15 percent rate applies to all intangible drilling costs, and that the 48 percent marginal corporate tax rate applies to affected individuals, the effective tax rate on revenues would be:

$$\frac{(.48)(1-.72)+(.15)(.22)}{1-(.48)(.72)+(.15)(.22)} = 24.3 \text{ percent}$$

and the effective tax rate on return of costs =

$$\frac{(.48)(1-.72)}{1-(.48)(.72)+(.15)(.22)} = 19.5 \text{ percent}$$

Because return costs are recovered at a lower effective tax rate than revenues are taxed at, the overall effective tax rate is higher than 24.3 percent. As explained in Section B of the Appendix, the common tax rate depends on the ratio of price to cost. Using the 3.5:1 ratio discussed in the Appendix, the overall effective tax rate would be approximately 26 percent. This rate is, however, sensitive to useful life, rate of return and decline rate because it depends on the ratio of price to cost which reflects these factors.

Assuming this 26 percent rate to be correct,[18] the result is that the minimum tax on intangible drilling cost deductions adds about 5 percentage points to the effective tax rate (increasing it from 20.5 percent to 26 percent). The result also indicates that repeal of the deductibility of intangibles, where the minimum tax was already fully applicable, would raise the effective tax rate by about 5 percentage points (from 26 percent to 31.5 percent). (See discussion of effects of capitalizing intangibles above.)

Percentage depletion is also available to some production. To incorporate percentage depletion into the model (and referring to the model in the Appendix, Section C), the effective tax rate on revenues would be:

(a) At 22 percent depletion rate:

$$.205-\frac{(.22)(.48)}{1-(.48)(.72)} = .205-.161$$

= 4.4 percent effective tax rate on revenues

$$.205-\frac{(.48)(.07)}{1-(.48)(.72)} = .205-.051$$

= 15.5 percent effective tax rate on costs

Using a 2.5:1 ratio of price to cost, as discussed in the Appendix, this would convert from a tax rate to a tax *subsidy* of 3 percent.[19]

(b) At a 15 percent rate:

$$.205-\frac{(.15)(.48)}{1-(.48)(.72)} = .205-.110$$

= 9.5 percent rate on revenues

Using a 2.5:1 ratio of price to cost, as discussed in the Appendix, this would convert into a tax rate of 5.5 percent.[20]

Although these results are much less certain than those relative to the expensing allowance, percentage depletion clearly has the potentiality to convert tax rates in the oil industry to virtually no tax or even to a subsidy (in effect a negative tax rate).

If the minimum tax applied to percentage depletion but not to intangible drilling costs, the effect would be:

(a) At a 22 percent depletion rate:

$$.205-\frac{(.48-.15)(.22)}{1-(.48)(.72)} = .205-.111$$

= .4 percent effective tax rate on revenues

$$205-\frac{(.48-.15)(.07)}{1-(.48)(.72)} = .205-.035$$

= 17.0 percent effective tax rate on costs

which converts into a 4.3 percent tax rate at a 2.5:1 price-cost ratio.

(b) At a 15 percent depletion rate:

$$.205-\frac{(.48-.15)(.15)}{1-(.48)(.72)} = .205-.075$$

= 13.0 percent effective tax rate on revenues

which converts into an overall tax rate of 10.3 percent at a 2.5:1 price cost ratio.

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Footnotes at end of article.

If the minimum tax were to apply to both intangible drilling costs and percentage depletion (again assuming a 48 percent marginal tax rate for individuals as well as corporations):

(a) At a 22 percent depletion rate:

$$.243-\frac{(.48-.15)(.22)}{1-(.48)(.72)+(.15)(.22)}=.243-.106$$

=13.7 percent effective tax rate on revenues

$$.195-\frac{(.48-.15)(.07)}{1-(.48)(.72)+(.15)(.22)}=.195-.033$$

=16.2 percent effective tax rate on costs

which converts into a 12.0 percent common effective tax rate at a 2.5:1 price-cost ratio.

(b) At a 15 percent depletion rate:

$$.243-\frac{(.48-.15)(.15)}{1-(.48)(.72)+(.15)(.22)}=.243-.072=17.1$$

which converts into a 17.7 percent overall effective tax rate at a 2.5:1 price cost ratio.

These effects with the minimum tax are, of course, also sensitive to the assumed price-cost ratio.[21]

These effects illustrate the greater importance of intangible drilling cost deductions to development drilling. Furthermore, if development drilling is less risky than total drilling (implying a lower price cost ratio) percentage depletion is more valuable to development drilling than to drilling as a whole.

## IV. EFFECT OF TAX PROVISIONS ON EFFECTIVE TAX RATES: DEVELOPMENT DRILLING[22]

Once a producer has discovered an oil or gas reservoir, he may make decisions to drill additional wells. In this case we will assume that he incurs no dry hole costs to measure the effect of expensing of intangible drilling costs in the extreme case where he is virtually certain that oil will be produced.

FPC data suggest that if all depreciable costs are allocated to successful wells, 56 percent of his cost will be intangible drilling costs and 44 percent will be depreciable costs. Accordingly, using the standard formula

$$\frac{z(1-x)}{1-zx}$$

the effective tax rate will be:

$$\frac{.48\ (1-.56)}{1-(.48)(.56)}=29 \text{ percent}$$

Thus, if intangible drilling costs were required to be capitalized, the effective tax rate would increase by 19 percentage points (from 29 percent to 48 percent).[23] Hence, the greater effect of intangible drilling costs on development as opposed to total drilling is demonstrated.

The application of the minium tax on intangible drilling costs would yield:

$$\frac{.48\ (1-.56)+(.15)(.56)}{1-(.48)(.56)+(.15)(.56)}=36 \text{ percent}$$

effective tax rate revenues

and

$$\frac{.48\ (1-.56)}{1-(.48)(.56)+(.15)(.56)}=25.9 \text{ percent}$$

effective tax rate on costs

At a 3.5:1 price ratio, the overall rate would be 40 percent.[24]

The incorporation of percentage depletion adds a 22 percent (or 15 percent) return of revenues and loses to cost depletion deduction. To calculate the effects of intangible drilling costs plus percentage depletion the formula is:

$$.29-\frac{(.22)(.48)}{1-(.48)(.56)}=.29-.144=14.6 \text{ percent}$$

effective tax rate on revenues

The rate on costs (computed earlier at a 29 percent rate) would be unchanged (ignoring the loss of cost depletion) and the combined rate would be (at a 2.5:1 price ratio) 5 percent. (Note, however, that a slightly higher common rate would apply because of the loss of cost depletion.)[25]

At a 15 percent depletion rate:

$$.29-\frac{(.15)(.48)}{1-(.48)(.56)}=.29-.098=19.2 \text{ percent}$$

effective tax on revenues

and the combined rate (ignoring the loss of cost depletion) would be 12.6 percent.[26]

Without displaying the calculation and assuming 2.5:1 ratio, a full minimum tax on percentage depletion at a 22 percent rate would be a 19.12 effective tax rate with a 12.5 overall tax rate; and at a 15 percent depletion rate would be a 22.2 percent effective tax rate on revenues with a 17.6 percent overall tax rate. A minimum tax on both intangible drilling costs and percentage depletion at a 22 percent depletion rate would indicate a 27.1 percent rate on revenues and a 27.9 percent overall rate; at a 15 percent depletion rate the effective tax rate on revenue would be 29.9 percent with an overall rate of 32.6 percent. These effects would also vary with price cost ratios.

## V. COMPARISON WITH OTHER FORMS OF INVESTMENT

In order to compare the allocative effect of special tax provisions with tax rates in oil and gas drilling, a determination of the overall effective tax rate which applies to alternative investments is required. This comparison is quite difficult, although some approximations can be made.

Observed aggregate effective tax rates in the past few years have ranged from around 31 percent to 35 percent.[27] These rates present some difficulties, however, because they represent average tax rate on return to all existing capital and not the implied rate on investment made in one period. Furthermore, they reflect accounting practices of the firms and actually include investment along a broad continuum (from very favored industries to those which pay close to the full statutory rate). Nevertheless, these observed tax rates can serve as one benchmark.

An alternative method of developing a standard for comparison is to look at the effect of the major general provision available in manufacturing—the investment credit—which is currently allowed at a 10 percent rate. In the case of manufacturing, the Treasury department estimated[28] that 65 percent of the average investment in manufacturing reflected machinery and equipment. Assuming all such investment is eligible for the credit[29] the effective tax rate can be calculated in the same form as a minimum tax (but with opposite sign), where the rate on revenues equals:

$$\frac{(.48)-(.10)(.65)}{1-(.10)(.65)}=44.4 \text{ percent}$$

and the rate on costs equals:

$$\frac{.48}{1-(.10)(.65)}=51.3 \text{ percent}$$

The overall rate ranges from 30.6 percent at a 1.5:1 ratio and 42.7 percent with a 5:1 ratio. Given fairly long useful lives suggested by these investments a fairly high price to cost ratio would be expected and, therefore, an effective tax rate closer to 42.7 percent.

It would also be desirable to include accelerated depreciation in this effect; however, it does not seem possible to account for it.[30]

In order to compare the numbers derived for the oil and gas industry with either of these standards, a further adjustment should be made to the rates to account for the investment tax credit which is available for well equipment. Because application of the minimum tax and percentage depletion is not common, particularly for corporations, only the expensing provisions will be assumed.

For total drilling the rate on revenue flows would be:

$$\frac{1.48)(1-.72)-(.10)(.18)}{-(.48)(.72)-(.10)(.18)}=18.3 \text{ percent}$$

effective tax rate on revenues

and the rate on costs would be:

$$\frac{(.48)(1-.72)}{1-(.48)(.72)-(.10)(.18)}=21.1 \text{ percent}$$

effective tax rate on costs

At a 3.5 to 1 ratio the tax rate would be 17.2 percent.

For development drilling the rate on revenues:

$$\frac{(.48)(1-.56)-(.10)(.44)}{1-(.48)(.56)-(.10)(.44)}=24.3 \text{ percent}$$

effective tax rate on revenues

and the rate on costs would be:

$$\frac{(.48)(1-.56)}{1-(.48)(.56)-(.10)(.44)}=30.7 \text{ percent}$$

effective tax rate on costs

At a 3:5 to 1 ratio the tax rate would be 21.7 percent.

In this regard it is interesting to note that the inclusion on the investment credit results in tax rate, when all factors are considered, on development drilling which is almost as low as that of overall drilling, due to the greater value of the investment tax credit for this type of drilling. This effect would be increased to the extent that accelerated depreciation occurs as well, but reduced if development drilling is less risky than total drilling.

It would also be useful to calculate the effect of repealing intangible drilling costs given that the investment credit was retained. By substituting (for total drilling) .50 for .72 and recalculating the common rate, the effect is to increase the rate to 30 percent for an effect of about 13 percentage points. In the case of development drilling by substituting 0 for the .56 and recalculating the common rate, the rate would be 43.8 percent for a 22 percentage point difference.

These effects again confirm the greater importance of intangible drilling cost expensing for development rather than total drilling.

The general results indicate, however, that oil and gas production of either type, even without percentage depletion, enjoys a much lower tax rate than average corporate profits in the economy.

## FOOTNOTES

[1] Gerard M. Brannon. Existing Tax Differentials and Subsidies Relating to the Energy Industries. Studies in Energy Tax Policy. Cambridge, Ballinger Publishing Company, 1975. Professor Brannon converted these provisions into present value terms, thereby allowing them to be compared with other industries. A 46 percent investment credit would reduce the cost of capital by 46 percent.

[2] Technically, a well may receive intangible drilling cost deductions initially, and then be abandoned, with much of the cost already deducted. Costs of acquiring a property are not deducted until the entire tract proves dry. Although technically dry holes may be deducted as intangibles, in this paper they are treated as abandonment losses since deduction of their costs would occur quickly even if intangible drilling costs were not allowed to be deducted.

[3] This recovery does not result in a true economic recovery if prices are rising because of the use of historical cost depletion. However, since other assets are also depreciated using historical cost basis, this effect only has an allocational impact if useful lives of oil and gas properties are significantly different from those of other assets. Such evidence as is available indicates a range of 6 to 25 years for oil and gas deposits; the Federal Power Commission uses a life of 15 years. Treasury data presented

in testimony before the Senate Interior Committee in 1973 (Financial Requirements of the Nation's Energy Industries) indicated that in manufacturing 65 percent is recovered over 10 years (machinery) and 35 percent over 45 years (structures) for a weighted average of around 20 years. Recovery of costs in the housing industry would take an even longer period. Thus, such evidence as is available does not suggest that oil and gas properties are disfavored by use of historical cost depreciation or depletion.

[4] See Treasury statement before the Senate Interior Committee (Financial Requirements of the Nation's Energy Industries, 1973) and testimony of J. Reid Hambrick before the Ways and Means Committee (Panel Discussions on Tax Reform, Pt. 9, Natural Resources, 1973).

[5] The individual minimum tax allows a deduction of the larger of $10,000 or ½ of regular taxes paid from preference income. The minimum tax on corporations allows a deduction of the greater of $10,000 or regular taxes paid. It is unlikely that major oil and gas firms pay any minimum tax.

[6] Estimates of Federal Tax Expenditures, Prepared for the House Ways and Means Committee and Senate Finance Committee by staff of the Joint Committee on Internal Revenue Taxation, March 15, 1977.

[7] For a discussion see Brannon, Ibid., and U.S. Congress, Committee on Government Operations, U.S. Senate, The Accounting Establishment, 95th Congress, 1st Session, March 31, 1977, p. 1629–1633.

[8] Of course, if the risk in oil production is perceived as greater than in building the plant then the investor may require a risk premium; but this adjustment can occur properly only in a neutral tax environment. Furthermore, for small producers securing debt capital may be more difficult or costly in the oil drilling case, also requiring a higher rate of return.

[9] Under present law, of course, a gain on an asset held for one year or more does not incur tax at full rates. This item is, however, recognized as a tax subsidy.

[10] It is important to view allocational effects from the standpoint of an investor making a choice without sure knowledge. For an investor drilling many wells, the ratio of dry to producing holes may not be precisely what he expects and his rate of return lower or higher as a consequence. If he perceives the return as highly variable he will demand a higher rate of expected return than in the case of a safe investment. However, not realizing his exact expectations does not imply that it is proper to expense any dry holes. A manufacturer may find his plant producing a lower or higher rate of return as well. If a true accretion income tax were applied, either type of investor would recognize gains and losses reflecting returns above or below market returns and they have the option of doing so if either sells an asset. The result of favoring investment in oil and gas production is to encourage a larger flow of capital into oil and gas production which may yield, at the margin, the same (or even a higher) rate of after tax return but a lower physical return. As a result capital does not flow to its best uses. Of course, a tax on the returns to capital may create its own non-neutralities in product mix but this effect should be evaluated in a more general context.

[11] For a discussion see Joseph E. Stiglitz, The Efficiency of Market Prices in Long Run Allocation in the Oil Industry, and Frederick M. Peterson, Two Externalities in Petroleum Exploration, in Studies in Energy Tax Policy. Cambridge, Ballinger Publishing Co., 1975. The externality argument applies in the opposite direction to drilling on an existing site if other drillers also are producing from the same reservoir since any one driller can gain at the expense of others by drilling more holes and thereby reducing the amount of oil pumped by his neighbors. An argument for a tax penalty can be made in this case.

[12] For a survey and extensive annotated bibliography, see U.S. Congress, Senate Interior Committee, An Analysis of the Federal Tax Treatment of Oil and Gas and Some Policy Alternatives. 93rd Congress, 2nd Session, 1974. See also Studies in Energy Tax Policy, op. cit., 1975.

[13] U.S. Congress. Senate. Committee on Interior and Insular Affairs. Financial Requirements of the Nation's Energy Industries, March 6, 1973, p. 240–244.

[14] U.S. Congress. Senate. Committee on Interior and Insular Affairs. Estimates of the Economic Costs of Producing Crude Oil, 1976.

[15] United States of America, Federal Power Commission, Opinion No. 770–A, National Rates for Jurisdictional Sales of Natural Gas Dedicated to Interstate Commerce on and after January 1, 1973, for the Period January 1, 1975 to December 31, 1976. Docket No. RM75–11, Opinion and Order on Rehearing Modifying in Part Opinion No. 770 and Granting Petitions for Intervention. Issued November 5, 1976. Hereafter referred to as Opinion 770–A.

[16] These cost ratios, of course, reflect ratios of the average cost investment rather than the marginal cost investment. This presents no problem if one is measuring the average effective tax rates of the industry for expensing provisions; however, the allocational effects are dependent on the marginal costs. Average cost data must be used because we have no observations on marginal investments. In any case, it is not clear which way these ratios might change from the average to the marginal. More marginal investments ments. In any cases it is not clear which way drilling costs, suggesting a smaller ratio of expensable to non-expensable items, but would also tend to have a higher expected ratio of dry to producing properties suggesting a higher ratio of costs which are expensable.

[17] Working capital is recovered at the end of the project. The amount is small enough that it can be ignored with no significant effect on the outcome.

[18] The rate does not vary substantially in reasonable ranges in any case. A 5:1 price ratio would yield a rate of 25.5 percent; a 2:1 ratio would yield 29.1 percent rate.

[19] In other words, an equivalent result could be reached by disallowing expensing and percentage depletion and paying the oil producer 3 percent of taxable income (although this comparison requires other income to deduct costs against). To illustrate the effect of the price to cost ratio assumption, at 5:1 ratio the tax rate would be a positive 1.6 percent rate while at a 1.5 to 1 ratio, the tax *subsidy* would be 17.8 percent.

[20] To illustrate as in the preceding footnote, at a 5:1 ratio the tax rate would be 8 percent; at a 1.5 to 1 ratio the tax *subsidy* would be 2.5 percent.

[21] To quickly summarize, for a minimum tax on percentage depletion only, the effective rate with a 22 percent depletion rate is a 7.5 percent tax with a 5:1 ratio and a 5.8 percent subsidy with a 1.5:1 ratio; the effective rate with a 15 percent depletion rate is a 12 percent rate with a 5:1 ratio and a 5 percent rate with a 1.5:1 ratio. For a minimum tax on both percentage depletion and intangible drilling costs, the effective rate with a 22 percent depletion rate is a 13 percent tax with a 5.1 ratio and an 8.7 percent tax rate with a 1.5 to 1 ratio. At a 15 percent rate the effective tax rate is 17.3 percent at a 5:1 ratio and 18.9 percent at a 1.5 to 1 ratio.

[22] This paper does not consider the case where exploratory drilling is treated as a separate investment. If the information yielded from exploratory drilling is saleable (such as a lease right) the tax rate would be very low since 95 percent of exploratory drilling is expensed. Furthermore, if the asset were held for one year, a lower capital gains rate would apply resulting in a net subsidy.

[23] Using the 56 percent tax rate on return costs, expensing would reduce it to 34 percent for approximately the same percentage point difference.

[24] On the average, one would expect a smaller price cost ratio for development drilling because of the smaller risk. At 2:1 ratio effective rate woud be 46.1 percent. At a 5:1 ratio the rate would be 38.5 percent.

[25] At a 1:5 to 1 price to cost ratio the rate would be a 14.2 percent subsidy rate, while at a 5:1 price ratio the effect would be an 11 percent tax. The value of return flows on cost depletion, after adjusting for the expensing effect would be very small.

[26] At a 1:5 to 1 price to cost ratio the rate would be a .1 percent subsidy rate while at a 5:1 price to cost ratio, the effect would be a 16.75 percent tax rate.

[27] See Emil Sunley, Toward a More Precise Effective Rate Measure. Tax Notes, March 1, 1976. Note that while the marginal tax rate on an additional dollar is either 0 or 48 percent, the tax rate on income from an additional investment (with incentives) would be less than 48 percent.

[28] See testimony presented before the Senate Interior Committee (Financial Requirements of the Nation's Energy Industries, 1973).

[29] Some equipment is too short lived to be eligible for the full credit.

[30] The asset depreciation range is much smaller in value than the investment credit, however.

## APPENDIX

### A. GENERAL MODEL

In order to convert the tax provisions allowed to oil and gas production to an effective tax rate, an income stream can be set up as follows (using discrete time intervals):

$$(1)\quad C=\frac{Pa_0Q}{(1+r)^0}+\frac{Pa_1Q}{(1+r)}+\frac{Pa_2Q}{(1+r)^2}+\ldots+\frac{Pa_NQ}{(1+r)^N}$$

where:

$P$=Price per unit after operating costs (including royalties)

$a$=Percent of reserves recovered each period

$Q$=Total recoverable reserves

$r$=Discount rate

$C$=Present value of the income stream

By factoring out a PQ term, the expression can be reduced to:

$$(2)\qquad C=PQ\ (df)$$

where:

$$df=\frac{a_0}{(1+r)^0}+\frac{a_1}{(1+r)^1}+\ldots+\frac{a_N}{(1+r)^N}$$

The income stream can be modified to allow for a constant rate of inflation by viewing $r$ as the real rate of return, i.e.:

$$(1+r)=(1-r^*)/(1+i)$$

where $i$=the rate of inflation and $r^*$ equals the nominal rate of return. This model assumes output prices rise at the rate of inflation.

Addition of an income tax at rate $z$ with no depreciation would be expressed as:

$$(3)\qquad C=(PQ-zPQ)\,(df)$$

In order to compare the embedded effective tax rate with a standard tax system, costs would be written off each period at a rate of $a_iC$. This expression could be written: [1]

$$(4)\qquad C=(PQ-zPQ)\,(df_1)+zC(df_2)$$

If inflation occurs, the discount factor associated with depreciation would differ to reflect the use of historical cost depreciation.

It can readily be shown that allowance of expensing of all costs when incurred would result in the equivalent of no income tax since:

[1] Such a system would imply unit of production depreciation; presently an option of depreciation as generally allowed in the tax code is available.

$$(5)\quad C(1-z)=(PQ-zPQ)(df_1)+z(C-C)(df_2)$$

converts to

$$(6)\quad C=PQ(df_1)$$

If a portion x of the cost is expensed, the resulting tax rate is:

$$(7)\quad C(1-zx)=(PQ-zPQ)(df_1)+z(1-x)C(df_2)$$

which can be converted into the expression: [2]

$$(8)\quad C=\left(PQ-\frac{z(1-x)PQ}{1-zx}\right)(df_1)+\frac{z(1-x)}{1-zx}C(df_2)$$

Noting the structural similarity between equations (8) and (3), a standard method for converting an expensing privilege into an effective tax rate can be derived by the following formula:

$$\frac{z(1-x)}{1-zx}=\text{effective tax rate}$$

If investment occurs in periods earlier than the first year of production the C on the left hand side of the equation is not equivalent to the C on the right hand side. When comparing to a standard tax rate, this effect does not create a problem because it occurs in other investments as well.

*B. Calculating effective tax rates for tax provisions without a basis adjustment*

Application of a tax in this model can be conceptually separates into two parts: a positive tax rate on revenues (or a negative cash flow) and a negative tax rate on the return of costs (or a positive cash flow). If a tax or credit is imposed without changing future deductions, a differential tax rate on revenues and return costs will occur. Such a situation will occur with items such as the minimum tax or the investment credit. The formula will be set up as follows:

$$(9)\quad C(1-zx)+wyC=(PQ-zPQ)(df_1)+z(1-x)C(df_2)$$

where:

$z$ = regular tax rate
$x$ = portion expensed
$w$ = tax or credit rate (negative of credit)
$y$ = portion of C to which the credit or tax applies

Equation (9) can be transformed into: [3]

$$(10)\quad C=\left(PQ-\frac{z(1-x)+wy}{1-zx+wy}PQ\right)(df_1)+\frac{z(1-x)}{1-zx+wy}C(df_2)$$

In this formulation, unfortunately, the same effective tax rate does not apply to the tax on revenues and the return of cost. There is no conceptual reason why the two cannot be separated; however, this does necessitate the additional step of deriving a single effective tax rate for the entire investment.

An overall tax rate could be constructed if the ratio of price to unit cost were known. By manipulation of equation (4) we can derive the following:

$$(11)\quad \frac{P}{C/Q}=\frac{(1-z)(df_2)}{(1-z)(df_1)}$$

[2] This expression can be derived by converting:

$$PQ\left(\frac{1}{1-zx}-\frac{z}{1-zx}\right)$$

to:

$$PQ\left(1-\frac{z(1-x)}{1-zx}\right)$$

[3] Derived by converting the expression:

$$\left(\frac{1-z}{1-zx+wy}\right)$$

to

$$\left(1-\frac{z(1-x)+wy}{1-zx+wy}\right)$$

The ratio of price to cost depends on the discount factor (which in turn reflects rate of return), useful life and decline rate, and on the tax rate (which is affected by any special tax provisions).

To convert the differential tax rates on revenues and costs requires use of a price cost ratio. For purposes of this calculation we will use a constant price model. The Federal Power Commission model,[4] which used an approximate 15 percent rate of return, indicated a constant price (after royalties and operating costs) of around 3½ times cost (without percentage depletion).

To convert a differential rate on revenues and costs to an overall rate can be accomplished by substituting the differential tax rates, $z_1$ and $z_2$ into an equivalent equation with an overall tax rate z;

which yields the following result:

$$(12)\quad (PQ-zPQ)(df)+zC(df)=(PQ-\bar{z}PQ)(df)+\bar{z}C(df)$$

which yields the following result:

$$(13)\quad \frac{z_2(C/Q-z_1P)}{(C/Q)-P}=\bar{z}$$

By setting C arbitrarily equal to one we can set P equal to 3.5 and solve for the overall tax rate.

C. INCORPORATING PERCENTAGE DEPLETION

Percentage depletion is available at a 22 percent rate on gross income subject to a net income limitation of 50 percent of taxable income before allowances for depletion. It will eventually decline to a 15 percent rate. Because the price used in the model is net income, the effective tax rate of the depletion allowance (with reference to P) will be higher than the statutory rate, but only slightly so because operating costs are relatively minor in oil and gas production. Furthermore, under present conditions, it would be unlikely that the net income limitation would apply.[5]

The model would be specified as:

$$(14)\quad C(1-zx)=(PQ-zPQ)(df_1)+z(1-x)C(df_2)+vzPQ(df_1)-uzC(df_2)$$

where:

$v$ = percentage depletion rate
$u$ = portion of $C$ attributable to depletable costs.

This equation can be transformed into:

$$(15)\quad C=\left(PQ-\frac{z(1-x)}{1-zx}PQ\right)(df_1)+\frac{z(1-x)}{1-zx}C(df_2)+\frac{vz}{1-zx}PQ(df_1)-\frac{uz}{1-zx}C(df_2)\Bigg)$$

By factoring the tax rate on revenues would be:

$$\frac{z(1-x)}{1-zx}-\frac{vz}{1-zx}$$

and the tax rate on costs would be:

$$\frac{z(1-x)}{1-zx}-\frac{uz}{1-zx}$$

Percentage depletion's effect on the tax rate is also dependent on the price to cost ratio. FPC calculations [6] using an approximate 15 percent rate of return and assuming the presence of percentage depletion resulted in a price equal to 2½ times cost (at constant prices).

To incorporate the minimum tax on percentage depletion [7] which is equal to 15 percent of the excess of depletion, an approximation would be to use a 33 percent rate (z−w), where w= the minimum tax rate, in both revenue and cost flows.

[4] FPC Opinion 770–A.

[5] The higher the effective rate of depletion, the lower the actual tax rate. Thus, use of the statutory rate reflects a conservative approach but is believed to be reasonably accurate.

The new equation will be:

$$(16)\quad C=\left(PQ-\frac{z(1-x)}{1-zx}PQ\right)(df_1)+\frac{z(1-x)}{1-zx}+\frac{v(z-w)}{1-zx}PQ(df_1)-\frac{u(z-w)}{1-zx}C(df_2)$$

By factoring, the tax rate for revenues would be:

$$\frac{z(1-x)}{1-zx}-\frac{v(z-w)}{1-zw}$$

and the tax rate on costs would be:

$$\frac{z(1-x)}{1-zx}-\frac{u(z-w)}{1-zx}$$

To incorporate the minimum tax on both intangible drilling costs and percentage depletion, the following equation would be employed:

$$(17)\quad C(1-zx)+wyC=(PQ-zPQ)(df_1)+z(1-x)C(df_2)+v(z-w)PQ(df_1)-u(z-w)(df_2)$$

This expression can be converted into:

$$(18)\quad C=\left(PQ-\frac{z(1-x)+wy}{1-zx+wy}PQ\right)(df_1)+\frac{z(1-x)}{1-zx+wy}C(df_2)+\frac{v(z-w)}{1-zx+wy}PQ(df_1)-\frac{u(z-w)}{1-zx+wy}C(df_2)$$

Collecting terms, the tax rate on revenues would be:

$$\frac{z(1-x)}{1-zx+wy}-\frac{v(z-w)}{1-zx+wy}$$

and the tax rate on costs would be:

$$\frac{z(1-x)}{1-zx+wy}-\frac{u(z-w)}{1-zx+wy}$$

D. DEVELOPMENT WELLS: EFFECT OF EXPENSING AND PERCENTAGE DEPLETION

A development well also produces a stream of revenues. However, in this case depletion costs are already "sunk" in the sense that they do not affect investment decisions and the cost calculation of the producer is the return on his marginal well in terms of additional revenues and the flow of depletion deductions.

$$(19)\quad C=(PQ-zPQ)(df_1)+zC(df_2)+zA$$

where A = the value of depletion deductions. This amount is difficult to determine in relation to cost since a marginal well may be a higher cost (certainly not a lower cost), lower producer than the average well. An extreme case would suggest the depletion is equal to 16 percent of cost implying a constant cost of drilling wells and constant well production. (This is derived by noting that total cost depletion is 7 percent of total costs, 50 percent of costs have been expensed and the remaining cost is 43 percent. Therefore, .07/.43 would represent a maximum ratio of depletion to cost of drilling an additional well.) [8]

Basically, the application of the model to a development well follows the same approach as for total drilling. Thus, the tax rate with expensing intangibles would be

$$\frac{z(1-x)}{1-zx}$$

Since a development well reflects only two costs: intangible drilling costs and depreciable costs, the minimum tax formula would be:

$$(20)\quad C(1-zx)+wxC=(PQ-zPQ)(df_1)+zC(df_2)-zA$$

[6] FPC Opinion 770–A.

[7] The minimum tax actually applies only to total percentage depletion in excess of cost and would actually apply in full in later years, but not at all initially.

[8] The result at the maximum would be a "proper" tax rate on costs of 56 percent. This will be taken into account when feasible.

This can be converted into the standard form as in the case of total drilling (and ignoring depletion returns) by substituting x for y:

$$(21)\ C=\left(PQ-\frac{z(1-x)+wx}{1-zx+wx}PQ\right)(df_1)+\frac{z(1-x)}{1-zx+wx}C(df_2)$$

The application of percentage depletion would proceed in the same manner as for total drilling except there would be no reduction on the cost rate because the return of cost depletion drops out.

The equation for percentage depletion would be:

$$C=\left(PQ-\frac{z(1-x)}{1-zx}PQ\right)(df^1)+\frac{z(1-x)}{1-zx}C(df^2)+\frac{vz}{1-zx}PQ(df_1)$$

for a rate on revenues of:

$$\frac{z(1-x)}{1-zx}-\frac{vz}{1-zx}$$

and a rate on costs of:

$$\frac{z(1-x)}{1-zx}$$

Incorporating the minimum tax on percentage depletion:

$$C=\left(PQ-\frac{z(1-x)}{1-zx}\right)(df_1)+\frac{z(1-x)}{1-zx}C(df^2)+\frac{v(z-w)}{1-zx}PQ(df_1)$$

for a rate on revenues of:

$$\frac{z(1-x)}{1-zx}-\frac{v(z-w)}{1-zx}$$

and the same rate on costs.

Incorporating the minimum tax on both would result in:

$$C=\left(PQz-\frac{z(1-x)+wx}{1-zx+wx}PQ\right)(df_2)+\frac{z(1-x)}{1-zx+wx}C(df_2)+\frac{v(z-w)}{1-zx+wx}PQ(df_1)$$

For a rate on revenue of:

$$\frac{z(1-x)+wx}{1-zx+wx}-\frac{v(z-w)}{1-zx+wx}$$

and a rate on costs of:

$$\frac{z(1-x)}{1-zx+wx}$$

## A MANIFESTO REGARDING THE TEXTBOOK SURVEY BY THE CIVIL RIGHTS COMMISSION

Mr. HAYAKAWA. Mr. President, I find myself in the peculiar position of having cosponsors without a bill, for today I am not proposing legislation. Instead, I am submitting, both to the attention of the Senate and for the consideration of the American people, a statement of conscience: A manifesto, if you will. Joining me in offering it are the distinguished Senators from North Carolina, Idaho, Utah, Nebraska, Delaware, and Wyoming: Senator HELMS, Senator MCCLURE, Senator HATCH, Senator CURTIS, Senator ROTH, and Senator HANSEN.

To every thing there is a season: A time to offer bills and a time to refrain from legislation.

We are refraining from offering legislation to correct a serious abuse of power by the Civil Rights Commission. Instead, we are appealing to the American people to make such legislation unnecessary.

There is nothing that can be so easily misunderstood as criticism of the Civil Rights Commission. It has become Washington's foremost sacred cow. And yet, just as one can criticize the Defense Department without being against defense, it should be possible to fault the Commission without opposing true civil rights. But bureaucracies have a way of identifying themselves with their jurisdictions, wrapping themselves in the flag, so to speak. That is why we want to emphasize that our challenge to the Commission does not involve any past defense of civil liberties but, rather, its present activities which imperil those freedoms.

The Commission has initiated a project which sets an ominous precedent and threatens the rights of all Americans. Several weeks ago, in a letter dated August 17 and headed, "Dear People," certain functionaries at the Commission informed a number of publishers throughout the country that "a small team of researchers" at the Commission "is investigating the nature, extent and impact of textbook biases." The ultimate result of their study will be a report, whose recommendations will be "aimed at ameliorating the problem of textbook biases as well as counteracting the negative impact of previous biases."

But in the meantime, inasmuch as the Commission's researchers "have already noted the pervasiveness of biases in textbooks presently in use," they "have decided to prepare an interim product to help people who are concerned with the problem and want to know how to counteract biases in textbooks now." This "interim product" is a "Resource List," which will be "widely disseminated throughout the country during the fall of 1977 and winter 1978 (sic)." Among the purposes of the list is "to raise the consciousness of students."

We submit to the candid consideration of the American people that, when the Commission was created by the Congress in 1957, its purpose was not "to raise the consciousness" of schoolchildren.

This consciousness-raising enterprise is presumably keeping busy seven Federal employees. But misuse of the public's taxes is not the worst part of their project.

It is disconcerting that any agency of the Federal Government should pry into the private business of book publishing. That is what the Civil Rights Commission is beginning to do, and its intrusion should be halted.

The Commission is asking textbook publishers for the "guidelines" they give authors to insure that their texts are not racist or "sexist." In other words, to insure that they portray women and racial minorities in a "positive" light. This may be an admirable goal, depending upon how one defines "positive"; but it has nothing to do with the business of Government.

The Commission's inquiry means that, if a publisher has not already forced his authors to bow to pressure group demands in their writing, he had better begin to do so. That threat is clearly conveyed by the Commission's inquisitors, who are asking publishers, "Will your textbook guidelines be available to interested persons subsequent to the lists publication this fall 1977—winter 1978? If not, please state why here."

We hope that the publishers of America will refuse to "state why here." We hope they will junk the Commission's questionnaire or send it back to those shortsighted bureaucrats who originated it. That would be a blow well struck for intellectual freedom.

But our hopes may be in vain. Where is the spirit of liberty in the academic community and the publishing industry? Why has not the Commission's attempt to play big brother to publishers and authors raised a furor among the intelligentsia? Why are not the writers of America demanding that the Commission withdraw its questionnaire and end this auto-da-fé?

Why, indeed? Because not many people want to criticize the Civil Rights Commission lest they appear to be against civil rights.

Poppycock. This is not the first time that an institution established to protect rights became an instrument for their erosion. And so, the publishers of America—most of them, anyway—are meekly submitting to the Commission their guidelines for producing officially approved books. It is no wonder that so many parents are teaching their children from reprinted "McGuffey's Readers."

So be it. If the authors and publishers of America will not defend their own civil rights against the interference of the Civil Rights Commission, no one else can really do it for them.

We, therefore, will not introduce legislation forbidding the Commission to imperil intellectual freedom by its textbook survey, even though the next step—mark well our words, for you can count on this—the next step will be for the HEW to pressure schools to use only federally sanctioned textbooks. Otherwise, school districts will lose Federal funds. It is only a matter of time.

If that happens, it will happen because publishers allowed it to happen, because they cooperated with the Federal bureaucracy in its initial intrusions into the writing and marketing of books.

All in the name of "civil rights."

## REGULATION OF RECOMBINANT DNA ACTIVITIES

Mr. BUMPERS. Mr. President, it is now evident that in this session of Congress we will not pass any significant legislation to deal with research involving DNA recombinants. It is my understanding from statements by my distinguished colleagues, Senator KENNEDY and Senator STEVENSON, that there may be a move to broaden the application of existing NIH guidelines for 1 year and to study the remaining issues during that same period. If this is the judgment of my colleagues then I will accept their plan, for they have studied the issue with great care and bring special expertise to these issues.

As the Senators know, I have been deeply interested in the DNA recombination experiments despite the fact that I am not a member of the committees which might normally be involved with those issues. I introduced a bill, S. 621, back in February and then testified before the Health Subcommittee in April. Senator KENNEDY was most generous in keeping my staff and me informed about the development of his subcommittee bill, S. 1217.

It is my feeling that the relevant issues were well covered in the bill that was reported by the Human Resources Committee on July 22, 1977. Certainly the issues that I felt to be important were considered at length during the drafting and redrafting of that bill.

The three articles that follow provide information that might help us understand the implications of our actions or inactions in this area. The paper in the most recent issue of American Scientist by Dr. Bernard D. Davis of Harvard Medical School is a scholarly and interesting analysis of the risks of working with recombinant DNA. By applying his knowledge of epidemiology and evolution Dr. Davis concludes that the risks of dealing with novel recombinants may be less than those associated with known pathogens. I have always thought that to be true; it does not, of course, mean that there are no risks to be concerned about.

The articles by Nicholas Wade in Science and Judith Randal in Change magazine provide a glimpse into recent developments in the field, as well as the way the current NIH guidelines have been followed by researchers. Frankly, these reports of failures to follow the NIH regulations do not surprise me, for I have been concerned all along about the lack of real enforcement capability on the part of NIH. These problems of administration would clearly be compounded many times if we decide simply to extend the coverage of the NIH guidelines without providing further sanctions and authority to an appropriate administrator. It is troublesome also to recognize the ways in which interested scientists have abused scientific data and results in lobbying against S. 1217 these past few months. The overinflated claims about the results of the experiments related to microbial production of insulin illustrate the point perfectly.

I think these articles speak for themselves, and 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:

[From Science, Sept. 30, 1977]

RECOMBINANT DNA: NIH RULES BROKEN IN INSULIN GENE PROJECT

(By Nicholas Wade)

A breach of National Institutes of Health rules on gene splicing occurred earlier this year in the Department of Biochemistry and Biophysics at the University of California, San Francisco, one of the leading centers for practice of the new technique. No hazard resulted, but the episode underlines some of the difficulties experienced by research laboratories in adapting to the new rules.

The breach was the use of a biological component, or "vector," before it had been certified by the NIH director. The researchers, a team engaged in isolating the rat gene which codes for insulin, say they destroyed the experiment as soon as they realized their mistake.

The experiment was repeated in a certified vector and published in *Science* on 17 June. It received considerable attention because the researchers had achieved, much earlier than expected, the first step toward the goal of isolating the human insulin gene and using it for the manufacture of insulin protein. The UCSF team was in competition with a group at Harvard which was known to be working with a better source material.

UCSF's preeminence in the gene-splicer's art has brought it some mixed blessings. Because of the practical implications of what its researchers are doing, a company called Genentech has established a relationship with Herbert Boyer, one of the pioneers of the technique. Members of the insulin team have set up a nonprofit corporation, the California Institute for Genetic Research. These commercial developments are a tribute to the department's success, but have also created internal stresses. "Capitalism sticking its nose into the lab has tainted interpersonal relations—there are a number of people who feel rather strongly that there should be no commercialization of human insulin," says UCSF microbiologist David Martin.

Another mixed blessing is fame, which has attracted press attention not only to the department's achievements but also to certain internal tensions. A lengthy and circumstantial article in the June issue of the *Smithsonian* called into question the respect accorded to the NIH safety rules by UCSF researchers, and in particular by the younger, postdoctoral workers who perform most of the experiments. Written after a 3-month internship in Boyer's lab by Janet L. Hopson, formerly a reporter for *Science News*, the article observed that "half of the researchers here follow the guidelines fastidiously; the others seem to care little. . . . Among the young graduate students and postdoctorates it seemed almost chic not to know the NIH rules," Hopson noted. In a letter to the editor criticizing the article, Boyer stated that "In practice [the NIH rules] are followed seriously."

The stresses of both commercial successes and media attention came together this May when the insulin team announced their production of the rat gene. Other researchers resented not only the intrusive presence of the press but also the fact that they were hearing of their colleagues' success for the first time. The team had worked in unusual secrecy, which many regarded as inappropriate in an academic setting as well as disruptive. "People would stop talking when you came into the room, or change the subject if you tried to make conversation about how the insulin project was going," says the UCSF biochemist Brain McCarthy. The insulin team say that no secrecy was intended, and that it was the speed of obtaining results that occasioned surprise.

The secrecy and suspicion surrounding the insulin gene experiment, together with perhaps a touch of resentment, helped to fan rumors within the department alleging that the NIH rules had been broken and even that the experiment published in *Science* might not have been performed as described. The focus of the rumors was the obvious fact that the whole intricate experiment had been completed only 3 weeks after the NIH had certified the vector which the researchers used. Even experienced gene splicers were surprised by the rapidity of execution. "It is conceivably possible to do such an experiment in three weeks if everything works perfectly the first time, but you know as well as I do that science never works as well as you hope," a member of the department remarks.

"Well, what can I say? It did work well. We were all set to go," says a member of the insulin team queried on the speed of the experiment. Yet members of the team concede that an earlier experiment took place, but say it was aborted half way through and before any pertinent information had been gained.

The episode of the earlier experiment illustrates the problems experienced by research laboratories both in acclimatizing to the NIH's gene-splicing rules and in devising ways of enforcing them. "We can't run a policing service," says David Martin, until recently the chairman of the UCSF biosafety committee. "What we do is to try to raise the consciousness of the individuals involved to make them respect guidelines." Martin spent 2 days investigating the episode and concluded that a breakdown in communications was responsible. Precise details remain obscure because the minutes of the biosafety committee record only Martin's conclusion, and a lengthier account prepared for the minutes by the present chairman, James Cleaver, is far from complete.

The episode revolves about the use of the vectors—virus-like entities known as plasmids—which are used to carry genes of experimental interest into bacterial hosts. Two particularly useful plasmid vectors, known as pBR322 and pMB9, had been developed by Boyer and others. But before either could be used, it had to go through a two-stage administrative process, the first of being approved by the NIH recombinant DNA committee and the second of being certified by the NIH director. Vectors, in other words, are off limits to researchers until certified.

Plasmid pBR322 was tentatively approved by the NIH committee on 15 January, finally approved on 23 June, and certified for use on 7 July. Plasmid pMB9 was certified on 18 April.

According to both Martin and two members of the insulin team, the episode of the earlier experiment was as follows. Early this year, sometime in February, an attempt was made to produce copies of the rat insulin gene with pBR322 as the vector. The gene was linked to pBR322 and the plasmids inserted into NIH-certified bacteria designated EK2 hosts. Some of the bacteria were successfully colonized by the plasmids. To verify that the clones of colonized bacteria contained the rat insulin gene it would have been necessary to carry the experiment to completion by extracting and analyzing the DNA sequence of the genes. This step was not performed because at that moment, on or around 1 March, the team say they learned that the plasmid had not been certified for use. They decided to destroy all their clones. Further attempts were made to clone the gene with an already certified vector, known as pCR1, but without success. When pMB9 was certified, team members say, they had all their materials ready to go, and repeated the experiment from scratch in the new plasmid. Martin says that he inspected the team's records and has "complete confidence" in their statement that the entire experiment was done after the approval of pMB9. "When the manuscript appeared so soon people said 'How in hell can you do it?' But you can do it—the experiment was very straightforward," Martin said from Great Milton near Oxford, England, where he is at present on sabbatical. "I think they realized they would be questioned and that if there were any shenanigans they would be really jeopardizing a hell of a lot, not only their own careers but the whole advance of science through recombinant DNA technology."

In the categories of the NIH rules, the experiment with pBR32 was assigned to the highest available containment level short of going off campus to a specially secure laboratory. But it is clear that the experiment posed no issue of public health since it was performed in the required type of laboratory—

a "P3" facility—and with a vector which has now been certified as safe.

The experiment also took place at a time when the NIH rules were still new and local procedures for implementing them were still in a formative stage. "This was one of the inevitable things that happened as we tried to evolve a new system," comments biosafety committee chairman Cleaver.

Not wholly plain from the Martin-Cleaver accounts of the episode is how the insulin team came to believe it was all right to go ahead with pBR322 prior to certification. Howard Goodman, chief of the laboratory which did the cloning and sequencing part of the experiment, is out of the country, as he has been for most of the past year. One of his postdoctoral colleagues says there was great confusion at the time about the status of the plasmid but the reason for the confusion is "sort of cloudy now."

According to Martin, it was clear that everyone knew that pBR332 had been approved but not certified, but the NIH, Martin says, was advising researchers that certification was imminent and that they should go ahead. According to the minutes of the 20 May meeting the UCSF biosafety committee. Martin reported that the researchers "had been verbally informed that the certification of an approved EK2 vector was imminent and to proceed with its use."

This version is strenuously denied by William Gartland, director of the NIH Office of Recombinant DNA Activities, and by his only assistant, Daphne Kamely. Both say that they would never have advised use of any vector before certification. Gartland notes that the team "must have got the vectors from Boyer, who certainly knew they were not certified" because Boyer had complained repeatedly to the NIH of the delay in certification. According to Boyer, the insulin team "kept on asking" if the plasmid had been certified and he told them it had not. Boyer states that he never encouraged anyone to go ahead prior to certification. Thus the source of encouragement for the team to go ahead prior to certification remains obscure.

A different account from Martin's is given by William Rutter, a member of the insulin team and chairman of the UCSF Department of Biochemistry and Biophysics. In its memorandum filed with the UCSF biosafety committee, the insulin team had said it would use as vectors pCRI and any other vectors that might in future be approved by the NIH recombinant DNA committee. When the NIH committee approved pBR322 on 15 January, Rutter says—(the committee gave tentative approval on 15 January and full approval on 23 June)—he therefore assumed that pBR322 was sanctioned for use, since he was not then aware of the NIH distinction between approval and certification.

The UCSF biosafety committee did not learn until May that the pBR322 experiment had taken place. Researchers doing recombinant DNA experiments are required to file a description of the experiment for committee approval. But as Rutter has said, the memorandum filed by the insulin team did not mention pBR322 specifically. Researchers using the P3 laboratory at UCSF are also required to sign a logbook describing their experiment. Yet Martin says that when he inspected the logbook at the outset of his investigation, he found "nothing recorded." Those in charge of the facility "were not being compulsive enough in seeing that people were filling in the logbook"—a situation which has now been corrected, Martin adds.

Cleaver, Martin's successor as bio-safety committee chairman, told *Science* that two entries from the insulin team are recorded in the logbook between 1 February, when the logbook was instituted (the P3 lab officially opened on 9 November 1976), and the end of April. An entry on 1 February notes in the column headed "vector" that pCR1 will be used, and the second entry on 23 April gives pMB9 as the vector. The pBR322 experiment according to Rutter, took place after 1 February. The vector was not mentioned, he says, because the 1 February entry referred to the general experiment already described in the memorandum filed with the biosafety committee, in which the team had said it would use pCR1 and other approved vectors, and the logbook has to be signed only for each experiment, not for each use of the laboratory. "The signing in of the logbook meant for the insulin cloning experiments in general. The vectors were not designated specifically, and that was just human error," says Rutter. Rutter's laboratory provided the insulin gene for the experiment; it was members of Goodman's laboratory—Goodman was away until mid-April—who performed the cloning experiments.

How should a local biosafety committee respond to an incident of this sort? "I would have expected that the biohazards committee to have investigated the whole thing," says Gartland. Martin did conduct an investigation and he took action both with the NIH and the insulin team. "I felt comfortable we had resolved the question and eliminated the possibility of it happening again." he says. But in fact, written documents of the committee record criticism only of the NIH.

The pBR322 experiment raises no question of hazard but it does raise the possibility that the insulin team might have gained an unfair advantage over other researchers who had abided by the NIH rules. Another team at Harvard is also working on the same problem. Members of the USCF team say that they gained no information from the pBR322 experiment which was helpful to the later experiment with pMB9. As it happens, the Harvard team was not neck-and-neck with UCSF because it has not even now published any results.

As far as is known the pBR322 experiment is the only occasion on which the NIH rules governing recombinant DNA research have been broken. The researchers say that the breach was the result of innocent error, a statement not refuted by the available evidence. The experiment presented no hazard to public health nor, in the event, was any unfair advantage gained over competitors. As for the UCSF biosafety committee, its response included action to ensure against repetition of the incident, although not a full public account. The committee's discussion of the experiment, as reflected in the minutes of its 20 May meeting, is confined to an attempt—unsupported by available evidence—to ascribe the error to confusion generated by NIH. But both the experiment and the biosafety committee's response to it occurred in circumstances to which researchers were then still adapting, and for which there were few, if any, precedents.

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[From Change magazine, Oct. 1971]

IF THE GENE SPLICERS WIN THEIR BATTLE, WILL THEY LOSE THE WAR?

(By Judith Randal)

As recently as last spring it seemed certain that Congress would enact regulatory legislation governing recombinant DNA technology—the fitting of bacteria with alien genes—before leaving Washington for its August recess. But that didn't happen; and it now appears that the legislation may be held in abeyance for months, perhaps even indefinitely. Major philosophical differences in the leading Senate and House proposals—authored respectively by Senator Edward M. Kennedy, chairman of the Senate Health Subcommittee and Congresman Paul Rogers, who holds the counterpart position in the House—are partially responsible for the slowed momentum. But nothing has so cooled Congress' efforts as the intensive lobbying of the scientific community.

Strong opposition to federal regulation surfaced in February when, at a meeting of the National Institutes of Health recombinant DNA advisory committee, NIH Director Donald S. Fredrickson read those present a bill, introduced by Senator Dale Bumpers, which would have imposed tough controls—including heavy penalties for violators—on laboratories and scientists engaged in gene transplant work. Although the Bumpers bill never got anywhere, it (and a companion measure in the House sponsored by Congressman Richard Ottinger, which was similarly ineffectual) struck a chill into molecular biologists, who until then had been pushing for congressional action as preferable to the hodgepodge of statutes that states and localities were threatening to enact.

Soon they began to recall the persecution of Galileo and to talk of Lysenkoism and threats to the freedom of scientific inquiry. When the Kennedy and Rogers bills materialized, molecular biologists criticized their provision for a "costly and unwarranted" bureaucracy. In particular, it disturbed the scientists that Congress might pass a law that would allow the states to set stricter safety requirements than those mandated in Washington. And the Kennedy measure troubled them deeply because it would create a regulatory commission six of whose eleven members would be people who had never been involved in biological research.

Consequently, the molecular researchers began consolidating their ranks in order to stifle possible dissent and gather support from other quarters of the scientific establishment, such as the American Society for Microbiology, the Federation of American Societies for Experimental Biology, the National Society for Medical Research, the Association of American Medical Colleges, and like-minded professional groups. A column in the *New York Times* by René Dubos, the distinguished Rockefeller University professor emeritus of microbiology, a resolution by the National Academy of Sciences, an editorial in *Science magazine*, and numerous letters and delegations to Capitol Hill were all devoted to the twin causes of convincing legislators that legal action, if necessary, should be light-handed and that recombinant technology is not after all as potentially dangerous as the scientists themselves had originally feared when they called for and obtained a two-year moratorium on gene-splicing experiments. (See the May 1976 Science Policy column.)

Two letters to NIH's Fredrickson that have been widely circulated have been particularly persuasive in the latter regard. One, written by Roy Curtiss III of the University of Alabama, has carried particular weight because Curtiss has from the outset been concerned about the risk problem and is, besides, a notably cautious and painstaking scientist. The other, signed by Sherwood L. Gorbach of Tufts University Medical School, purports to reflect the "unanimous agreement" (this has since been disputed) of some 50 researchers from a variety of biological disciplines who participated in an NIH-sponsored recombinant risk assessment conference held in June at Falmouth, Massachusetts.

Both letters cite evidence from "extensive studies" to conclude that the insertion of foreign genes into the enfeebled strains of E. coli bacteria (the recipients of most DNA transplants) is incapable of creating epidemics. (Both Curtiss and Gorbach, though, have urged further experimentation to clarify certain aspects of this point.)

But both letters also intimate, whether intentionally or not, that without being bluntly dishonest organized science can take advantage of public and congressional naiveté. Enthusiasts of gene technology have been reluctant to admit it, but the fact is that just as E. coli strains can be endowed with the hereditary material of whatever species a scientist chooses, so also can strains of other types of bacteria whose behavior and prop-

erties have been much less thoroughly explored.

To be sure, most recombinant work to date has been done with the familiar crippled E. coli strains, which would almost certainly fail to survive and reproduce were they to accidentally escape. But this secure situation is subject to change, the entire field being less than five years old. Still, the current lobbying effort seems orchestrated to convince people either that only E. coli will be used for this type of genetic engineering, or that if it is safe to juggle the hereditary material in one kind of microbe, it follows automatically that this is true of all microbes. Virtually ignored by the public's would-be persuaders is that the pursuit of scientific truth by academics, which entails the use of small quantities of recombinants, may pose a lesser degree of risk than the far larger batches industry can be expected to produce.

Nor is it only in downplaying the admittedly hypothetical perils of their work that gene splicers and their allies have become adept at fast talk. They have also been less than forthright in vaunting the potential practical applications of their work. A University of California, San Francisco, team's recent insertion into E. coli of the genes that program for rat insulin is illustrative. This achievement was announced in tones implying that similarly treated bacteria might soon be manufacturing human insulin for diabetics. The reality is that the UCSF experiments did not succeed in catalyzing hormone production and that, furthermore, no method is now known for pulling apart the genetic sequence that codes for human insulin from the entirety of the human DNA molecule. This means that, for the moment at least, gene jugglers are at a loss as to which genes to transplant.

Moreover, even if microbial synthesis of human insulin were just around the corner, it would not necessarily represent a major boon. The vast majority of the nation's estimated 9–10 million diabetics develop the disorder during middle or old age, when the disease is of a form usually better controlled by diet than by other means, the more so because many of these patients are insulin-resistant and derive no benefit from injections. And at any rate, there is no shortage of insulin from animal sources for younger diabetics, although the human insulin currently used by those few thousand who cannot tolerate animal insulin preparations is more costly than it might be if bacteria were to be put into service as the manufacturing vehicle.

None of this is to say that there will not be practical benefits from gene splicing, although it is difficult to predict with any precision what they will be. Nor is it to deny that the technology is an intellectually exciting tool. Rather, what is troubling is the dogmatic posture the special pleaders have adopted—all but promising maximum benefits and minimal risks from the practice of their art and arguing that they are capable of supervising themselves completely.

Their cry, to quote the Science magazine editorial alluded to earlier, is that "public fears may overcome scientific judgment." But one suspects that, at bottom, something more fundamental than the researchers' abhorrence of red tape is at stake—namely, that the legislative proposals, as presently drafted, will provide the nonscientist a role in scientific decision making.

If this is so, and if the current lobbying efforts succeed in deleting the provisions for public participation and produce token legislation or none at all, the scientific establishment will have won a battle. But in the long run, it could well discover that its policy of exclusivity has boomeranged. Mishaps occur in almost every technology, and recombinant DNA technology is unlikely to prove the exception. When the inevitable occurs, gene splicers could find they are unable to drum up the public support necessary to continue their largely tax-funded work.

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THE RECOMBINANT DNA SCENARIOS: ANDROMEDA STRAIN, CHIMERA, AND GOLEM

(By Bernard D. Davis)

Bacteria offer striking advantages in the study of the molecular basis of gene structure and function: they contain only 1/1,000 as much DNA as mammalian cells; they can be rapidly and cheaply grown in enormous numbers; and even very rare mutants or genetic recombinants can be readily selected from a huge population. These advantages became apparent soon after Avery and coworkers launched the field of molecular genetics, in 1944, by identifying the genetic material as DNA (dexoyribonucleic acid). This work also launched the field of bacterial genetics, since the transformation of pneumococci, by DNA released by one cell and taken up by another, revealed the existence of genetic recombination in bacteria. The subsequent spectacular success of molecular genetics has depended on continual interplay between chemical studies on DNA and genetic studies in bacteria.

One of the goals of this research, of course, is the understanding of mammalian gene regulation, and the importance of this knowledge cannot be overestimated. Normal regulation is the key to the mechanism of development of a fertilized egg into a differentiated organism, in which the various cells all contain the same full set of genes but differ in their pattern of gene activation and repression. Moreover, an aberration in this pattern is central to the cancer problem: for whether a particular cancer is due to viral infection, to mutation, or to an abnormality of differentiation, the loss of control of cell growth reflects a loss of normal gene regulation.

The study of such normal and abnormal regulation in the simplified background of a bacterial cell would offer great promise, since our present knowledge of regulation in mammalian cells is primitive, compared with that in bacteria. Four years ago this breakthrough was achieved, with the development of procedures for introducing DNA from any organism into bacteria. This technique of molecular recombination (gene-splicing) is obviously a highly versatile tool. Indeed, it may well turn out to be as valuable for biology and medicine as radioactive isotopes. It not only allows the regulation of mammalian genes to be studied in bacteria but it also promises to make possible the preparation of unlimited quantities, in easily purified form, of any genes and their products. Moreover, it is now easy to determine the complete DNA sequences of such a purified gene (and its adjacent regulatory region), since recently developed analytical techniques (1) have reduced the time for sequencing short DNA segments from two years to two days.

There are also prospects for many practical applications. which we can only begin to foresee. One of the more obvious uses is in the manufacture of medically valuable human proteins—for example, hormones, clotting factors, antibodies, and interferon. Antibodies may prove to be particularly valuable, since we now know that they are the products of thousands of specific genes, and immunogenetic studies are rapidly revealing a variety of specific individual deficiencies in these genes. Similarly, as the immunology of cancer advances we may expect to use antigens from individual cancers, and antibodies to those antigens, in prevention and treatment. In agriculture the incorporation of genes for nitrogen fixation in higher plants, to eliminate the need for nitrogen in fertilizer, has also been widely discussed, but this development seems more problematic since the bacterial genes would have to function within the more complex and possibly inhospitable environment of a plant cell.

THE TECHNIQUE OF MOLECULAR RECOMBINATION

Molecular recombination, like many major advances in biology, depended on unplanned interactions of several initially esoteric discoveries. The first of these was the finding that bacteria often contain one or more plasmids (small, autonomously replicating circles of DNA), in addition to their chromosome (a circle of DNA about 1,000 times the length of the cell).

While the chromosome ordinarily includes all the genes essential for growth and multiplication, plasmids, add optional genes, i.e. genes that broaden the organism's range of habitats by providing such traits as resistance to various inhibitors or the ability to use alternative food sources. Moreover, plasmids move about widely in the microbial world, occasionally picking up genes from one host cell and transferring them to another. They thus serve as a primitive precursor for sexual reproduction.

A second step toward the recombinant technique was the discovery of a peculiar method of cleaving DNA, by the use of "restriction" enzymes. Fifteen years ago these enzymes were discovered to be present in some bacteria, protecting them against infection by foreign DNA. When the sites that they attacked were finally identified, each enzyme was found to cleave DNA at a different specific short "restrictive" sequence, of 4 to 8 base pairs. The restriction sequences were further found to have palindromic symmetry: the sequence in one strand and its complement in the other (based on the constant pairing of A with T and G with C, and on reading the two strands in opposite directions) are identical. Moreover, most restriction enzymes cut these symmetrical sequences at their opposite ends, producing staggered "nicks" in the double-stranded DNA. Under ordinary conditions the DNA breaks apart at these cuts, and the short single-stranded extensions at the ends are all complementary to each other. Because DNA contains only four kinds of bases, chance will usually cause any short restriction sequence to be present in the total sequence of any large DNA, and at rather short intervals.

Under appropriate annealing conditions these complementary ("sticky") ends, on the same or on different molecules, will transiently hydrogen-bond to each other from time to time. Herbert Boyer and Stanley Cohen (2) showed that this stickiness could be used to splice foreign DNA into a plasmid. The plasmid has its circle opened—and the foreign DNA is cut into segments—by the same enzyme, and the products are then annealed together. Because all the ends are complementary, the opened plasmid occasionally links in tandem with one of the other segments before closing its circle. This unstable, reversibly closed circle, with several nicks in its DNA, is converted to a stable product by use of another enzyme, DNA ligase, which covalently seals such nicks. (This useful enzyme was discovered a dozen years ago in the course of research on genetic recombination and DNA repair in the cell.)

In order to multiply, the recombinant plasmid must now be incorporated into a bacterial host. Although the bacterium most useful for genetic studies, *Escherichia coli*, does not pick up plasmids from the medium at a detectable rate, it was discovered by Cohen in 1972 that these cells can take up free plasmid DNA from the medium at a detectable frequency if their surface is modified by heating the cells in the presence of calcium chloride. The plasmids then multiply with the cells, and after cell lysis the plasmid DNA can easily be purified.

The overall procedure is not efficient: less than one plasmid in a million will be incorporated into a cell, and only a few of these

plasmids will carry an inserted sequence. Ingenious techniques have therefore been developed for selecting those rare bacterial strains that have become hosts for a recombinant plasmid. For example, one may start with a plasmid that carries genes for two kinds of drug resistance—and that also carries a single retsriction site located in one of those genes. Since recombination will insert DNA in the restriction site, thus inactivating that gene and thereby eliminating one of the two drug resistances, it is easy to select the strains with a hybrid plasmid by plating on appropriate media: these strains will exhibit single resistance, while all others will have picked up either no plasmid (yielding no resistance) or an unrecombined plasmid (double resistance).

STORMY HISTORY

Although advances in some areas of genetics have aroused public apprehension (3), recombinant DNA seemed at first to be escaping this fate. At the very start, even though no harm from any recombinant had then (or has yet) been seen, workers in this field responded vigorously and openly to the demand that scientists take more responsibility for preventing harmful consequences of their work. Specifically, in 1975 a group of molecular biologists publicly called for a moratorium on certain experiments (4), arranged for a large international conference (at Asilomar), which was attended by the press, and urged government action to establish guidelines. The final result was an elaborate set of guidelines from the National Institutes of Health (5), which specify four levels of physical containment (P1 to P4, the strictest level) and three levels of biological containment (see below) for different kinds of experiments.

For the first two years these actions were received favorably in the press. Eventually, however, the atmosphere changed dramatically, to a large extent because of the widely publicized objections of a handful of scientists who demanded much more severe restrictions (or even a complete ban) on research in this field. Moreover, the critics not only expressed concern over the possible outbreak of an "Andromeda strain," but they also raised two further specters; that of creating dangerous chimeras by meddling with evolution, and that of creating a Golem, with a prefabricated personality, by genetic engineering in man. In the resulting highly charged atmosphere George Wald, after failing to convince a Harvard committee of the danger of building a P3 facility, sought political controls at the level of municipal government—despite the obvious inadequacies of this kind of organization for the task, and despite the long tradition of autonomy and responsible self-discipline in the academic community.

The media, of course, had a field day with such man-bites-dog stories. *Science*, the organ of an association dedicated to the advancement of science, ran almost weekly news articles that featured predictions of disaster. But although the Citizens' Experimental Review Board appointed by the Cambridge City Council started with suspension of self-regulation by scientists, they patiently listened to many dozens of hours of testimony, and the important point is that they ended up essentially endorsing the guidelines developed by scientists at the NIH. (They did recommend minor technical changes, quite inappropriate for a nontechnical committee; and they recommended local supervision, which was an appropriate area for them to judge.) But despite this encouraging outcome, the public has understandably become anxious, and federal legislation seems virtually inevitable. At the time of this writing a number of bills are under consideration, and it is not clear how restrictive the legislation will be.

NEGLECT OF RELEVANT DISCIPLINES

In the light of this history, the organizers of the temporary moratorium to make their concerns public at the start. Yet it did seem necessary to act rapidly to prevent the unrestricted incorporation of tumor viruses into bacteria, at least until after adequate exploration and reflection. Moreover, the public reaction today might well be even more negative if scientists could be accused of secrecy on a matter of such potential public interest. But though this question is moot, I believe there was one serious defect in the approach: in emphasizing their responsibility for not creating undue hazards, the molecular biologists failed to recognize how much the problem of estimating those hazards lay outside their field. In fact, the ability of an organism to give rise to an epidemic, and the mechanism of its spread, are problems in epidemiology.

Instead of recognizing that the familiar features of the organisms offered grounds for reliable, general epidemiological predictions (as we shall see below), even before laboratory studies on the new strains provided more precise information, the scientists involved proceeded as though nothing relevant was known and they were peering into a black box. The resulting preoccupation with unlimited scenarios contributed to the anxiety that they came to feel—and then transmitted to the public. To be sure, in order to establish the pathogenicity of any novel recombinants with precision, direct tests would be necessary. But a purely empirical approach could not be sufficient for the next experiment might still inadvertently unleash an Andromeda strain. Eventually, then, it would be necessary to take into account also what is known about epidemics—and this information could have been helpful from the start.

More broadly, the problem is also one in evolutionary biology, since it involves the survival and spread of novel organisms in nature. Indeed, epidemiology may be seen as an applied branch of evolution, concerned with the genetic and the ecological factors that influence the spread of agents of disease. But evolutionary considerations have also been neglected.

This neglect is hardly surprising. Biologists interested in physiological mechanisms and those interested in evolutionary origins have long lived in two rather separate cultures (6, 7). And though some of the barriers may have been broken down by the recent spectacular contributions of molecular genetics to two aspects of evolutionary biology—the mechanisms of genetic variation and the estimation of evolutionary distances—this success may also have reinforced disdain for nonmolecular approaches to evolutionary problems. But hereditary variation is only one of the two pillars of evolution. The other, natural selection, is based on population dynamics—and these events cannot be reduced to molecular terms. Hence reductionism, though a useful guide to methodology, is a poor philosophy for biologists.

Since discussions of the hazards of recombinant DNA research have continued to have little input from evolutionary biology and epidemiology, I shall approach the subject from the perspectives of these fields, first reviewing the underlying principles and then considering their application to the matter at hand.

EVOLUTION AND EPIDEMIOLOGY

Though the production of hereditary variation is the ultimate source of evolutionary change, natural selection is the main guiding force, determining which variants survive and spread. In a stable environment excessive deviations from the norm of a species ordinarily decrease an organism's ability to leave progeny and thus to succeed in the Darwinian competition. Under these circumstances the effect of natural selection is largely stabilizing. Changes in the environment are the main source of selection pressures that favor novel variants.

As evolution proceeded from prokaryotes (bacteria, with a single chromosome) to eukaryotes (higher organisms, with a more complex genetic apparatus) it also created the mechanism of genetic recombination by sexual reproduction, thereby providing vastly increased diversity for natural selection to act on. But unlimited recombination from the total pool of genetic material in the living world would be disadvantageous, because it would yield innumerable grossly unfit, nonviable progeny. Hence the evolution of sexual reproduction was accompanied by the evolution of species, separated by fertility barriers.

This restriction of interbreeding to groups of closely related organisms illustrates a more general principle: Darwinian fitness (i.e. reproductive success in the competition of natural selection) requires a balanced genome (total set of genes) (8). Natural selection judges a novel gene not in isolation but in terms of its coadaptation to the rest of the organism's genes—whether the organism is a mammal or a bacterium. This principle is crucial for assessing the possible impact of any novel organism on evolution.

Darwin had no interest in the invisible world of microbes, and Pasteur, concerned with disproving spontaneous generation and with establishing the stable differences between microbial species, resisted evolutionary ideas. Nevertheless, within less than a decade of the publication of *The Origin of Species* Pasteur unwittingly began the absorption of bacteria into the Darwinian framework. His classical studies of fermentation demonstrated that different media, such as milk or grape juice *select* for different kinds of organisms from the same mixture that can reach them from the air. However, this selection was for *classes* of microorganisms, and its extension to *variants* within a class was not recognized for many decades.

Meanwhile evolution became increasingly fused with enetics, but this fruitful synthesis could not be extended to bacteria until they were shown, in the 1940s, to possess genes—units of heredity that are linked in a chromosome and are capable of mutation and recombination. The delay was largely due to two difficulties: distinguishing stable hereditary changes from reversible physiological adaptations in bacteria and recognizing the very low frequency gene transfers in bacteria—fewer than 1 per $10^6$ cells even with a fertile strain under optimal conditions. These transfers are now known to occur via plasmids, or viruses, or free DNA.

Gene transfers in bacteria do not show a sharp population boundary but simply become less efficient with increasing evolutionary distance between the donor and the recipient; hence prokaryotes have no true species. Nevertheless, the requirement of a balanced genome results in stable clusters of organisms with similar sets of genes, and these can be conveniently regarded, for purposes of classification, as species. *E. coli*, for example, is the name given to a range of strains with certain common features but also with a variety of differences—in surface molecules, nutrition, growth rate, sensitivity to inhibitors, etc. These differences determine the relative Darwinian fitness of various strains for various environments, and the name *E. coli*, applied equally to an old laboratory strain and to a strain that has recently caused gastroenteritis in a patient, fails to convey the fact that these organisms have vastly different capacities for survival and spread in nature.

Every living species is adapted to a given range of habitats. The set of bacterial strains called *E. coli*, and closely related pathogens such as the typhoid and the dysentery bacillus, thrive only in the vertebrate intestine and hence are called enteric organisms. In water these organisms survive temporarily but quickly die out. (Indeed, for that reason the *E. coli* count of a pond is a reliable index of its continuing fecal con-

tamination.) In the gut there is intense Darwinian competition between strains, depending on such variables as growth rate, nutritional requirements, ability to scavenge limited food supplies, adherence to the gut wall, and resistance to antimicrobial factors in the host. Therefore most novel strains are quickly extinguished, in the kind of competition envisaged by Darwin for higher organisms. With bacteria the process is very rapid, for with three generations per hour, differences in reproductive rate are rapidly compounded.

It is easy to demonstrate that the environment in the gut (i.e. type of food and physiological state) plays a decisive role in determining which organisms persist there. For example, when a baby shifts from breast feeding to solid food, the flora in the gut shifts dramatically from lactic acid bacteria, which produce sweet-smelling products, to *E. coli* and other foul organisms. Conversely, efforts in an earlier era to reverse the process in adults, by administering large numbers of lactic acid bacteria in the form of yogurt, were not successful. The recent increase in the frequency of antibiotic-resistance plasmids among the bacteria recovered from patients illustrates even more sharply the dominating role of natural selection in the gut. The cause is not the increased cultivation of these plasmids in laboratories (though this has been going on): it is the selection pressures exerted by widespread use of antibiotics in patients (i.e. in the natural environment of the organisms).

Various kinds of infectious bacteria differ from each other in several distinct respects (9): infectivity (the infectious dose, ranging from a few cells of the tularemia bacillus to around $10^6$ cells of the typhoid bacillus); invasiveness (specific distribution of the organisms in the body); virulence (the severity of the disease once the infection has overcome natural resistance); and communicability from one individual to another. Each of these attributes, like any complex property, depends on the coordinate, balanced activity of many genes capable of independent variation. Another epidemiological distinction is between infection (presence of a microbe in a host) and disease; tuberculin-positive individuals carry tubercle bacilli, but most keep the numbers in check and are free of illness—only a few have low enough resistance, or a massive enough infecting dose, to lead to disease. An even more striking example is provided by the tetanus bacillus. This organism produces a powerful toxin, but it is a normal, noninvasive inhabitant of the gut of man and some other mammals, and its toxin is not absorbed; to cause illness it must gain access (usually by trauma) to a susceptible tissue. A patient with tetanus is therefore not a menace to his contacts.

### POTENTIAL RISKS

Let us now turn to the specific problem of recombinant DNA. It is obviously easy to draw up unlimited hypothetical scenarios, and it is easy to magnify the problem by demanding assurance of absolute freedom from risk. But any realistic discussion must proceed in terms of probabilities, and for the Andromeda strain scenario we must distinguish three kinds: that experiments with a particular kind of DNA will produce a dangerous organism, that it will infect a laboratory worker, and that it will spread outside the laboratory.

It is undoubtedly now possible to produce variants of *E. coli* that would make a toxin ordinarily found in some other organism. Whether such a strain would be pathogenic depends on whether it also has the properties of infectivity, invasiveness, and virulence. Such experiments are not of pressing scientific interest, and they are prohibited by the present guidelines.

A more important question is whether the various kinds of permissible experiments have a significant risk of producing dangerous strains. Of particular interest are the so-called "shotgun" experiments (the introduction of random small fragments of the DNA of a given species into *E. coli*), since this approach is especially promising for advancing our understanding of mammalian genes. The present guidelines regard these experiments as highly hazardous and restrict them to the quite expensive P3 facilities. Moreover, experiments with human DNA (which are of greatest medical interest) are restricted even more than those with the DNA of other mammals, on the grounds that tumor virus genes picked up from human tissues would be particularly dangerous to man.

I believe that the likelihood of spreading tumor viruses by shotgun experiments has been enormously exaggerated. A mammalian cell contains a million genes equivalents of DNA, of which only a few would be inserted into any bacterial recombinant. Hence even if the genes for a tumor virus were present in the donor cells, the probability of picking them up, without selecting for them, is very low. Moreover, the unknown frequency of tumor viruses in man creates a paradox. On the one hand, if these viruses are rare, they have little chance of being present in the donor tissue. On the other hand, if they are already widely distributed, their further spread by bacterial carriers—a very inefficient process—would have little effect. Moreover, it is becoming increasingly clear that the genes of tumor viruses shade into normal host genes, and the problem is not so much preventing the spread of those viruses as understanding the special circumstances that cause those genes to give rise to a tumor in some individuals.

An even deeper question is raised by the underlying assumption that the insertion of mammalian DNA into bacteria in the laboratory is a radical departure, creating an entirely novel class of organisms. This assumption is exceedingly doubtful. The argument is simple: Bacteria can recombine with free DNA not only in the test tube, as we have seen, but also in the animal body, where a mixture of two strains of pneumococcus has has given rise to a third, recombinant strain (10). Moreover, in the gut (or in carcasses) bacteria must be continually exposed to fragments of host DNA, released by the death of adjacent host cells. Since the mechanism of bacterial uptake of DNA would not exclude mammalian DNA, we must assume that this DNA does occasionally enter bacteria.

To be sure, free DNA survives only briefly in the gut, and even under more favorable conditions its uptake by bacteria (especially the kinds found in the gut) is very inefficient. On the other hand, the scale of the exposure in nature is extraordinarily large—the collective human species excretes around $10^{22}$ bacteria per day. Hence even if the rate of incorporation should be far too low (by as much as $10^{10}$) to detect experimentally, it is almost certain that such recombinants have been formed in nature continually over millions of years and are being formed today (11).

This argument does not imply that every conceivable recombinant has already appeared in the past. On the contrary, any individual recombinant, whether formed in nature or in the laboratory, is likely to have a unique combination of genes, just as does every newborn human baby. The problem is not one of *individual* novelty: only if the entire *class* is novel is there likely to be a novel danger for which evolution has not prepared us.

Having recognized that the inadvertent production of a harmful recombinant has a low probability, we must now consider the probability that such an organism, if formed, might cause *illness in a laboratory worker*. Let us assume the worst case (which is prohibited at present)—an *E. coli* strain that produces a potent toxin (such as botulinus toxin) absorbable from the gut. Laboratory contact with such a strain would indeed present some degree of danger, for even if the cells could survive only briefly in the body, each one might release a small amount of toxin before disintegrating, which might add up to a large enough infection to cause illness. However, to estimate this danger we must take into account the following considerations.

1. In contrast to the agents of respiratory infection, which are spread by small inocula in droplets in the air, enteric organisms, such as *E. coli* and the closely related pathogens of typhoid and dysentery, are ordinarily spread by the swallowing of large inocula in contaminated food or water. Hence even the most virulent enteric pathogens, which may turn up at any time in the thousands of diagnostic laboratories throughout the world, are relatively safe to handle with simple precautions. Among the 6,000 instances of laboratory infection recorded in the history of microbiology, the majority were due to various agents of respiratory infection (12).

2. Strain K12 of *E. coli*, used in all current work with recombinant DNA, was isolated from a patient over fifty years ago and has since been transferred innumerable times on artificial media in the laboratory. During these years one rare mutation after another has been selected by the artificial media, because it improved the organisms adaptation to the new environment. Indeed, the present product has such radically altered surface properties that if it were isolated today it might well not be classified as *E. coli*. Moreover, this adaptation to laboratory media has occurred at the cost of deadaptation to the human gut: in recent tests with a large dose in man (much larger than could be expected from a laboratory accident cells of this strain ceased to appear in the stools after a few days (13). Thus *E. coli* K12, outside the laboratory, is like a hothouse plant thrown out to compete with weeds.

3. Since an organism's adaptation to survival in nature depends on an exquisite fit of the parts produced by all its genes, the addition of a block of foreign DNA will ordinarily decrease that adaptation. Moreover, the likelihood of poor coadaptation obviously becomes greater with increasing evolutionary distance between the donor and the recipient.

4. A very large further safety factor is added by the biological containment required in the present guidelines for the presumably more dangerous work (e.g. that with random mammalian DNA). Biological containment involves the use of host cells, called EK2 strains, that have been drastically impaired in their ability to multiply and even to survive, except under very special conditions provided in the laboratory. In other words, this material has been coded for self-destruction: a degree of protection unprecedented in man's exploration of potentially hazardous new materials.

The currently certified EK2 strain, derived from *E. coli* K12, owes its fragility to several stable mutational defects, which include loss of the ability to synthesize two metabolites—thymine (a constituent of DNA) and diaminopimelate (a constituent of the cell wall)—and ultra-sensitivity to lysis by bile salts. Without thymine the cell dies because of the distortion of its attempted DNA synthesis. Without diaminopimelate the cell cannot form more wall, but it can continue to expand and so it quickly bursts. Accordingly, under conditions similar to those in the gut (which is defective in these compounds and contains bile salts) an EK2 strain not only fails to multiply but fewer than 1 in $10^8$ cells survive after 24 hours. An extraordinarily sloppy laboratory accident would be required for the ingestion of $10^8$ cells.

The exceedingly restricted survival of EK2 hosts under natural conditions is reassuring. However, before the cells die they might con-

ceivably transfer their recombinant plasmid to other, well-adapted cells, which could then spread the plasmid. But this problem is also taken care of by biological containment. First, the particular plasmids being used to carry recombinant genes are also defective: they have been selected for loss of genes that code for their own transmission from one cell to another (i.e. they are nonconjugative). Second, the most recently developed EK2 plasmids are nonmobilizable: unlike most normal plasmids, their transfer cannot be effected by the presence of a second, conjugative plasmid in the same cell. Although a normal conjugative plasmid could conceivably enter an EK2 cell from another cell, it has been reliably estimated that the probability of this happening and causing the transfer of the recombinant plasmid is far below $10^{-16}$ per recombinant per day (R. Curtiss III, pers. comm.). If it were as high as $10^{-16}$, a hundred million people would each have to take up $10^8$ bacteria containing a dangerous plasmid in order for the "escape" of that plasmid to become probable.

I conclude that the risk of laboratory infection by *E. coli* recombinants is much smaller than the risk encountered with known pathogens in medical laboratories.

We now come to a hazard that is much more important for the public than laboratory infection: *the initiation of an epidemic.* To place this problem in perspective we must first recognize that the words *hybrid* and *chimera,* applied to recombinants, do not imply an organism that is half *E. coli* and half something else. In fact, the recombinants made possible by the new technique are genetically 99.9 percent *E. coli,* with about 0.1 percent foreign DNA added. We can therefore make some firm predictions about their properties.

In particular, such a small addition could not conceivably endow the organism with a radically expanded habitat beyond the confines of the vertebrate gut. Hence even if the added DNA should include genes that made the organism toxic, the product would still be an enteric pathogen. It is difficult to see how such an organism could be more communicable, or more virulent, than the worst enteric pathogens produced by evolution (e.g. the organisms of typhoid or dysentery). Moreover, modern sanitation provides excellent control for this class of agents, unlike those of respiratory infection: in contrast to influenza, the appearance of a case of typhoid does not lead to an epidemic, unless sanitation is poor. Accordingly, if any toxic recombinant of *E. coli* escaped, its chain of transmission would quickly be interrupted.

Let us supplement these epidemiological principles with some facts about laboratory infections. In our government's biological warfare laboratories at Fort Detrick, where work was carried out for twenty-five years on the most communicable and virulent pathogens known, 423 laboratory infections were recorded (12). Most were due to respiratory agents, whose transmission in the laboratory via droplets was poorly controlled until closed safety cabinets were introduced in the later years. Nevertheless, only a single probable case of secondary spread to a person outside the laboratory was seen. Similarly, in the Center for Disease Control of the United States Public Health Service 150 laboratory infections were recorded, and again only one possible case of transmission to a family member was noted (12). Elsewhere in the world about two dozen laboratory-based microepidemics have been recorded, most involving no outsiders and the rest involving only a few. Of course the pathogens that produced all these infections gave an early warning—but this would also be true of any recombinant that caused disease by producing a toxin.

Tumor viruses present a special hypothetical problem, because any resulting illness would have a long latent period and thus would lack an early warning. However, this loss is balanced by the fact that viruses, by definition, have their own means of spreading. Indeed, in general the natural spread of viruses is even more effective than that of bacteria; each bacterium produces only two daughter cells, whereas each infected animal cell releases thousands of infectious virus particles. Moreover, these particles have a special coat that protects the DNA within and also facilities its entry into susceptible animal cells. Viral DNA in a bacterial plasmid, in contrast, would presumably have to become free before it would enter a human cell. In the test tube this is a very much less efficient process than viral infection of a suspectible cell, by many decimal orders of magnitude, and in the gut it would be rendered even less efficient by the rapid enzymatic digestion of free DNA. It is therefore hard to imagine that viral DNA in a bacterium would be nearly as hazardous as the same DNA in complete viral particles. Meanwhile we produce the latter material on a large scale in many laboratories—and we must do so if we are to learn to control viral infections.

I conclude that illness in a laboratory worker caused by a recombinant organism would require compounding of three probabilities, all low: that a dangerous gene will inadvertently be incorporated in the EK2 cells, that a large number of cells will be taken up, and that these cells will cause harm despite their short survival. Hence the danger appears to be vanishingly small, compared with the very real danger faced continually by medical microbiologists working with known virulent pathogens—organisms well adapted to survive and produce disease.

Because of the rapid self-destruction of the EK2 host cells, the severely impaired transmission of their plasmids, the effectiveness of sanitation in preventing the spread of enteric pathogens, and the excellent record of laboratories in avoiding the initiation of substantial epidemics, the risk of epidemic from a recombinant is clearly even smaller than the risk of laboratory infection, by a large margin—and also much less than the risk from cultivation of known pathogens in laboratories. I therefore see no realistic basis for public anxiety over possible infection by recombinants crawling out of the laboratory.

Though this assessment of a low risk is not conventional, it is also not idiosyncratic. For despite public impressions to the contrary, the experts are *not* in sharp disagreement over this issue—if we define the experts not as just any scientists, but as those familiar with epidemiology and infectious disease. In my own contacts with colleagues in this field I have encountered none who consider *E. coli* recombinants a serious hazard, compared with known pathogens; and the producers of a recent Nova program on Public Television, seeking all points of view, reported a similar experience. The Andromeda strain remains entertaining science fiction.

I would further suggest that as long as investigators are not creating undue risk for others they have the right to take risks for themselves—as they do whenever they work with pathogens (including such unknowns as the agent of "Legionnaires' Disease"). In the United States 2,348 cases of laboratory infections were recorded up to 1961, of which 107 were fatal—over half from diagnostic laboratories (13). More than balancing this cost, millions of lives have undoubtedly been saved by bacteriological research and diagnosis.

Viewed in the light of the technical considerations discussed above, the NIH guidelines seem excessively conservative—especially for the experiments with random human DNA. On the other hand, in the light of the attention that the alleged dangers have received and the resulting public anxiety, I would regard the present guidelines as a reasonable and practical response. They contain a provision for periodic revision, and the same will probably be true of any future legislation. Since the revisions will depend on public attitudes as well as on the results of actual experience with the organisms, a great deal of public education is needed.

INTERVENTION IN EVOLUTION?

The risk that we have been discussing—production of a recombinant that might cause an epidemic—is clearly a legitimate matter of public concern. Society obviously has the right to limit actions that may harm others, and the concept of freedom of inquiry has always tacitly recognized such boundaries. The matter at issue is simply the assessment of the potential harm.

Chargaff (15) and Sinsheimer (16–18), however, have asserted that the recombinant technology creates long-term evolutionary dangers and that these justify holding up the research. Their assertion introduces quite a different kind of question. Dangers from the possibility of interference in future evolution are so intangible and distant that the concern has shifted in effect from dangerous actions to dangerous knowledge. Hence the question of freedom of inquiry does arise. But before we consider a possible conflict between that right and other rights we must try to settle a simpler and more technical question: How much, in fact, is research with recombinant DNA likely to disturb evolution?

Specifically, Sinsheimer has said that we simply cannot foresee the consequences of breaching the barrier between prokaryotes and eukaryotes. But there is no evidence that there is such a barrier. On the contrary, there are many reasons to suppose that the two groups have always engaged in occasional fragmentary DNA exchange. Eukaryotes have evolved from prokaryotes and have maintained constant intimate contact with them; the mitochondria in eukaryotic cells may well be descendants of prokaryotes growing within them; and, as was noted above, prokaryotes can take up free DNA.

In addition, the allegation of danger in breaching any natural barrier to recombination turns evolutionary principles upside down. Evolution has indeed established fertility barriers between species. But these barriers do not function to prevent the formation of monsters that might take over in the Darwinian struggle: they prevent wasteful matings that would produce only unbalanced monstrosities, unable to survive. Moreover, the existence of these barriers, between even closely related organisms, clearly indicates that evolution proceeds in small steps, which will not excessively distort the genome in one respect while improving its adaptation in another. We can preserve under artificial conditions the large-step hybrids that can now be produced between distant organisms, but these products would be exceedingly unlikely to pass the test of Darwinian fitness in nature.

On a more general note, even if the recombinant technology should eventually have evolutionary consequences, it does not follow that such a development would be either unprecedented or dangerous. Man has meddled with evolution since Neolithic times—both deliberately by artificial selection and inadvertently by alterations of the environment. He has been cloning and grafting plants, domesticating animals and plants, and converting forests into fields. What has now been added is artificial recombination, as a potential source of added variation. But selection is the main directive force in evolution. Hence the supplementation of natural

with artificial recombination can hardly affect the biosphere as profoundly as the supplementation of natural with artificial selection. The chimeras of mythology are not about to descend from the realm of art into that of technology.

GENETIC ENGINEERING IN MAN?

Apprehension over undefined effects on evolution has inevitably led to concern over a specific kind of meddling—genetic engineering in man. Indeed, this concern, with all its emotional freight, may unconsciously underlie much of the alarm that has been expressed over other aspects of recombinant DNA research. But as with the other presumed hazards that we have already discussed, the moral issue is serious only if the technical prospects are realistic. Two questions stand out. How much does the development of recombinant DNA in bacteria advance us toward gene manipulation in man? And if such manipulation becomes possible, how likely is it to be used for harmful rather than for beneficial purposes?

As to the first question, the recombinant technique does not seem to be a particularly large step toward gene manipulation in man. A number of past developments are at least equally significant: the isolation and the chemical synthesis of a gene, the cultivation of human cells, the use of viruses to incorporate genes into those cells, and genetic recombination between cultural human and other animal cells. Nevertheless, it is understandable that to the public successful genetic engineering in bacterial cells would seem very close to the same achievement in human cells (19).

The second question—the dangers of misuse of genetic engineering in man—received extensive discussion in 1970. To review briefly my comments at that time (20): first, as far ahead as it is profitable to look, the medical aim of genetic engineering in man is simply *gene therapy*—the replacement of single, defective genes. For most hereditary diseases we would have to introduce the replacment DNA reliably, in the right cells, and subject to normal regulation. We still seem to be a long way from that goal.

But even if this prediction is wrong, and if we should succeed soon in genetically curing such diseases as sickle-cell anemia and the severe mental deficiency caused by phenylketonuria, we would yet be very far from manipulating the genes that generate most of the genetic diversity in behavioral traits—those that specifically direct the morphogenetic development of the brain. For this morphogenetic process must involve a very large number of genes, and so its significant manipulation would require transfer of many genes. Moreover, these genes are at present totally unknown, and they will be much harder to identify than the familiar, chemically defined genes that are responsible for various metabolic functions in the already developed organism. Finally, once these morphogenetic genes have directed the development of brain circuitry no conceivable later manipulation of the DNA could redirect those circuits (or the phenotypically acquired information stored in them). For these several reasons it is difficult to believe that a tyrant interested in altering the personalities of his subjects would find genetic engineering more useful, for the foreseeable future, than the simpler techniques that are already available: psychological, economic, pharmacological, and even surgical.

In addition, even if we could use genetic technology to mold personalities it is not clear that the technological imperative would lead us to do so, or that we would choose these techniques. Selective breeding and artificial insemination have long proved effective in animal husbandry, and they are equally applicable to man—but they have not led to a eugenic program designed to influence the human gene pool. If our society should some day decide to undertake such a program, the decision would not depend on the development of elaborate techniques for manipulating human genes in the laboratory: simple but effective techniques are already available.

The Golem, like the Andromeda strain and the chimera, remains a product of man's literary imagination and not his technology. As Philip Handler recently stated, "Those who have inflamed the public imagination [over recombinant DNA] have raised fears that rest on no factual basis but their own science fiction" (21).

LESSONS OF THE DEBATE

Some have suggested that the exhaustive debate over recombinant DNA will prove beneficial because it will lead to better mechanisms for resolving future issues of this kind. Perhaps so. But the purely conjectural risk in this case does not seem to offer a good model for the real problems of technological assessment, which involve real risks. Moreover, the issue has caused a decrease in public confidence in the sense of responsibility of scientists and an increase in pressure for detailed external control of their research, and the latter inevitably leads to emphasis on immediately visible benefits and on freedom from risk. This development threatens the intellectual freedom and the creative urge that have played so prominent a role in the spectacular success of science.

One lesson for the scientific community is the imperative need to develop more responsible and effective procedures for exploring possible dangers before communicating publicly. The question is not *whether* the public should participate in making value judgments on benefits and risks that may affect its interests: the question is *when* and *how*. Recent years have seen much praise for the virtues of maximal openness at all stages, but the history of the recent debate suggests that on issues with a large technical content, and with a large potential emotional charge, premature public involvement may be less than useful. Just as a responsible physician faced with a diagnostic problem would not immediately tell the patient that the possibilities ranged from neuritis to cancer, so the scientific community has a responsibility in transmitting conjectural information about frightening possibilities to an easily alarmed public.

A second challenge to the scientific community is that of responding more effectively when a scientific issue has generated public controversy. Debates and forums, with equal time for all points of view, are not enough. The scientific community has learned that in trying to judge questions of scientific fact in terms of evidence and logic, rather than of rhetorical skill or public stature, it must weigh the credentials of the witnesses carefully and it must rely heavily on those with authority derived from demonstrated expertise and judgment in the relevant area. But it is difficult for the public to make such distinctions without help from reliable sources; in addition, the media inevitably favor the more sensational pronouncements. Accordingly, on matters that involve a large technical content as well as value judgments, our scientific organizations would do well to develop better mechanisms for conveying to the public the collective judgment of qualified peers. To be sure, this judgment is not infallible: but it would be difficult to find a social institution with a better record of success in winnowing truth from falsehood.

Of late, perhaps because of guilt over the charge of elitism and the ills of technology, some scientists appear to be losing confidence in the objectivity of scientific knowledge and in the ability or the right of their community to speak with any authority. But while there is no room for absolute authority in science, there is also no room for extreme intellectual relativism. In the areas of its expertise the scientific community has the authority, and the obligation, to help the public to discriminate between rational and irrational views.

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## THE ROLE OF CONGRESS IN THE ABROGATION OF TREATIES

Mr. GOLDWATER. Mr. President, one of the foremost issues facing this administration is how to pursue its China policy. Those persons who are apologists for or sympathetic to Communist China are clamoring for President Carter to give in to each and every demand of the mainland regime for what they call a normalization of relations. These requirements include abrogation of the mutual defense treaty between the United States and the Republic of China on Taiwan, a condition that was recently reiterated by Communist Chinese Vice Foreign Minister Yu Chan and Vice Premier Li Hsien-nien.

In implementation of this demand, the friends of Red China are seeking to persuade the administration to consider

the defense treaty as automatically having lapsed upon recognition of the Communist Government. Now, aside from the immorality of such a proposal and its guaranteed harmful effects upon our worldwide foreign policy, the fallacy in this suggestion is the fact that it is unconstitutional.

No President acting alone has authority to take action which has the effect of terminating a treaty unless he first obtains the consent of Congress. The Constitution demands a role for Congress in the abrogation of treaties, either in the form of joint action by the President and the other half of the treaty-making power, the Senate, or by action of the President together with both Houses of Congress.

Mr. President, I am surprised that this elementary constitutional fact has been ignored by the people who would have us yield to the terms of Red China. Congress role in the termination of treaties is quite firmly based upon the Constitution and historical practice, and it is most improper for the friends of Red China to ask President Carter to violate the Constitution.

In order that my colleagues may have a brief explanation of the subject, I ask unanimous consent that an article I wrote, which was printed in this morning's New York Times, entitled, "Abrogating Treaties," be printed in the RECORD.

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

ABROGATING TREATIES

(By BARRY M. GOLDWATER)

WASHINGTON.—In the debate over our China policy, almost no serious attention has been given to whether any of the conditions demanded by Communist China for normalized relations would require Congressional approval.

For example, on Aug. 15, Senator Edward M. Kennedy called on the Carter Administration to recognize Red China and consider our defense treaty with the Republic of China on Taiwan as having lapsed. That the President could so terminate the treaty was assumed.

The defense treaty involved provides for revocation upon one year's notice by one party to the other. It is my contention the President cannot give that notice, let alone abrogate the treaty without notice, before obtaining legislative approval.

If President Carter should seek Congressional approval, he will not get it. Public opinion against capitulating to Peking's terms is so strongly reflected in Congress that no President could obtain the necessary consent of two-thirds of the Senate or a majority of both Houses.

It is true the Constitution does not spell out how a treaty is to be terminated. But the clear intent of the Constitutional text, supported by the overwhelming weight of historical practice, proves a treaty cannot be revoked without some role for Congress.

Virtually nothing was said at the Constitutional Convention about the termination of treaties, but it is well known the Framers were concerned with restoring dependability to our treaties and were anxious to gain the respect and confidence of foreign nations. It would hardly instill confidence in other nations if a single officer could abrogate a treaty at will without any check from another department of Government.

And, it is difficult to believe that the Framers, who established the Presidency and Senate as checks upon each other in completing a treaty, did not intend a check in the converse situation, the revoking of a treaty.

The Framers may well have assumed the President would not attempt to annul a treaty independently since he is under a constitutional mandate to "take Care that the Laws be faithfully executed. . . ." As the Constitution specifies that a treaty is part of "the supreme Law of the Land" . . . the Framers undoubtedly expected Presidents to enforce and carry out treaties in good faith.

The general rule follows: As the President alone cannot repeal a statute, so he alone cannot repeal a treaty. This was the belief of James Madison who foresaw "the same authority, precisely, being exercised in annulling as in making a treaty."

It was also the belief of Thomas Jefferson, who in his manual of rules and practices of the Senate, wrote: "Treaties being declared, equally with the laws of the United States, to be the supreme law of the land, it is understood that an act of the legislature alone can declare them infringed and rescinded."

Historical practice supports Madison and Jefferson. Far more often than not, the Senate, or the whole Congress, has exercised power to approve the termination of treaties, and Presidents have usually sought legislative approval before giving notice of withdrawing from any treaty.

There are exceptions, but none support an untrammeled power of the President to annul any treaty he wishes. In particular, the United States has never repudiated a defense treaty with a friendly nation. Nor has any President alone terminated a treaty that has not been breached by the other party, been placed in conflict with a subsequent law or treaty, or become impossible of performance due to circumstances not of his making.

None of these exceptions apply to our treaty relations with the Republic of China. Even if one or two examples to the contrary can be dredged up, they cannot make legal what the Constitution makes invalid.

Nor does it follow that, should the President take the improper step of de-recognizing the Republic of China, prior treaties would lapse. In a recent study, Stanford law Prof. Victor Li concluded: "International law does not require that treaties affecting only the territory controlled by the Taiwan authorities must lapse. On the contrary, there is strong support for protecting ongoing relations. . . ."

Since the President alone could not abrogate treaties with the government on Taiwan, he must consider them as still being in effect. Any President who would violate the Constitution on such a major matter as breaking faith with the nation's treaty obligations would run the risk of impeachment.

## LET US NOW PRAISE CLEVELAND

Mr. METZENBAUM. Mr. President, for many years—too many, I might say—my hometown of Cleveland, Ohio, has been subjected to national ridicule for various reasons. In some circles, it has become fashionable to use the name of Cleveland as the "punch line" in jokes.

Finally, someone has stood up to be counted as one who is tired of hearing derogatory remarks about Cleveland. I refer to Mr. James Damico, the author of an article entitled "Let Us Now Praise Cleveland," in the October 17, 1977, issue of Newsweek magazine.

To borrow a phrase from Mr. Damico's article:

I've lived in Cleveland. I even had the temerity to be born and raised there.

In fact, it is still my home and I plan to make it my home for many, many more years.

Mr. President, even though Mr. Damico has now left the shores of Lake Erie for the towers of Manhattan, his thoughts on Cleveland reflect my own and those of many thousands who are proud to claim the city of Cleveland as their home.

I ask unanimous consent that the article be printed in the RECORD.

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

LET US NOW PRAISE CLEVELAND

(By James Damico)

"If you don't read us," goes the ad of an ultra-trendy magazine, "you might as well live in Cleveland." A prominent television moderator shudders and pronounces "Cleveland" with the disdain he usually reserves for women's libbers. Aspiring comedians on the "Tonight" show, facing death at 12:35 in the morning and desperate for the surest laugh they can dredge up, shout "Cleveland!" and are momentarily reprieved by the automatic bark of laughter that echoes back. A new, thoroughly rational friend says grimly, "I was in Cleveland *once*," as if it were a combination Devil's Island and Chateau d'If worth any sacrifice of health and wealth to escape.

Well, I've lived in Cleveland. I even had the temerity to be born and raised there. And though I never used to give these circumstances much thought, I must admit that since it's become the pet target of every unimaginative copy writer, comedian and neighborhood life-of-the-party, I've grown defensive, even chauvinistic, about what I've always regarded as a pretty fair city, one possessed of more than its share of amenities, charm and good, honest folk.

BALLYHOO

Culturally, for example, it has a quality and range that most glamour towns can't begin to match. Its beautiful and prestigious art museum is a richly endowed jewel, which, had it been erected on Wilshire Boulevard in Los Angeles, would have been as ballyhooed as Disneyland and long ago accepted by the general public as the Taj Mahal West. Neither is it hard to imagine Atlanta happily trading its Hyatt Regency, or Houston a couple of its oil conglomerates, for the Cleveland Orchestra, one of the world's outstanding musical organizations. As for theater, Clevelanders have enough of a choice to put a healthy strain on their time, funds and behinds.

To satisfy the sports nut, the city provides a full set of professional teams, including the latest rages, team tennis and soccer. The Browns haven't won a championship since Joe Namath was a bonus baby, it's true, but they have an untarnished perigree as one of football's class aggregations; and, for their part, the Indians have operated continuously in the same city for 62 years, which is slightly more than can be said for the Padres, Dodgers, Mets and whatever other baseball teams are destined to be swallowed up in the ex-swamps of New Jersey.

Architecturally, to be sure, Cleveland is no Paris. But its gracefully proportioned and somewhat revitalized downtown is also without that devastated, ground-zero look of parts of central Detroit—about which, incidentally, I never hear anyone cracking wise—and many of its neighborhoods retain the

type of lively, individual character that was once an adornment of our cities.

But why is it that when I feel compelled to remind people of these and other positive features, their eyes glaze over and a patronizing smile of excruciating disbelief curls their lips? How has this insidious thing happened whereby my pleasant, inoffensive, totally congenial hometown has become the country's No. 1 joke city?

I'd always imagined that this kind of stigma was something a town was saddled with at birth. Like yearly flooding or rockslides from a nearby mountain, it was a congenital defect—obvious, irremediable and noncommunicable. And I'd thought that the list of those poor quaint burgs whose mere names would unfailingly provoke bemused scorn and easy laughter was fixed forever: Brooklyn (a natural), Philadelphia (a tip from traveling show people), Dubuque (the archetypal hick town), and Cincinnati (it sounded funny, especially through a vaudeville German accept). It never occurred to me that obloquy of this order was something that could be acquired by national consensus, or—God forbid—even *earned*.

I suppose the precise moment things started downhill for Cleveland was the day several years ago when its river, the Cuyahoga, caught fire. Sure, that's hysterical, but on reflection it's perfectly reasonable. After a hundred years of absorbing the most noxious and volatile chemicals from bordering plants, that tiny stream should have exploded, not merely burned. If it had happened in Pittsburgh, though, it would have been rightly cursed and deplored as an inevitable excess of industrialization, but I doubt that anybody would have started to crank out Pittsburgh jokes.

SHENANIGANS

Admittedly, the situation was compounded shortly afterward when the mayor of Cleveland, making a play for the blue-collar vote, set his own hair on fire demonstrating his skill with a welding torch. More fuel was added to all these flames by the mayor's confession that his wife skipped a White House dinner because it fell on her bowling night. (In the current election year, the same politician chose to have his sanitation men pass out questionnaires on pornography.) About such antics, there is little to be said. Yet, a city ought not to be permanently branded by the shenanigans of its elected officials. By that standard, New York might be the funniest two words in the English language.

Well, however it came about and however unfair it is, the deed is done and there surely seems to be no way, for one man at any rate, to rectify a social injustice done to an entire city. The only solace I have is the certain knowledge that someday this too shall pass. I've done a little research into the subject and I've discovered that other and far greater cities have been grossly maligned and have survived to take their proper places in the hearts and minds of their countrymen and posterity.

John's Gospel, for example, tells us that Nathanael, on hearing that the savior of mankind had arrived and that he hailed from Nazareth, exclaimed, "Nazareth! Can anything good come from Nazareth?" I can just see the glaze over his eyes and the excruciating disbelief in his smile.

## COMPLAINTS AGAINST HEALTH CARE ORGANIZATIONS BY FTC

Mr. WALLOP. Mr. President, in 1975 the Federal Trade Commission filed a complaint against the American Medical Association, the Connecticut State Medical Society and the New Haven County Medical Association. In January of this year, a similar complaint was filed against the American Dental Association, the Indianapolis District Dental Society, the Indiana Dental Association, and the Virginia Dental Association and the Northern Virginia Dental Society. These health care professional organizations were charged with acts, practices, and unfair methods of competition in violation of the Federal Trade Commission Act. The trial in the American Medical Association case is underway, with the FTC nearing the end of its case-in-chief. Following a 1-month interval, the respondents will put on their rebuttal. The American Dental Association case is also moving full-speed ahead, with a pretrial conference set for later this month.

In many instances, I applaud the work that the Federal Trade Commission performs as a regulatory agency. However, in this situation, I am concerned that there has been a gross misallocation of that agency's time, resources, and energy. While the outcome of these trials will not be certain until some time in the future, what is certain at this time is that the FTC should not have instituted these suits in the first instance.

To generalize, nearly all associations of health professions personnel are nonprofit, by definition and in nature. As such, these organizational entities are not engaged in trade or commerce nor are they organized to carry on business for their own profit or that of their members. On the contrary, most of these associations were founded and continue to this day to encourage the improvement of the health of the public, to promote scientific research and development, and to represent their respective health professions.

I do not fault the objective of the FTC to protect consumers of medical and dental care, but the FTC intervention in this area is clearly a usurpation of the States' rights to regulate the practice of dentistry and medicine which directly touches the lives of their citizens.

There is no question in my mind that the health and welfare of the public is paramount in the minds of State legislatures and those bodies charged with the enforcement of State laws. My own State of Wyoming has been conscientious in this area. Our Dental Practices Act and the Medical Practices Act establish licensure and minimum education standards for medical and dental practitioners. These statutes provide for the revocation or suspension of licenses to practice dentistry and medicine under specified conditions. These laws are rigorously enforced to insure that health services of high caliber are delivered by qualified doctors and dentists.

Let us not overlook the ability of States to police any anticompetitive practices engaged in by health care associations under applicable State laws. This is a second mechanism for insuring that the public is protected from unfair practices. The Federal Trade Commission recently published a factsheet that indicated that 48 States and the District of Columbia have enacted laws which parallel the Federal Trade Commission Act. If 48 States and the District of Columbia all have laws designed to prevent deceptive and unfair trade practices, is not the FTC acting needlessly where the States have the necessary tools to proceed on their own?

In short, I agree in principle that the consuming public must not be subjected to unrestrained anticompetitive practices engaged in by any individual, be it health care associations or any other enterprises. However, in the area of dentistry and medicine, which affects each and every State resident, I must emphasize that each of the States is uniquely suited to police the professional organizations within its jurisdiction and thereby to protect its residents.

I have taken the opportunity to address the FTC litigation in order to serve notice on all arms of the Federal Government, and particularly on the Federal Trade Commission, that the 10th amendment still has vitality and must be respected. Our Founding Fathers quite wisely reserved to the States and to the people those powers not specifically delegated to the Federal Government by the Constitution. Nearly all of the States have exercised their legislative prerogatives in enacting professional practices acts and laws dealing with unfair trade practices. The States are well equipped to enforce their own laws without interference from the Federal level. The States have done a good job in this field and have satisfactorily prevented the abuse of the privileges that accompany professionalism. The Federal Government has a constitutional responsibility to defer to the States in matters so close to home.

To conclude, let me underscore the value of reasonable regulation of the health care professions to prevent deceptive and unfair trade practices. On this point, I am in accord with the Federal Trade Commission. The question boils down to which branch of government should be charged with this responsibility. State governments have been, and must remain the leaders in this area. The FTC investigations and trials are an unwarranted intrusion into the constitutional domain of the States.

## NEW MEXICO STATE POLICE CRIME LABORATORY

Mr. DOMENICI. Mr. President, I would like to take this opportunity to recognize the valuable contributions the New Mexico State Police Crime Laboratory has made in the battle against crime in New Mexico.

I recently sought the views of New Mexicans on issues and concerns of interest to them, and it is not surprising that crime was listed as the No. 1 problem. Therefore I believe it is appropriate to note the services the New Mexico State Police Crime Laboratory has made to law enforcement agencies throughout the State.

Any person familiar with law enforcement, and the techniques employed to maintain law and order in this Nation, is aware that the collection and interpretation of physical evidence is a vital segment of the process. This facility has increased the use of physical evidence by

New Mexico's law enforcement agencies, which has resulted in an increase in convictions.

Americans have traditionally valued their freedom and prosperity above all other concerns since its founding following the Revolutionary War. However, an American is not truly free to enjoy his liberty or prosperity if crime exists to such an extent that citizens are fearful for their lives and property. Thus while Americans have freedom of speech, religion, and property, they do not have freedom from burglary, mugging, or murder.

Because of efforts such as the laboratory, I must be confident that Americans will someday be able to exercise their freedoms and liberties without fear of attacks on their persons or property.

I ask unanimous consent that the article appearing in the current issue of the FBI Law Enforcement Bulletin recognizing the New Mexico State Police Crime Laboratory's development and resulting effectiveness be printed in the RECORD.

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

[From FBI Law Enforcement Bulletin, October 1977]

THE NEW MEXICO STATE POLICE CRIME LABORATORY

(By Donald W. Hannah)

In 1960, it was decided that the New Mexico State Police should have a forensic crime laboratory to provide assistance for the various law enforcement agencies throughout the State. Administrative officers toured several established laboratories to observe operations and found that the most serious obstacle to implementing this decision would be the tremendous expense involved in equipping and staffing a laboratory. This funding problem was aggravated by the fact that adequate housing for the laboratory was not available. The State police headquarters building which might have provided room was already overcrowded; larger facilities were needed.

In response to these needs, a concerted fundraising effort was begun, and over the next few years, plans for a new State police headquarters complex large enough to accommodate the crime laboratory were drawn up and approved.

Construction got under way, and in January 1971, the agency moved into its newly completed facility. The top south wing of one of the buildings—approximately 10,000 square feet of space—was reserved for the crime laboratory. This area included a central hallway of approximately 1,300 square feet which would allow visitors to tour the laboratory and view the analysts through windows without disturbing their work.

INITIAL ORGANIZATION

A Law Enforcement Assistance Administration (LEAA) grant was obtained to begin buying equipment for the laboratary, and initial purchases were made for the chemistry section.

The laboratory was opened with a supervisor, a crime scene technician, and two inexperienced in-State chemists. It was planned that the chemists would receive their initial training within the laboratory itself, and receive additional training with an outside laboratory doing similar work.

It was felt that other sections of the laboratory required experienced or at least partially experienced personnel, and toward this end an experienced serologist and an experienced firearms examiner were hired from out of State.

Selecting this basic complement of personnel was difficult for several reasons. The budget was somewhat limited, yet it was felt that in order for the laboratory to be effective a high-quality staff was needed. By nature, crime laboratory work requires an array of abilities and competency in several varied fields. In addition to technical proficiency, the analyst must be able to function effectively in court as an expert witness. He must have a good basic scientific background and be capable of expressing himself in terms that lay jurors can understand. He must remain unemotional and objective while testifying, particularly if attacked by opposing counsel. The analyst should stay abreast of changes and advances in his field, and be prepared to attend various meetings of organizations involved in similar work.

In order to staff the laboratory with personnel of this caliber, it is necessary to compete on a nationwide basis. Salaries must be on a par with other laboratory systems, and State laboratory facilities must be attractive to talented out-of-State analysts. This is especially true now that Federal funds have become available to law enforcement. Forensic laboratories throughout the country are expanding and have a great deal to offer in terms of salary and working environment. For a newly operational facility, therefore, funding is the critical element in retraining well-trained analysts and attracting equally qualified personnel in the future.

Thus far, the New Mexico State Crime Laboratory has been fortunate in acquiring both Federal and State funding. Most of the laboratory's equipment has been purchased with LEAA funds; analysts and other personnel have been hired with State funds. At present, the laboratory is operating with an approximate annual budget of $235,000 and the following sections and staff: A director, three analysts in the Chemistry Section, one in the Latent Print-Photography Section, two in the Firearm-Toolmark Section, two in the Serology-Trace Evidence Section, and one in the Questioned Document Section.

In the latter part of 1971, the International Association of Chiefs of Police conducted a survey of the New Mexico State Police. A portion of that study resulted in certain recommendations concerning the laboratory. Several of these suggestions were implemented, including the establishment of the laboratory as a division of the State police.

PROBLEMS

Although the laboratory is now fully operational, a few problems remain. Even though the space is not presently needed, it is now felt that the visitor's hallway space is somewhat wasted and would have been better used to enlarge the laboratory. It has also become apparent that each section of the laboratory requires additional space for storage of supplies and evidence. Since the laboratory was not planned to serve as the central depository in the State for all physical evidence, a policy was instituted of returning all evidence to the contributing investigative agencies as soon as possible after examinations are completed. This arrangement has worked out rather well. It frees the laboratory staff from much recordkeeping and relieves the congestion in evidence storage areas. It also places the responsibility of keeping track of individual cases with the submitting agency rather than the laboratory itself. This is helpful because it is often impossible for laboratory personnel to tell when a case has been closed, and further, to obtain authority to destroy the evidence. As a general rule, the laboratory makes an effort to return evidence to the submitting agency within 30 days after examinations are completed.

Another problem encountered was a backlog in the Serology-Trace Evidence Section. Although the laboratory has the capability to do electrophoresis and other typing of physiological fluids, the rapid increase in the section's caseload has resulted in insufficient time to develop and refine necessary examination techniques. This is a genuine problem because, of late, defense attorneys are becoming more aware of laboratory capabilities and are asking, legitimately, why certain types of examinations are not being performed on the evidence. This is especially true of determining blood groupings, information which might be beneficial to the client. Prosecutors are also becoming more sophisticated in their requirements for physical evidence before they will allow a case to be taken to court. Unfortunately, we also have problems with a lack of understanding about the capabilities and limitations of a crime laboratory—a situation aggravated through the spread of misinformation by "experts" in the State.

TRAINING

Developing confidence in the laboratory's capabilities and knowledge of its limitations is, of course, the best remedy for this problem. As a result, training has become one of the laboratory's most important missions. When the laboratory first opened, a booklet with information culled from various physical evidence handbooks available at the time was printed and sent to all agencies throughout the State.

In addition, the laboratory staff conducts basic instruction at the New Mexico Law Enforcement Academy. This instruction for police officers has been combined with a tour of the laboratory, during which each student is introduced to the analysts and receives a short explanation of the process by which the laboratory handles evidence. Academy personnel, in return, have been very generous in emphasizing the value of the laboratory and the ways in which it can best help the investigator.

In mid-1975, a criminal investigator from one of the departments requested that he spend 2 weeks in the laboratory to increase his knowledge of physical evidence and his capacity to work crime scene searches. His department's chief made the request through proper channels, and the Law Enforcement Academy was asked if he could stay in one of its unoccupied rooms. Permission was granted, and the seed of a future program was planted. During the 2 weeks he spent in the laboratory, he divided his time between the sections, observing the evidence which the laboratory received and how it was handled and examined. He was also taken to crime scenes as an observer. It was found that having an observer presented no great problems, and it seemed that a greater appreciation of physical evidence and proper handling was gained. The laboratory personnel also developed greater respect for the field officers' problems.

As time went on, academy personnel expanded this idea. Funds were allocated to establish a program, which would include criminal investigators from the various departments throughout the State. It was decided that a period of 2 weeks was excessive, and the program was reduced to 4 days. It was also decided to schedule two officers at a time rather than only one. It would be required that the officers remain observers during their visit, and that they spend about 4 hours in each of the five sections. The 12 hours that are not assigned may be spent as the officers see fit—observing operations in the various sections or browsing through the literature available in the laboratory. Or if they wish, they may return to their respective departments. This aspect of the program has purposely been left unscheduled due to the varying interests and responsi-

bilities of the officers. Several have indicated that the time they spent in the different sections was sufficient. Others have expressed a desire to return to the laboratory for some additional study.

An announcement concerning the program was sent to the departments throughout the State, and the response has been very rewarding. Critiques written by those officers who have attended thus far indicate that the program is having a very positive impact.

CONCLUSION

**What does the future hold?** Response to our work has been complimentary and indicates that the New Mexico State criminal justice system has found a real need for the laboratory, which now services the entire State—an area of approximately 140,000 square miles. In 1976, laboratory personnel traveled about 54,000 man-miles attending court and about 19,000 miles aiding in 97 crime scene searches. The use of department planes greatly reduce traveltime, allowing analysts to accept court commitments in different parts of the State on consecutive days.

The laboratory caseload has grown from 1,052 cases submitted in 1973 to 2,368 cases in 1976. Indications are that the caseload will continue to increase as time goes on and the education and training of police officers throughout the State becomes more advanced.

In order to keep the backlog of cases to a minimum and the turnaround time on the cases realistic, additional personnel are needed and are, hopefully, forthcoming. It is also hoped that the laboratory will be expanded, and if need be, personnel placed in the field doing crime scene searches, latent prints, and photography in those areas where local departments need assistance. As more analysts are added to the staff, the scope of laboratory experience will increase, and it is felt that the extra personnel will help to provide greater continuity in the laboratory when analysts are in the field.

It may become advantageous, as the caseload increases, to establish small specialized satellite laboratories in the more populated areas of the State to cut down on traveltime to and from the main laboratory. In the meantime, the laboratory is providing a much needed service by increasing the utilization of physical evidence by New Mexico's law enforcement agencies.

## ERA

Mr. BAYH. Mr. President, the October issue of Redbook magazine contains an article by Judy Carter, daughter-in-law of President Carter, entitled, "Why Nice Women Should Speak Out for ERA."

Mr. President, many reliable polls have shown that a majority of Americans endorse the principle of the Equal Rights Amendment. Thirty-five of the necessary 38 States have ratified the ERA; however, a vocal minority continues to inundate many of the remaining State legislatures with misinformation about the effects of this amendment. It is time, Mr. President, that these legislators hear from the majority, who believe in the principle of equality, as well as from the minority. It is time that the general populace makes itself heard.

Ms. Carter's article clears up many of the misunderstandings about the ERA, and makes it clear that the "nice" people of this country, who have heretofore stayed out of the battle, must make their views known if we are to pass this amendment which is so crucial to the basic equality of all of our citizens.

Mr. President, I ask unanimous consent that the text of this article be printed in the RECORD.

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

WHY NICE WOMEN SHOULD SPEAK OUT FOR ERA

(By Judy Carter)

American voters, your majority rights are in danger. Unless the Equal Rights Amendment is ratified by March 22, 1979, it will die. And that's not what the majority of American voters want.

But how can this be? If there were a national referendum on ERA, there is no doubt that it would pass. The maximum ever recorded against ERA in a national poll was 35 per cent. Both major political parties, over 200 national organizations, the last six Presidents and a clear majority of citizens have supported it. And doesn't the majority rule in this country?

Not always. In this case the minority may decide, because ERA must be passed by state legislatures instead of by direct vote. It has been passed by 35; it needs three more to become a part of the Constitution. The opposition doesn't have to deal with the general public; it has only to focus on a few legislators' votes. That makes lobbying the name of the game—and lobbying is a bad, bad word to most of us. "Nice" people do not become involved in that sort of thing. We forget that it can be used for a good cause as well as for a selfish one.

Lobbying may sound underhanded, but it works. The 1977 ERA vote in Florida is a classic case. A reliable poll, taken a few days before the vote, showed strong support: 62 per cent in favor; 16 per cent against. The majority held equally among men and women, through all areas of the state, age groups and political parties. But the Florida senate defeated the amendment by two votes. Because of effective lobbying by the minority, Florida remains one of the states that has not ratified ERA, despite the fact that a clear majority of its citizens are in favor of it.

Lobbying can work for the majority too, but it takes work to organize it. Indiana is a good example. In the November, 1976, election, four anti-ERA senators and three anti-ERA House members were defeated by pro-ERA voters. ERA was ratified in January, 1977, soon after the new legislature convened. Many women who helped make this possible were ordinary, nonpolitical citizens whose involvement at the right time made a significant difference.

That sort of involvement in Florida, North Carolina and Nevada could have got ERA ratified this year. If only 13 legislators—two in Florida, two in North Carolina and nine in Nevada—had been influenced to vote for instead of against the amendment, it would have passed in those three states, and that would have put ERA over the top.

The opposition group Stop ERA is determined to prevent another ratification. It is supported by groups of the kind that for years have opposed all progressive legislation. They have been against women's suffrage, the income tax, the United Nations, civil rights legislation, Social Security, détente, Medicare and laws to prevent child abuse. Like other such crusades, Stop ERA is well financed by unknown sources. Attempts to find out whom the money comes from are met with vague replies or absolute refusals to answer. The group's lobbyists use well-known tactics: planting fears ("We'll have unisex bathrooms!"), simply repeating the statement when asked for proof, blatantly distorting the facts and insisting they are doing it all to protect freedom.

The underlying argument for opposing ERA is that God made women to have children and men to be responsible for both of them. The laws passed years ago to "protect" women under this reasoning have been changed in recent years to recognize women's rights to equal credit, employment and other business opportunities. Few people object to such basic fairness. But then, it would seem that few people could object to this: Equality of rights under the law shall not be denied or abridged by the United States or by an State on account of sex." And that's the wording of the Equal Rights Amendment.

Why, then, is it so difficult to gain a Constitutional guarantee that the legal gains we've made will not be repealed and that they will be incorporated into our whole system of laws? Why would the vast majority who believe women should have equal rights sit back and let a few vocal extremists take them over?

To find out, I asked a number of "nice" women to talk about ERA. Their comments were surprisingly similar, whether they were in favor of ERA or not. "I'm happy with my situation the way it is," was one comment I heard over and over. Another was, "Those ERA campaigners really turn me off." Most women admitted that they really did not know very much about what ERA would do. Those who assumed that ERA would change things a great deal were against it. Those who agreed that women should have equal rights had little enough knowledge about what ERA could do for them and enough negative feelings about its image to be wary of working for its passage.

ERA would be extremely important to these women if they were in different circumstances. As wives and mothers, most of us enjoy feeling secure and protected by our husbands. ERA will not affect that at all. Like any other Constitutional right, ERA will be there only if we need its protection. We are not required to carry guns simply because we have the right to do so. ERA does not require that any personal habits be changed; it simply guarantees a woman the same legal rights as a man if she needs them.

If your husband dies or if you are divorced, you need to have full, legally protected opportunity to care for your family. If you work, you should be able to expect equal treatment. Our daughters, of course, should have every available opportunity. ERA, like an insurance policy, will guarantee us all those things if we need them.

Obviously, ERA's image is a serious problem. Most of the attention has been focused on a very small number of ERA's millions of supporters: those who have been demanding and strident in their support, the pro-ERA groups that also support some unrelated and far more controversial issues and professional issues and professional women who emphasize discrimination in the business world. The composite has emerged as a group of shouting, aggressive, bra-burning "women's libbers," and "nice" women have been reluctant to be identified with such a group though they support ERA itself.

ERA still has a chance—if we look at the facts in time. The image is changing and the average woman has more to identify with. No one could describe Lady Bird Johnson or Betty Talmadge (wife of the Senator from Georgia)—both of whom actively support ERA—as demanding or strident. Rosalynn Carter could certainly not be accused of trying to weaken the family, though she has been outspoken in advocating equal rights. Jean Stapleton's support has given Edith Bunker fans a push to be involved too. Ellie Smeal, the new president of NOW and a stanch ERA advocate, is a housewife and proud of it.

Even with this all-star support, how much chance ERA has depends on you. Because we are so close, every effort is important. And you don't have to be an expert or a loudmouth to help. The first item of business is

to be informed, considering well the source of any information. Rumor and distortion have taken a great toll in support. Read the facts with this article. Check them out. Write for more information if you want it. Get in touch with ERAmerica, the national coalition of ERA supporters (see box on page 215). Then start talking.

If you live in a state that has already ratified ERA, you still have several avenues for action. First, write a letter to your Congressional representatives and ask that they do what they can to assist passage of the amendment. They may have a direct link to representatives from states that have not yet ratified ERA and who could be of assistance in passing it through their state legislatures. Second, urge any organization of which you are a member to support the effort with money and publicity. Third, urge anyone you know in states that haven't ratified to learn about ERA and help get it passed. (You never know when a letter like that can find the right person!) Fourth, send money. It's needed for advertising in some states, campaign contributions for electing pro-ERA legislators in targeted districts, printing and mailing information and salaries for a few full-time people to coordinate teh effort. Your contribution is an investment in your future, so give as much as you can.

If you live in a state that hasn't ratified ERA yet (and that includes states that have rejected it in the past; they can vote on it again), you have even more to do. Get ready to be a lobbyist—a nice, calm, intelligent, feminine, determined lobbyist. Here's how.

First tell your own representatives how you feel about ERA. They need to know. It is difficult for legislators to get a realistic view of their constituents' opinions when they are being bombarded by a very vocal minority. A calm voice helps them remember that the vast majority of people they represent are reasonably sane and expect them to make decisions based on what the majority will accept. In the back of every politician's mind is the possibility of being removed from office when a more acceptable candidate comes along. Your legislator needs to treat you kindly even if you don't see eye to eye.

You've found important allies if your representatives are ERA supporters. Keep in touch with them. They will need you when they are being pressured by the other side. Remember that some close votes were lost by last-minute switches.

If your representatives are against ERA or are undecided, try to convince them. The most important thing to remember is: Keep cool. Very few people have ever been convinced of anything by threats or tantrums. You may fail and you may be very frustrated, but don't blow your relationship with your legislators. They could change their minds at the last minute, too!

Begin by working with them yourself. Get your information together and ask for an appointment. Ask what their objections are, discuss your position and be sure to point out who your sources are. Of course, even if you beat them on the facts, they still have an effective defense: "The voters in my district are not for it, and I cannot vote for it." At this point retreat and find some allies. A petition supporting ERA, phone calls and letters stating support and public endorsements by local groups can help. Remember that you are not threatening your representatives in any way; you are giving them information to help them make a decision.

When convincing doesn't work, you have one more option: Find a replacement. In most states there is an election before the ratification deadline. Check with your state ERA coalition first. They should have information about potential candidates in anti-ERA districts. Get behind the best pro-ERA candidate and go to work. Voter power is a potent force, A turnover of one or two key seats in most states would ensure ratification. Remember Indiana.

We are living in an era of great historical importance for women. The next few months will be crucial in the struggle for equal rights. It is up to the majority, silent until now, to make it a reality. Our daughters and granddaughters will thank us for it.

WHY ERA IS NEEDED

All laws and court decisions are based on the U.S. Constitution's definition of rights. There is no clause in the Constitution granting legal status as persons and equal protection under the law to women.

There is no consistent pattern in state laws with regard to women. A woman's legal status may differ greatly from state to state.

The Supreme Court must treat all sex-discrimination cases on a case-by-case basis, since there is no Constitutional guarantee of rights for women.

In the case-by-case procedure, women with the fewest resources suffer most. When a woman is solely responsible for her family, she should not be required to spend her time and money in costly legal battles to gain rights she should have in the first place.

The alternative to a Constitutional Amendment to ensure women's legal status is a myriad of Federal statutes and increased bureaucracy to enforce them.

Some people say that the TRA isn't needed, arguing that women's rights are guaranteed by the 14th Amendment. However, in case after case the Supreme Court hasn't interpreted it that way. Just as women needed a separate amendment for the right to vote, they now need ERA for full and equal citizenship.

WHO SUPPORTS ERA?

The last six Presidents of the United States.

Congress (ERA passed in the House 354 to 23; in the Senate, 84 to 8).

35 state legislatures.

Over 200 organizations, including: American Baptist Women; American Bar Association; AFL–CIO and 26 affiliated unions; American Home Economics Association; American Jewish Congress; American Veterans Committee; B'nai B'rith Women; Board of Church and Society, United Methodist Church; Catholic Women for the ERA; Child Welfare League of America; Christian Church (Disciples of Christ); Coalition of Labor Union Women; Common Cause; Democratic National Committee, Girl Scouts of the U.S.A.; League of Women Voters of the United States; Lutheran Church in America; NAACP; National Catholic Coalition for the ERA; National Coalition of American Nuns; National Council of Churches (of Christ); National Council of Jewish Women; National Council of Negro Women; National Education Association; National Federation of Business and Professional Women; National Secretaries Association; Planned Parenthood Federation of America; Republican National Committee; United Church of Christ; United Mine Workers of America; United Presbyterian Church, U.S.A.; Young Women's Christian Association.

WHAT EFFECT WILL ERA HAVE?

*Rights to privacy.* ERA will *not* affect the individual's right to privacy. No rest rooms will be sexually integrated. The states would also retain the right to regulate cohabitation, which would allow for separate sleeping facilities as well.

*Criminals laws.* ERA will require that men and women receive equal penalties for the same crimes. It will not invalidate any laws as long as they apply equally to men and women. That includes rape, which is an assault, a crime against the person.

*Social Security.* ERA will *not* jeopardize any benefits now available under Social Security. It will allow a workingwoman's husband to receive her benefits if she dies or retires just as a wife can now receive her husband's benefit if he dies or retires.

*Protective labor laws.* ERA will require that protections accorded one sex be extended to include the other.

*Alimony and child support.* ERA will *not* make alimony unconstitutional; it will extend its benefits to include men. Contributions of both partners, monetary and nonmonetary, will be considered in making a fair division of property. ERA will make both parents equally responsible for the support of their child, again considering financial as well as nonmonetary contributions to support. The welfare of the child will remain the major criterion in awarding custody.

*Family relationships.* ERA will *not* alter family relationships. It has nothing to do with the customs, agreements and practices that every family works out for itself. ERA will ensure that the wife has a legal right to support from her husband in compensation for her homemaking services. Currently a wife must file for separation or divorce to gain any legal right to be supported.

*Military service.* The Constitution gives Congress the power to raise armies and to regulate them as it sees fit. Women have always been eligible for the draft, although they have never been called. If there is another draft, exemptions must be based on reasons that apply equally to men and women, such as marital, parental, physical or religious status. If women wish to volunteer, ERA will require that men and women be admitted to service under equal conditions, receive equal benefits of service and equal consideration for rank and assignment. Women will not be required to serve in combat unless they meet appropriate physical standards.

WHERE TO START

ERAmerica is the national coalition of ERA supporters. It is a clearinghouse for information and it coordinates ratification efforts in each state, giving assistance to state coalitions from nationwide sources. It is the place for you to send money, to volunteer and to find out whom to call in your state. The address is: ERAmerica, 1525 M Street, N.W., Washington, D.C. 20005. The phone number is: (202) 833–4354.

The National Women's Conference in Houston, Texas, November 18–20, will be voting on an ERA plank. Let your state's delegates to the conference know that you support the amendment. You can find out how to get in touch with them by calling your local NOW chapter, the League of Women Voters or the YWCA, or by writing to the National Commission on the Observance of International Women's Year, D/IWY, U.S. Department of State, Washington, D.C. 20520.

SOURCES OF INFORMATION

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"Catholics and the Equal Rights Amendment," Network 224 D Street, S.E., Washington, D.C. 20003.

"The Continuing Controversy Over the Women's Equal Rights Amendment—Pro and Con," *The Congressional Digest*, June–July 1977, Vol. 56, Nos. 6–7. Congressional Digest Corp., 3231 P Street, N.W., Washington, D.C. 20007 ($2 single copy).

"The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," by Barbara A. Brown, Thomas I. Emerson, Gail Falk and Ann E. Freedman. *The Yale Law Journal*, Vol. 80, No. 5, April, 1971.

"The Equal Rights Amendment—Senator Ervin's Minority Report and the Yale Law Journal," Citizens Advisory Council on the

Status of Women, Rm. 1336, Department of Labor, Washington, D.C. 20010.

"The Equal Rights Amendment: A report on the proposed 27th Amendment to the Constitution," Common Cause, 2030 M Street, N.W., Washington, D.C. 20036.

"Homemakers Need the Equal Rights Amendment," Housewives for ERA, Anne Follis, President, Route 3, Urbana, Illinois 61801.

"Let's Have ERA as a Signal," by Ruth Bader Ginsburg. *American Bar Association Journal*, January, 1977, Vol. 63.

"What the Equal Rights Amendment Means," National Association of Women Lawyers, American Bar Center, 1155 E. 60th Street, Chicago, Illinois 60637.

## SENATOR ESTHER SORRELL

Mr. LEAHY. Mr. President, I would like to take but a brief moment to comment on an award presented to a longtime friend, Senator Esther Sorrell of Burlington, Vt.

Senator Sorrell has been chosen as one of the "Ten Outstanding State Legislators in the United States" by the Assembly of Government Employees during its 25th Annual General Assembly in Portland, Ore. The selection was made by delegates of the AGE, which is a federation of 46 independent State and local organizations representing more than 600,000 public employees from 34 States.

In noting Senator Sorrell's many achievements, the Assembly was quick to point out how often she had to fight in committee, on the floor and in conference committee to pave the way for legislation helping the State employees. According to the Vermont State Employees Association who nominated her for the award, she "consistently votes for and supports State employee benefits at the risk of alienating colleagues of both parties."

She has been a member of the Vermont Senate for 5 years and is serving her third term on the Government Operations Committee. Having been a member and active participant of various task forces ranging from employment of the handicapped to study election laws, she may indeed be quite proud of her life of public service. I consider it an honor and a privilege and ask unanimous consent to have these remarks printed in the RECORD on behalf of my friend, Senator Esther Sorrell.

There being no objection, the remarks were ordered printed in the RECORD, as follows:

TEN OUTSTANDING STATE LEGISLATORS IN THE UNITED STATES

(as selected by Assembly of Governmental Employees)

Alaska—Sen. Leland C. Croft of Anchorage authored the Public Employees Negotiation Act which gave Alaska state employees the right to bargain over working conditions and compensation. The recognized labor attorney was nominated for the outstanding state legislator award by Alaska PEA.

Arizona—Rep. Thomas N. Goodwin of Tucson was nominated for the award by Arizona PEA because of "his consistent concern and active support for state employee rights." Goodwin spearheaded legislation to improve their compensation and fringe benefits.

California—Assemblyman Wadie P. Deddeh of Chula Vista effectively chaired the Assembly Public Employees and Retirement Committee which supported successful collective bargaining and retirement bills. PEA of Riverside County says "Deddeh is one of those rare politicians who not only believes in the value of public employees and enunicates such unpopular beliefs publicly, but also acts accordingly by consistently supporting legislation in their behalf."

California—Sen. Albert S. Rodda of Sacramento is described by California State EA as "a gentleman and legislator of extreme integrity who has managed to walk the line between supporting public employee benefits and salaries while maintaining public respect and confidence." Rodda has successfully authored more than 375 bills on education, public employment, conservation, retirement, labor, election reform, taxation, consumer protection and civil rights.

Connecticut—Rep. Leo H. Flynn of Taftville has a 90% voting record for state employee legislation on both the Personnel and Appropriations Committees. An advocate of state employee and retirement legislation, Flynn is the leading spokesman for Connecticut SEA legislative programs and "is known as one of the state employees' best friends in the legislature."

Illinois—Rep. James VonBoeckman of Pekin has handled Illinois SEA's pay increase bills and other public employee legislation for four years in the face of warnings from major trade unions for his assistance to an independent labor organization. Von Boeckman's response: "No one is telling me who I can work with or what legislation I'll sponsor."

Maine—Sen. Philip L. Merrill of Portland, an aggressive advocate for the welfare of state employees, led the fight for improvements to the state collective bargaining law in the 108th Legislature on the basis that "public employees have the right to full participation in the political process and protection against legal action arising out of their employment." Maine SEA nominated Merrill for the AGE award.

Montana—Sen. Frank H. Dunkle of Helena in the 1977 session sponsored successful retirement legislation, salary and benefit increases and worked effectively to kill bills detrimental to public employees. Montana PEA nominated him because "he's dedicated to the establishment of a statewide merit system in the face of opposition from the state administration and organized labor."

North Dakota—Sen. Evan E. Lips of Bismarck was nominated by North Dakota SEA for his "concern over improving the quality of state government by making public service a viable career opportunity." In the past 16 years, Lips has been the prime sponsor or key element in the enactment of all employee-related legislation including retirement, health insurance and the Central Personnel System. In fact, "he's responsible for just about everything good that's ever happened to state employees."

Vermont—Sen. Esther Hartigan Sorrell of Burlington, reports Vermont SEA, "consistently votes for and supports state employee benefits at the risk of alienating colleagues of both parties." After failing on the Senate floor to get an amendment to a bill for binding arbitration in contract disputes, she took her fight to conference committee and, as the lone minority party member on the Senate side, after 12 hours of constant debate secured support necessary to pass the bill into law. During the same conference, she opposed both the governor and majority leadership to rally support for a 16% state employee pay hike.

## TOP COP MAKES MONEY TALK

Mr. DOMENICI. Mr. President, New Mexico is very proud of Officer Greg MacAleese of Albuquerque, who has been designated recipient of the Police Service Award conferred by Parade magazine and the International Association of Chiefs of Police.

Attributed to the Crime Stoppers program initiated by Officer MacAleese is a 27.6 percent citywide crime reduction. Such a tremendous accomplishment in the fight against crime deserves national commendation and recognition.

I ask unanimous consent that the article commending Officer MacAleese be printed in the RECORD.

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

OUR BEST POLICEMAN—TOP COP MAKES MONEY TALK

(By John G. Rogers)

ALBUQUERQUE, N. MEX.—Here in Albuquerque a 30-year-old cop named Greg MacAleese has conceived and is coordinator of a project that's achieving solid results. The Bible says money can be "the root of all evil," but in the MacAleese anti-crime program it's the root of much good. Through a fund raised by hundreds of residents, the city pays cash to informants for clues leading to arrests and indictments of malefactors. So far total payments are more than $11,000 in amounts ranging from $50 to $2000, and all informants are promised anonymity if they want it.

Some results: 261 cases including murder, rape, robbery and burglary solved in the first 11 months of operation. Recovery of $286,000 worth of stolen property. A citywide crime reduction of 27.6 percent.

And widespread praise. Albuquerque Police Chief Bob V. Stover pronounces the project—called Crime Stoppers—"an unbelievable success." Chief Deputy District Attorney Robert A. Martin said in a letter to City Hall: "Of all the devices and programs that have come along in the area of law enforcement in the past few years, this is one that appears to be a sure winner."

For his imaginative anti-crime project, which involves innovative TV programs and has solid media and community support, Greg MacAleese has been designated recipient of the 12th annual Police Service Award conferred by Parade and the International Association of Chiefs of Police. This honor, which names MacAleese a symbolic representative of all the nation's 440,000 law enforcers, is accompanied by a roster of 10 others cited for honorable mention for superior performance.

MANY CONTENDERS

The candidates for this year's awards were, as always, nominated by their commanders, usually a city's police chief. And, as always, the judges sifting the nominations had a difficult time narrowing them down to MacAleese and the 10 others. This was because there were so many outstanding candidates arising from the great variety of good works in law enforcement.

The designation of Greg MacAleese as the 1977 Policeman of the Year points up that more than ever police are groping harder for ways to reverse the trend of increasing crime.

Plaques for MacAleese and the 10 honorable mentions will be presented to them this week in Los Angeles at the annual convention of the International Association of Chiefs of Police.

MacAleese, a former college baseball pitcher who had offers from five major league teams, calls the Crime Stoppers program "simply an exchange of commodities. Out there in the community are people who have information about crimes. We want it. And in exchange we'll pay the money and guarantee anonymity. Sometimes we get the criticism that paying informers is a sort of smelly business. But

I don't see it that way. It's commonplace after some sensational or especially repulsive crime for a reward to be offered for information. We just have a permanent setup of reward. I think about 70 percent of our telephone informants are ordinary people who happen to hear or see something and the rest are in or of the underworld."

A keystone of Crime Stoppers is publicity to keep this community of 312,000 fully aware of how it can help the cops by telephoning a special number at police headquarters. MacAleese uses three TV stations, eight radio stations and two newspapers to spread his message and he'll speak to as many as five groups a week. Even car bumper stickers urge cooperation.

"CRIME OF THE WEEK"

Crime Stoppers' most novel gimmick is "The Crime of the Week"—a three-minute show written by MacAleese depicting an actual crime in Albuquerque. The young officer rounds up amateur actors, coaches them through his script, and they appear every Monday night on a TV news program.

Says he: "There's psychology behind these shows. People are more likely to react to visual treatment. It tends to jolt their memories, to sharpen a sense of awareness of something they know about somebody. One man said to me, 'You seem to be saying I should turn in my neighbor.' I told him, 'Well, if he's a crook, I hope you do.' But we do get calls from people who wouldn't call the police directly. We are set up as a civilian and community organization, and that gives us a special status.

"Of course, if a person agrees to testify, the anonymity can't be guaranteed. But in cases in which the anonymity holds, courts here have ruled against defense lawyers who demand to know the identity of accusers.

"In one particularly brutal murder, after the conviction a witness received so many threats against himself and his family that we sent all four of them hundreds of miles away, got him a job and gave the whole family new identities. It was not only a humane thing to do but showed the underworld Crime Stoppers stands by its informants."

Albuquerque Police Detective Joe Garcia says, "What we've done is to create worry and suspicion among part of our criminal element. If they had a code of honor about squealing on each other, we've cracked into it."

Another of Crime Stoppers' TV stunts is to display mug shots of suspects. Says MacAleese: "We put a mug shot on the screen on Monday night and almost invariably we've got the guy by Wednesday. Somebody out there knows where he's holed up, and in come those phone calls."

BUILDING THE FUND

Crime Stoppers' fund that pays informants now stands at more than $37,000. Back in the beginning an appeal was sent out along with the water bills, and that brought in about $10,000 in amounts from $1 to $10. But, as the program becomes better and better known, contributions arrive almost daily. The smallest was 36 cents from a fifth-grader who explained in a letter, "It's all I can afford."

MacAleese personally makes the payoffs to the informants and, because he has received telephoned threats to his own life, he dictates the site of the meeting for his own safety and makes sure that he's paying the right person.

The 1977 Policeman of the Year began his career as a street cop, and MacAleese believes he'll go back to that duty if his present usefulness diminishes as a result of his becoming too well known. He's experienced violence—one time a gun and another time a knife was pulled on him—but his only injuries resulted from a beating by eight kids in a parking lot. Later, during a year as collector of evidence for detectives, he found that many shady characters had impulses to divulge information if they could do so safely. That was one of the elements that led to Crime Stoppers.

IMPORTANCE OF ANONYMITY

Another was an experience of his attractive wife, Jo, a concerned citizen who's running for City Council. One time she felt she had some useful information in a narcotics case: "I phoned the police and they wouldn't even listen to me unless I gave my name, address and telephone number. Later on, when Greg was thinking of Crime Stoppers, I told him about that. We agreed there ought to be some way of encouraging people to talk on an anonymous basis. Also, in the underworld, money talks. If you can make more safely squealing on a crook than risking the killing of a gas station attention, why not do it?"

Albuquerque Police Chief Stover calls MacAleese "the sparkplug that makes Crime Stoppers work." The young officer enjoys his achievements but concedes that occasionally he wonders how he might have fared as a major league baseball pitcher. Still, he says, it's rewarding to be striking out criminals.

## NATURAL GAS CONFEREES

Mr. BENTSEN. Mr. President, as we all well recognize, the natural gas bill that the Senate passed last week was only produced after an enormous effort. It represents years of legislative give and take; years of study and restudy; years of debate.

Now we face a conference with our House colleagues. Many people seem to forget that 47 percent of the House membership backed a more immediate version of natural gas deregulation than that approved by the Senate. But if the Senate position on natural gas is to be fairly represented in conference, and all possible compromises fully explored, a majority of the Senate conferees should be completely convinced of the wisdom of the Senate position and have so voted.

I recognize the continuing controversy over deregulation, and I ask for no unfair advantage in the debate to follow in conference. I am not seeking the appointment of any particular conferee or group of conferees. My goal is simply to insure that Senate procedures are followed. In fact, the rules and precedents established some times are overlooked points: Conferees from the prevailing side should be in the majority and conferees can be elected or rejected by the Senate as a whole.

As Senator HUMPHREY stated in the debate on the civil rights bill in 1964:

> The conferees in theory are appointed by the Presiding Officer but in fact are designated by friends of the measure, who are in sympathy with the prevailing view of the Senate.

The Senate Democratic Caucus adopted a similar rule, which instructed that "a majority of the proposed conferees shall have indicated their support for the bill in question as passed by the Senate, and their support for the prevailing opinion of the Senate on the principal matters of disagreement with the House."

To back up these rules, the Senate, as a whole, is given the power to elect its own conferees or amend any motion to elect conferees.

In selecting the advocates of the Senate position, the Senate is not limited to members of the jurisdictional committee. This is a well recognized principle going back at least to 1896. In that year Senator Lodge was chosen as a conferee on a bill which was reported out of the Judiciary Committee, although he was not a member of that committee.

Conference is the place for compromise, and I think one can be found on the issue of deregulation. It would be impossible for 535 Congressmen to sit down as a whole and work a solution. So representative conferees will be chosen. Accordingly, the composition of the majority of the Senate conferees must reflect the 52 Senators who voted for deregulation. I have and will continue to seek assurances that a majority of the Senate conferees on the natural gas bill will be chosen from supporters of the Pearson-Bentsen bill.

Frankly, having sat on conferences, I recognize the inevitability of compromise. However, the selection of conferees should reflect what happened on the Senate floor, not what someone wishes had happened. In other words, the appointment of conferees is not another chance for the losers to win; it is the open selection by the Senate as a whole of the advocates of the Senate position.

## ANOTHER MISCONCEPTION ABOUT THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, ever since the Genocide Convention first came before the Senate for ratification in 1949, it has been subject to repeated attacks that it would become a farce through which demonstrators, convicted criminals, and publicity hounds could bring trumped-up charges against the United States. Dan Smoot, in an article for American Opinion magazine, charged that since every American citizen belongs to some national, ethnical, racial, or religious group, practically every criminal case in the country would automatically become both a crime under American statutes and an international crime of attempted genocide.

As examples, he cited the hypothetical death of a Black Panther in a gun battle with police and public criticism of Communists in the press as actions which could be interpreted as causing serious mental harm and thus become violations of the convention and international crimes. Mr. Smoot's article is simply one more example of the crude sensationalism and convenient disregard of facts that has become a trademark of many of the convention's opponents.

In the first place, the Foreign Relations Committee has always included with its recommendations to ratify the convention the understanding that mental harm means permanent impairment of mental faculties. As the State Department told the committee in a 1971 clarification:

> This construction is in keeping with the generally understood meaning of the term

in the context of Article II. It would make clear that the term could not be construed as applying to various lesser forms of mental harassment toward minority groups. This construction is consistent with the negotiating history of the convention.

In addition, a second understanding states that the United States construes genocide as defined by the convention to include only those cases when the act was committed so as to affect a "substantial part" of the group involved—a group of such numerical significance that *its loss* would cause the destruction of the group as a viable entity. Clearly, Mr. Smoot's examples and all such isolated court cases would not be in violation of the Convention.

Finally, the proof is in the pudding, for in the quarter century this Convention has been in force throughout much of the world, it has not been treated lightly or invoked for publicity reasons, but has been accorded the same importance and respect as other important international conventions. Mr. President, the United States has ratified many of these other conventions, and we in the Senate know full well that they have not become playgrounds for absurd charges. Mr. Smoot and many others like him are simply using half-truths and sensationalism to delay the ratification of this important document. I urge my colleagues to look at the Genocide Convention for what it is—a crucial piece in the growing framework of international protections of human rights—and to ratify it immediately.

## COMMITTEE ON RULES AND ADMINISTRATION

Mr. CANNON. Mr. President, I ask unanimous consent that a report from the Senate Committee on Rules and Administration pursuant to section 302(b) of the Congressional Budget and Impoundment Control Act of 1974, distributing the committee's allocations under the second concurrent resolution of the fiscal year 1978 budget, be printed in the RECORD.

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

COMMITTEE ON RULES AND ADMINISTRATION

REPORT TO THE SENATE PURSUANT TO SECTION 302(b) OF THE CONGRESSIONAL BUDGET ACT OF 1974

ALLOCATIONS OF 2D CONCURRENT RESOLUTION AMOUNTS FOR FISCAL YEAR 1978

[In millions of dollars]

| Programs | Direct spending | | Entitlement programs that require appropriations action | |
|---|---|---|---|---|
| | Budget authority | Outlays | Budget authority | Outlays |
| Function 250 | (1) | (1) | ---- | ---- |
| Smithsonian Institution trust funds | 0.055 | 0.058 | 0 | 0 |
| Function 500 | 4.00 | 4.00 | 0 | 0 |
| Oliver Wendell Holmes devise fund | .004 | .020 | ---- | ---- |
| Gift and trust funds, nonrevolving (Library of Congress) | 4.440 | 4.273 | ---- | ---- |
| Function 800 | 30.00 | 0 | 0 | 0 |
| Presidential election campaign fund | 30.00 | 0 | ---- | ---- |
| Total amount to be distributed | 34.00 | 4.00 | 0 | 0 |
| Controllable | 0 | 0 | ---- | ---- |
| All other | 34.00 | 4.00 | ---- | ---- |

[1] Under $500,000.

## PULASKI DAY

Mr. DOLE. Mr. President, on October 11, 1779, Casimir Pulaski, a Polish hero, lost his life fighting for the Colonies in the Revolutionary War. In recognition of his contributions, this day every year has been designated and celebrated as Pulaski Day.

PARTICIPATED AT THE BATTLE OF BRANDYWINE

Forced by Russian oppression to leave Poland, Pulaski became an exile and at first opportunity hurried to help the colonists at the outbreak of war. Benjamin Franklin engaged him for the American service and gave him an introductory letter to General Washington. At the Battle of Brandywine, September 11, 1777, while still a volunteer, he saved the retreating American Army from being cut off by the British by attacking them with just a handful of men.

"FATHER OF THE AMERICAN CAVALRY"

As a result, he was appointed brigadier general in charge of the cavalry. Using his great talents and zeal, he reorganized the existing regiments of dragoons with such skill that he justly earned the title of "Father of the American Cavalry." The following year he organized an independent corps of cavalry and light infantry which became known as Pulaski's Legion. It saved Charleston from British General Prevost and his troops on May 14, 1779.

"I CAME TO HAZARD ALL FOR THE FREEDOM OF AMERICA"

However, on October 9, 1777, Pulaski was wounded during the siege of Savannah and died from his wounds 2 days later at the age of 31. In fighting for the American cause, Pulaski was motivated by pure idealism when he crossed the seas. Two months before his death, he wrote in his last letter to Congress, "I came to hazard all for the freedom of America." We can ask no more of any man.

THADDEUS KOSCIUSZKO ALSO HELPED COLONISTS

Nor was Pulaski the only Polish soldier to help our fledgling Nation. Thaddeus Kosciuszko was sent to West Point for the purpose of strengthening the defenses of the Hudson, a job he did so well that the fortifications "frightened the very enemy from all temptation to even trying to take the highlands."

Many Polish Americans since that time have continued to serve this country with great distinction in all the great wars that we have been involved in up to the present century.

POLISH AMERICAN CONTRIBUTIONS IN OTHER AREAS

But we can be proud of the contributions Polish Americans have made in other areas to produce the rich mosaic of American life. American musical development has been greatly enhanced by the late maestro Leopold Stokowski and Arthur Rodzinski, the conductor of the American Symphony. The spiritual guidance for all Americans has been provided by the Archbishop of Philadelphia, John Cardinal Krol, and the sports enthusiasts can immediately identify with the great baseball player, Carl Yastrzemski.

America has been fortunate in her development to have been able to receive so many immigrants on her shores. The cultural and social diversity this has provided us gives us the strength we need as a nation. The sons of Polonia are a proud segment of our great land and we salute their contributions.

## THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings on the Panama Canal treaties today receiving testimony from the following witnesses: Prof. Jorge Dominguez, Center for International Affairs, Harvard University; Dr. Abraham F. Lowenthal, the Woodrow Wilson Center; Prof. Donald Dozer, University of California; Prof. Lewis Tambs, Arizona State University; Robert M. Bartell, Liberty Lobby; Franklin Delano Lopez, chairman, Puerto Rico Democratic Party; Phillip Harman, Canal Zone Non-Profit Public Information Corp.

I ask unanimous consent that the prepared texts of the statements of these witnesses be printed in the RECORD.

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

TESTIMONY BY JORGE I. DOMINGUEZ

I want to thank the Committee for inviting me to come to present this testimony. I appear before you as an individual citizen, and not as a representative of Harvard University or any other organization. I would like to address my remarks to the issue of the Panama Canal treaties in the context of relations between the United States and Latin America.

I urge you to support the Panama Canal treaties as they have been submitted to you, and to reject amendments which would in fact cripple the treaties and prevent their acceptance by Panama. There are many reasons to urge ratification of these treaties; I simply want to call some of them to your attention.

1. The treaties have become a test of the steadiness of U.S. foreign policy toward Latin America, and indeed toward other countries. The treaties are the culmination of work by four Presidents of the United States of both major political parties and their Secretaries of State, in consultation with members of Congress and other interested parties. One issue that has arisen is whether the U.S. government is reliable enough as a partner in international relations, so that a bipartisan agreement on a central question for U.S. foreign policy, can in fact be implemented with broad Congressional support. The defeat of the treaties, therefore, would represent not only a substantive setback for U.S. foreign policy, but it would also make it more difficult to conduct that foreign policy in the months ahead.

2. The treaties protect U.S. national security interests in the canal better than any other alternative. The treaties guarantee that the United States will retain control of both operation and defense of the canal for the remainder of this century. More im-

portantly, the treaty provides for the long term security of the canal by engaging the government of Panama seriously in the canal's defense. What are the real threats to the continued operation of the canal? One kind of threat might be an attack by some other power on the canal; the United States has the capability to retaliate against any such attack. That defense of the canal, of course, does not depend on the presence of any U.S. forces in the area of the canal, but on the general defense capabilities of the United States. The right of the United States to defend the canal against those who might destroy it is guaranteed by Article IV of the Neutrality Treaty; this right and obligation will continue indefinitely.

Another kind of threat might be an attack that Panamanians in their frustration might have launched against the canal. By engaging Panamanians and the government of Panama gradually in the operation and defense of the canal, and by eventually turning over to them these responsibilities, the continued operation of the canal is more likely to be assured. As their own political and military responsibilities increase, and as their own economic benefits increase, Panamanians will find it ever more in their interest to defend the canal with U.S. support. Failure to ratify the treaties, failure to increase Panama's stake in the canal, would make the canal more vulnerable and its defense more difficult.

The continued operation of the Panama Canal is in the national interest of the United States. These treaties make it likely that Panama will increasingly see its national interest in keeping the canal open, too. Both countries, therefore, can gain from these treaties because their national securities will be enhanced; both countries will lose if the treaties are not ratified.

3. The treaties are necessary for the effective conduct of U.S. foreign policy toward Latin America. There is broad support in Latin America, and among Latin American governments, for these treaties. That support was symbolized recently when so many heads of state from the hemisphere came to Washington to express their support. The present relationship between the United States and Panama is often seen in Latin America as the residue of an era long past, when the United States might impose its will on weaker countries. The continuation of this situation, in the absence of a treaty, is a symbol that the United States does not yet take Latin America seriously enough in the conduct of its foreign policy. A protracted debate in the U.S. Congress over treaty ratification would also probably paralyze other initiatives in U.S. foreign policy toward Latin America. There are important issues of nuclear proliferation, human rights, private foreign investment, trade, and many others, which can only be negotiated successfully between the United States and Latin America, if Latin American governments have continuing assurances that they are treated seriously by the United States. There is no better assurance than to put an end to the present arrangement over the canal, and to ratify these treaties.

4. The treaties demonstrate the possibilities for creative United States initiatives in the hemisphere. The treaties show that the U.S. government can move forcefully on issues of common concern to countries in the Americas. The treaties show that the United States, Panama and other countries in Latin America, can identify common interests, and agree on ways to advance their common interests. The successful ratification of the Panama canal treaties may thus open the way for the negotiation of other issues of common concern to Latin America and the United States, such as I mentioned in the previous paragraph. The treaties also demonstrate that the United States can take the initiative and not merely react to real or alleged actions of other countries. The United States has demonstrated by this treaty its continued importance to Latin America. This is something the Soviet Union cannot do; this is something Cuba cannot do. And this is also something no other U.S. ally can do. The point may bear an example. I have done a fair amount of work on Cuban foreign policy. In its competition with the United States over influence in Latin America, the Cuban revolutionary government has often called attention to the U.S. failure to agree with Panama on a new canal treaty. These new treaties, therefore, have taken away this argument with one stroke, and have demonstrated to many Latin American governments—including the government of Panama—that it may be more useful for them to work closely with the United States than with any other country, including Cuba.

5. The treaties strike a subtle balance between the preservation of U.S. military rights and U.S. declared policies of non-intervention. The United States has two different political interests in these treaties, which are difficult to reconcile. One interest is to retain the right to be able to assist Panama in the future to guarantee the neutrality of the canal, using military force if necessary. Another interest is to persuade Latin American countries, and other less developed country governments in the so-called Third World, that the era of U.S. intervention in their internal affairs has passed, and that the United States is interested in responsible relations with them. This commitment to non-intervention is essential if credible relations are to be maintained with the majority of the countries of the world. To balance these two interests, delicate language is required. That delicate language appears in Article IV of the Neutrality Treaty, and I urge you to reject amendments which might modify that article. That article strikes this difficult balance of assuring that the United States and Panama will defend the canal, and at the same time indicating to the rest of the world, and to Panama, that the United States no longer contemplates intervention in the internal affiairs of other countries as a matter of routine national policy.

These treaties, in conclusion, serve the national interest of the United States by identifying those elements where constructive cooperation with Panama is possible. In doing so, the treaties signal to other countries that the United States is willing and able to conduct a responsible foreign policy toward them—one that meets the essential test of being faithful to U.S. interests while being realistic and feasible in its implementation. The defeat of the treaties would signal, on the contrary, that the United States is unable to perceive its large stakes in a common security arrangement, that it is unable to treat the people of a small country with the respect due them, that it is unwilling to put aside practices and agreements of a bygone era, that it pays little attention to the coalesced voices of Latin American governments, and that it cannot conduct a foreign policy which would relate its national interests to their realistic implementation. In order to gain as much as we can, and to lose as little as possible, I urge the speedy ratification of the Panama canal treaties.

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STATEMENT BY ABRAHAM F. LOWENTHAL

Mr. Chairman: It is an honor for me to be among those asked to testify on the question of the Panama Canal treaties now before your Committee. Surely the Senate's role in considering these proposed treaties makes these hearings among the most important the Committee has held in recent years, and all concerned will want to be as helpful as possible to you.

I speak, of course, not as a "representative" of the Wilson Center or as head of its new Latin American Program, but in my capacity as a professional student of Latin America and of United States-Latin American relations. For me, as I think for practically all concerned with inter-American relations, Panama is a key issue, a test of United States policy toward the nations of this hemisphere. Proponents and opponents of the new treaties, as well as those-including some of the distinguished members of this Committee—who have not yet made up their minds: all of us agree that the Panama issue is significant, and that its time has finally come. I believe we also agree that the issue is important beyond what is immediately at stake: how best to preserve secure access for the United States to a convenient waterway. It is important, as well, for its symbolic significance, both in the Western Hemisphere and beyond. How the United States deals with the question of Panama will tell us, and the world, whether the United States is outgrowing its "hegemonic presumption" (about which I wrote in Foreign Affairs a year ago) and whether it is ready to deal on the basis of mutual respect even with the small and weak countries of the world. The outcome of the Panama debate will also tell a good deal about the strength of our democratic institutions, and about the capacity of our constitutional system to deal wisely with complex issues on which passions sometimes outrun understanding.

I tried in a recent article (which I am told was put into the record during the first day of your hearings) to show why I think it is in the best interests of the United States to work together with Panama to replace the 1903 Treaty with one grounded in today's realities and built on the principle of mutual respect and on the pursuit of shared aims. Rather than repeat my whole argument here, let me just summarize briefly why I hope the Senate will help the United States and Panama to reach agreement, on a new treaty relationship. After doing so, I would like to take a few moments to emphasize one particular point: why the Panama issue is an essential part of improving United States relations with Latin America. Finally, I would like to make some brief comments on one of the issues which has come up already in this Committee's deliberations, the "right of intervention."

THE CENTRAL QUESTION

The central question posed in Panama is whether United States interests in the Canal require us to continue to treat Panama as less than a juridical equal, as we have done from the beginning.

Those who urge the United States to cling at all cost to the anachronistic terms of the 1903 Hay-Bunau Varilla Treaty in the face of rising opposition from Panama, on the international scene, and even from within the United States are not, for the most part, unreasonable people, although some of them do approach this issue with an emotional zeal which is hard to analyze or deal with. They take their stance basically because they see no better way to protect this country's interests, even though they know that continuing and deepening conflict over Panama will result.

Those of us who favor replacing the 1903 Treaty with a new set of agreements—negotiated carefully over many months and years—believe that the United States and Panama share the basic aims of keeping the Canal open, secure, efficient and neutral. We believe, therefore, that United States interests and Panama's dignity can be reconciled through an accord—like the one before your Committee—which recognizes Panama's sovereignty and builds on the basis of the interests the two countries share.

Sticking with the 1903 Treaty would assure an era of bitter and continuing confrontation between the United States and

Panama, magnified and deepened by the effects of this struggle on United States relations with other countries of Latin America and the Caribbean.

Adopting a new set of mutually agreeable obligations promises closer cooperation between Panama and the United States and offers the chance to turn the Panama issue from an example of American intransigence into a sign that this country knows how to protect its lasting interests in a rapidly changing world.

When all is said and done, the essential choice posed by the proposed new treaties is that simple. There is no real doubt, I think, that the United States has significant (if no longer critical) economic and military interests in Panama. Few would argue, I think, that the United States has a positive legal obligation to modify its treaty relationships with Panama in order to protect those interests. The real question is whether it is wise for the United States to base its continuing access to the Panama Canal on words alone, on the terms of a discredited treaty drafted under dubious circumstances in the bygone era of imperial expansion. It seems to me that previous testimony before your Committee has established well the case for constructing a new and more viable basis for protecting U.S. access to the Canal, a basis founded not on mere words, but on shared responsibilities and benefits. In brief, the proposed new treaties should engage Panama's energies more positively in maintaining and defending the Canal as that country's chief resource, it should decrease the threats to the Canal from Panamanian bitterness, it should diminish the prospect that the United States could eventually be drawn again into a bloody military confrontation with a nationalist movement on its own territory, and it would remove an irritant in U.S. relations with all the countries of the Hemisphere, an irritant which Senator Church of the Committee has aptly called a "bone in the throat" for Latin American nations.

PANAMA AND THE FUTURE OF INTER-AMERICAN RELATIONS

Because my own research and writing has not concentrated mainly on Panama, but rather on broader issues of United States relations with Latin America, let me emphasize this last point: the larger significance of the Panama issue in hemispheric relations.

As the United States enters its third century of independence, the nature of our relations with our neighbors in Latin America and the Caribbean is changing importantly. For many years, and especially in the immediate post-war period, the United States understandably treated Latin America and the Caribbean as its "sphere of influence": the United States wielded virtually unchallenged power, economic and military, and our political leadership was unquestioned. We came to feel we could take for granted the loyalty and cooperation of our neighbors to the South; they would support U.S. initiatives, import U.S. goods, utilize U.S. weapons, welcome U.S. investment, and so on and so forth, pretty much in the nature of things.

During the last ten years, however, the bases for this country's hegemonic presumption have eroded. No longer can the United States assume that the nations of Latin America and the Caribbean will share U.S. interests and perceptions.

Objective and subjective trends of several types coalesce to produce a fact, that the countries of Latin America and the Caribbean need to be taken seriously by the United States as independent countries, each able and eager to deal with the United States on a broad agenda of issues, regional and global. And as the issues are faced, each Latin American country begins with a special sensitivity about U.S. paternalism and interventionism, about the legacy of the past.

It is in this context that the Panama issue becomes so important in U.S.-Latin American relations. U.S. relations with Panama—and especially the status of the Canal Zone—have long symbolized for Latin America all that was regrettable about its "special relationship" with the United States. All our government's attempts to convince Latin Americans that we respect their rights and understand their interests would ring hollow if we could not bring ourselves to abandon the habits of thought and practice epitomized in the Panama Canal Zone.

Sensitivity and respect are the key points here, I think. And they are points which take on even more importance as the issues before this Committee become better defined.

I am no authority on artful terms like "expeditious passage" or on the likely course of world shipping patterns and how they will affect the economics of Canal use. But one thing I—or any student of U.S.-Latin American relations—can and should say is that the Senate should not consider asserting an explicit "right" of "intervention", in Panama, or anywhere else.

The "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal" establishes a joint commitment by Panama and the United States to maintain the Canal's permanent neutrality, notwithstanding the termination of the Panama Canal Treaty or of any other treaties entered into by Panama and the United States. No clear statements are made about how the United States may exercise its obligation to maintain the regime of neutrality, and it is understandable and proper that this Committee should want to make U.S. rights in the matter somewhat more explicit. But to be surprised or upset that Panama's government officials deny that the United States will have a right to "intervene" in Panama seems to me to illustrate the problem of Panama, not to contribute toward resolving it.

Thank you for inviting my testimony. I would be glad to try to answer any questions of course.

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STATEMENT OF DONALD MARQUAND DOZER

My name is Donald Marquand Dozer, and I am Professor Emeritus of Latin American History and Inter-American Relations at the University of California, Santa Barbara. My professional career in brief outline includes a Ph.D. from Harvard University, intelligence work in the Office of Strategic Services in the Latin American area from 1941 to 1943, service in the Department of State in the fields of policy, intelligence, research, and history of Latin America from 1944 to 1956 including representation of the Department at Inter-American conferences and work on strategic surveys of Latin America for the Joint Chiefs of Staff. I have also been associated as consultant with the Brookings Institution and with the Center for Strategic Studies at Georgetown University, and I served in 1971 as Fulbright lecturer to Argentina. I am author of several books on Latin American history and inter-American relations, including Are We Good Neighbors? (University of Florida Press), The Monroe Doctrine: Its Modern Significance (Knopf), and Latin America: An Interpretive History (McGraw-Hill). I have visited all the Latin American countries, most of them many times, with the exception of two or three of the smallest and have friends and other excellent sources of information in all of them. In 1972 I was presented with the Alberdi-Sarmiento award by La Prensa of Buenos Aires for outstanding contributions to inter-American friendship. I was the second United States recipient of this award since it was established in 1954.

On my recent trip to Latin American countries earlier this year government executives, business leaders, journalists, and other leaders expressed their apprehension about the adverse effects on their national economies of the increased tolls authorized in this new canal treaty for the unjust enrichment of Panama. The Carter-Torrijos Canal Treaty will require a substantial increase in tolls to provide the Torrijos government with an average of $80 million per year to service Panama's debts to a consortium of foreign lending institutions. In the new Canal treaty Panama assumes no binding obligation, like that which rests upon the United States, to keep the Canal free and open at reasonable charges.

Latin American leaders also expressed indignation over the cavalier treatment of Colombia. The Thomson-Urrutia Treaty of 1914 granted Colombia free use of the Canal for certain products of its soil and agriculture and also free use of the Panama Railroad under certain conditions. There is no protection of Colombia's treaty rights in either the new Canal Treaty or the new Neutrality Treaty. When Colombia protested this violation of its treaty rights the State Department summarily dismissed the complaint with the statement that Colombia must negotiate with Panama.

The diplomatic ineptitude of the negotiators of the new draft treaties in agreeing to pay Panama $10 million annually for discharging police and sanitation responsibility in the Canal area ignores the sad experience of the United States abrogating its police power in the cities of Panama and Colon in accordance with terms of the 1936 treaty and abdicating its responsibility for sanitation in the same two cities in accordance with terms of the 1955 treaty. Recent rioting in both Panama and Colon underscore the folly of the former concessions and the failure of Panama to collect the garbage with the attendant problems of disease-bearing rats emphasizes the folly of the latter concession.

The Hay-Pauncefote Treaty of 1901 binds the United States to defend the freedom of transit of the Panama Canal and keep it open to the vessels of all nations at charges which are just and equitable. The United States has made an unblemished record at honoring this commitment ever since opening the Canal to world traffic in 1914. During the 63 years while the United States has operated the Canal as an international public utility the citizens of all nations who have used the Canal have acquired a vested right to free and uninterrupted transit under the flag and protection of the United States.

The Isthmian Canal Convention of 1903 is the only treaty which binds Panama to Articles III and IV of the Hay-Pauncefote Treaty which makes the isthmian canal an international waterway. There is no time limit on this commitment. The national honor and integrity of the U.S. demand that we retain all the sovereign rights, power, and authority granted by Panama in perpetuity in 1903.

Contrary to false statements made by the executive branch the neutrality treaty does not give the United States the right to intervene in Panama to honor our international commitments to keep the Canal free and open to user nations. In fact the word intervention appears nowhere in either treaty and was deleted in capitulation to Panama's demands. Chairman Romulo Escobar of the Panamanian People's Party and Panama's principal treaty negotiator, has made it clear to his Assembly of Community Representatives that the United States cannot intervene to defend the neutrality of the Canal without committing an act of aggression.

The publicly stated aims of the Marxist Torrijos dictatorship of Panama are: (1) to nationalize the Canal Zone, (2) to order the United States defense forces to leave the Isthmus, and (3) to confiscate the Canal. If the Senate consents to ratification of the Carter-Torrijos Canal Treaty the Canal Zone will cease to exist. Torrijos can then order United States troops off the Isthmus just as

General Charles DeGaulle ordered United States forces off our defense bases in France.

The Isthmian Canal Convention of 1903, specifically provides for the stationing of United States forces in the Canal Zone for the defense of freedom of the interoceanic canal. Under the new treaties and President Carter's contingency plan for keeping on the alert United States troops at Fort Bragg, a parachute drop on what will be again Panamanian soil will be be an act of aggression. As long as we retain our present treaty rights in the Canal Zone we can keep the peace and regain the respect of our Latin American neighbors by maintaining a strong defense in the Canal Zone. On the other hand if the Senate consents to the new Canal treaties it will be necessary for the United States to commit an act of aggression in order to maintain the neutrality of the Canal.

What is best for the nations of the free world is also best for Panama. The wisest advice was given by nine members of the Senate Committee on Armed Services in February 1973 as follows: "In a long range, we must work with Panama to help her understand that the best guaranty of her sovereignty, security, prosperity, and nationhood lies in maintaining the historic grant of sovereignty to the United States in the Canal Zone."

The United States did not transgress in any way against the Panamanian people by guaranteeing their independence in 1903. The President of the Provisional Government of Panama, José Agustín Arango, and his associates had worked for twenty years for freedom from the tyranny of the unitary government imposed upon them by Bogotá. Whenever they undertook to reassert their independence the United States had intervened to protect the freedom of transit across the Isthmus and had supported the sovereignty of Colombia. The impudent rejection of the Hay-Herrán Treaty by Colombia was for Panama a stroke of fortune. Unwilling to see the Nicaragua canal completed in accordance with the Spooner Compromise of 1902 the Panamanian patriots resumed their independence and offered the United States a canal treaty conforming in every respect to the requirements of the Hay-Pauncefote Treaty of 1901 and the Spooner Act of 1902.

When in 1911 Theodore Roosevelt boasted "I took the Isthmus" he should have added "because Panama offered herself." We have the word of Dr. Manuel Amador, "It was our own act." (Manuel Amador, "The New Republic of Panama," The Independent, November 26, 1903). President Roosevelt considered it "fitting that the United States should . . . be the first to stretch out the hand of fellowship . . . to the new-born state."

In response to Colombian protests against Roosevelt's braggadocio the United States paid Colombia the $25 million which their congress had demanded in 1903. Under terms of the Thomson-Urrutia Treaty of 1914 the United States purchased a quit claim by which Colombia recognized the independence of Panama and acknowledged that "title to the Panama Canal and the Panama Railroad now vests entirely and absolutely in the United States without any encumbrances or indemnity whatever."

Neither in the treaty of 1903 nor in any subsequent treaty concluded between the United States and Panama are the words rental or lease or any form of these words used to define the status of the United States in the Canal Zone. The continuing argument for a leasehold status of the Zone rests entirely upon the spurious interpretation of Article XIV in that treaty in which the United States agreed to pay Panama an annuity of $250,000 in gold coin starting nine years after the signing of the treaty. A study of the history of the negotiations of 1903 shows that Bunau Varilla, in an effort to resolve a deadlock, persuaded Secretary Hay to assume the annual franchise payment of $250,000 which the Panama Railroad formerly paid to Colombia. This annual payment to Panama did not impose any limitation upon the sovereign status of the United States in the Canal Zone nor upon the ownership by the United States of the land of the Canal Zone. The Canal Zone has never been leased to the United States. It was granted in perpetuity, and in this relationship no justification can be found for a partnership arrangement with Panama for the administration of the Canal.

Contrary to false statements by the executive branch Article III, paragraph 6, of the 1936 treaty revision does not say that the Canal Zone is "territory of the Republic of Panama under the jurisdiction of the United States of America." This refers to territory of Panama in the city of Colon formerly known as New Cristóbal. United States jurisdiction over this parcel of territory was later abrogated under the terms of the 1955 treaty revision.

The ruling by the United States Supreme Court in *Wilson* v. *Shaw* (204 U.S. 24, 1907) that Panama ceded the Canal Zone to the United States is not a unilateral interpretation of the 1903 treaty as falsely alleged by our State Department. It merely affirmed decisions made by all three branches of the government of Panama in 1904. In his well known letter of October 1904 to Panama's minister, Jose de Obaldía, Secretary of State John Hay cited the Davis-Arias boundary agreement of June 1904, by which the executive conceded that Panama ceded the Canal Zone to the United States by terms of the 1903 treaty. Hay cited Law No. 88 enacted by the Panamanian National Assembly in July 1904 which used the words "the Zone ceded to the United States." Hay also cited numerous court cases by which the judicial branch of Panama acknowledged the territorial cession of the Canal Zone to the United States.

The theory of titular sovereignty has no standing at law. Originally promulgated in connection with the Taft agreement of 1904 it was dismissed out of hand by Secretary of State Hay as a "barren scepter." Later while Taft was serving as Chief Justice of the United States in 1930 he had an opportunity in delivering the decision of the Supreme Court in *Luckenback Steamship Company* v. *United States* (280 U.S. 173), to give legal standing to his theory of titular sovereignty. He did not do so. Instead he sustained the ruling decision of *Wilson* v. *Shaw*, and this ruling was again sustained in 1972 when the Supreme Court denied certiorari in the case of *United States* v. *Husband* (R). (406 U.S. 935)

A pretext advanced by the State Department for renegotiating the treaties with Panama is the international law doctrine of *rebus sic stantibus* which permits the renegotiation of treaties when the conditions of the original negotiation have changed. Conditions in international relations are constantly changing, and to seek to renegotiate treaties of territorial cession on this pretext can lead only to international chaos. For example, during the early years of the Eisenhower Administration the Soviet government questioned the validity of our Alaska Purchase Treaty of 1867. This question was answered by admission of Alaska to the Union as a new state.

The Canal Zone purchase of 1903 accords with the historic foreign policy of the United States. This policy is so firmly established in international law and in the United States Code that there is now no alternative but to incorporate the Canal Zone in the Union as a new state by joint resolution of Congress. This will mandate the President to defend the territory of the new state against invasion and will fulfill the statesman-like vision of Secretary of State John Quincy Adams in the Monroe Doctrine, of Secretary of State Henry Clay, who established the principle that an interoceanic canal must be open and free to the vessels of all nations upon payment of reasonable tolls, and of President Rutherford B. Hays who stated to Congress: "The policy of this country is a canal under American control . . . . and virtually a part of the coastline of the United States."

Persistent efforts to renegotiate treaties to surrender control over national territory and to let it pass into the hands of foreign powers only promote international instability and serve the interests of these foreign powers. Claims of the State Department that a new treaty relationship with Panama will protect the vital interest of the United States are only a vain Utopian dream. To restore good relations with Panama and the other nations of Latin America the United States must return to a Good Neighbor Policy based upon self-respect. This demands that we retain all our treaty rights in the Canal Zone. We must defend them as indispensable economic, geopolitical, and military assets. Then Congress can appropriate public funds to complete the larger third locks, authorized by law in 1939 in accordance with the approved Terminal Lake Plan.

There is no substitute for an American canal, on American soil, under American control.

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"STRATEGY, SEA POWER AND SURVIVAL: THE CASE FOR RETAINING THE ISTHMIAN CANAL"

(By Lewi A. Tambs)

On Monday, June 6, 1977 a hand carried letter arrived at the White House. Addressed to President Jimmy Carter the message cautioned him against the new Panama Canal agreements and warned that loss of the Canal, which would be a serious setback in war, would contribute to encirclement of the United States by hostile naval forces and threaten our ability to survive. The communique closed with the signatures of four former Chiefs of Naval Operations—Admirals Thomas Moorer, Arleigh Burke, Robert Carney and George Anderson.

Presidents and admirals pass, but strategic imperatives and national interests remain. The bulk of the World's seabourne commerce flows through twelve major maritime choke points; four inland seas—South China Sea, Mediterranean, North Sea and Caribbean; two interoceanic canals—Suez and Panama; and six critical passage points—Singapore, Ceylon, Horn of Africa, Gibraltar, Cape of Good Hope and Straits of Magellan. These twelve choke points have been the scene of strife ever since the sixteenth century when Western Europe launched its maritime expansion. All the major sea powers—Spain, the Netherlands, France and Great Britain-struggled for domination of these passages. But by 1945 the older commercial empires were ebbing. A new biopolar world emerged. The United States stood triumphant. Control and responsibility for the global sea lanes rested with the Americans. But, the other super power, the Union of Soviet Socialist Republics, also had national and ideological aspirations.

The US sought to restrain Soviet ambitions with the Containment Doctrine of George Kennan. Containment was essentially an updating of Sir Halford Mackinder's Eurasian Heartland thesis which envisioned land power (Russia) and sea power (Anglo-Americans) juxtaposed. Secure in their air, atomic, economic and technological superiority the North Americans erected a series of defensive encircling alliances in the Rimland or Inner Crescent of the Eurasian World Island. Simultaneously behind the NATO, Northern Tier and SEATO shield they sought to promote political progress by encouraging decolonization and liberal democracy while generating economic stability by fostering free trade and private capitalism in the Outer or Insular Crescent. Containment was, however, basically defensive. The initiative passed to the Soviets. Seeping through the encircling alliance system the Russians began fueling wars of national liberation and sowing subversion. Meanwhile, ignoring the cries of their consumers, the Communists concentrated the vast resources of the Eurasian pivot area on the production of nuclear weapons, the development of heavy industry and the advancement of space technology. Within a decade and a half they had achieved near parity. Atomic warfare became almost unthinkable; nuclear devices and intercontinental ballistic missiles unoperational. The world returned, if only tempoarily, to the classical concepts of strategy and political geography where space, place, population, endowment and development are paramount. The Russians, noteably Field Marshal V. P. Sokolovsky and Admiral Sergi G. Gorshkov, having studied and digested the geopolitical theories of Mackinder, Karl Haushofer and Thayer Mahan opted for imperial adventure.[1]

The holders of the Eurasian Heartland would challenge the Oceanic peoples of the Inner and Outer Crescents—the Americans and their allies. Construction of a high seas fleet and control of the world's sea lanes emerged as a prime objective of Soviet policy. By 1959 the Russians, having made the North Sea a virtual *mare nostrum*, accelerated their intrusion into the three other inland seas—South China Sea, (Viet Nam) mediterranean (United Arab Republic) and Caribbean (Cuba). Of the two isthmian canals, Suez—since it provided the USSR with shorter seaborne link between its Atlantic and Pacific coasts just as Panama served the United States—was targeted first. In true nineteenth century colonial fashion further efforts were directed at the six critical passage points—Singapore, Ceylon, Horn of Africa, Cape of Good Hope, Gibraltar and Straits of Magellan.

Between 1959 and 1975 the world was awash with diplomatic and military maneuvers. The People's Republic of China broke with the USSR. United States' efforts to salvage South Viet Nam and the South China Sea failed. Indonesia was, however, retrieved. The Soviet Fleet entered the Indian Ocean in force. Conflict wracked the Middle East. The Suez Canal was opened and closed. From Cuba Fidel Castro struck around the rim of the Caribbean, only to be frustrated by local nationalism and U.S. counter insurgency. Salvador Allende came and went in Chile and with him a potential threat to the Straits of Magellan.

Of greater import the bipolar world of the post World War II era faded and the day of the super tanker dawned. Four nations emerged as centers of economic and political stability in their respective regions; Japan in the Western Pacific, Iran in the Mid East, the Federal Republic of Germany in Western Europe and Brazil in South America. Recognizing the new reality the United States sought to shore up the shattered Mackinder-Kennan system along the Eurasian rimland while Brazil was given special recognition in South America. But the world had also altered in another way. The repeated closings of the Suez Canal, the economy of petroleum transport and the mounting dependency of the industrialized nations on imported oil heralded not only the advent of the super tanker, but also the evolution of a new strategic map. The oil sea lines of communication (SLOC) which had previously passed from the Middle East to Western Europe and the United States by way of the Mediterranean now ran southward through the Indian Ocean, around the Cape of Good Hope and up the South Atlantic. The world was turned upside down; the globe inverted. And the Soviets were astride the sea lanes on both coasts of Africa.[2]

In April 1974 the dominoes had begun to totter. Portugal, targeted along with Spain and Morocco by the Soviets in their Plan Oran, trembled. Mozambique and Angola swayed with Soviet-supported insurgency. Saigon fell in March 1975 and with South Viet Nam went Cambodia and Laos. Mozambique and Angola were pushed into the Socialist orbit by Russian trained and supplied Cuban regulars. The United States apparently paralyzed by its inability to implant Wilsonian democracy in Indo-China, stunned by the failure of its machines to impose its will on the minds of the North Vietnamese and torn internally by the defection of the intelligentsia, stood by helplessly. The United States which had stood triumphant in 1945 was within thirty years in retreat everywhere. America's major allies—Japan, Iran, West Germany and Brazil sensing the metaphysical crisis, scrambled to save themselves.

The proposed new agreements with Panama are but another example of the decay of America's instinct for survival, sense of strategy and commitment to freedom. Even John F. Kennedy's declaration that the mission of the United States was to make the world safe for diversity seems to be forgotten as totalitarian Marxist-Leninist regimes supported by Soviet subversion and sea power spread over the globe.

The cruise of the *USS Oregon* from the Pacific to the Atlantic during the Spanish-American War of 1898 dramatized the need for an American isthmian canal. The voyage around Cape Horn added 8,000 miles and almost two months travel time to the voyage. Assuming that Cape Horn and the Falkland Islands are in friendly hands, a modern war vessel steaming at 20 knots still needs an additional 17 days to complete the cruise around South America when compared with the 8 to 10 hours required for the Panama passage. Possession of the Panama canal, moreover, has allowed the United States the economic advantage of maintaining one fleet by shifting units back and forth rather than supporting the cost of a two ocean navy. The continuing value of this concept was proven during the Viet Nam War. In 1968 at the height of the conflict 1504 US Government vessels utilized the canal. Even in the relatively sombulent years of 1974 and 1975 the number totaled 248 and 170. Of the 176 combat surface ships and 75 attack submarines currently on active duty with the United States Navy, only 13 large aircraft carriers cannot transit the canal. However the vast majority of warships can. The need for the US Navy to retain the ability to shift units is further accentuated by the increasing presence of Soviet task forces in the Gulf of Mexcio and the Western Atlantic. This is especially critical given the numerical superiority of the Soviet Fleet which lists 214 major combat ships and 231 attack and cruise missile submarines. All of which, curiously enough, can pass through the Panama Canal.[3]

In modern naval warfare submersibles hunt submersibles. The USSR enjoys an advantage over the US attack submarines. They also have a geographical advantage. While the US is essentially a large land mass surrounded by water, the USSR is an even larger land mass essentially surrounded by land and frozen seas. Thus Soviet submarines carrying relatively short range missiles can stand off North American coasts and cover the continent, while US Polaris submersibles stationed in the North Atlantic, Indian Ocean and Western Pacific must be equipped with the expensive Trident missile system with a range of 4,000 miles. Detection, location and tracking of submarines depends on underwater sound and satellite systems; the kill by aircraft or attack submarines. Control of the Canal Zone adds to US aerial surveilance and permits the immediate transfer of attack submarines to regions frequented by Soviet submersibles, and thus aids the defense of the continental United States.[4]

US foreign and coastal commerce also depends on the Canal. In 1975 over 16 percent of all US seabourne trade used the waterway. Moreover, statistics reveal that down through the years a constant average of about 70 percent of all cargo through the Canal is bound either from or to a US port. The economics of water transport for bulk products such as grain or petroleum are well known. Midwestern grain growers who ship their cereals by way of the inland waterways and the Missouri and Mississippi on to US and foreign Pacific ports by way to the Canal depend on inexpensive tolls for their small margin of profit.

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Footnotes at end of article.

If the Canal were closed many would be ruined for the Cape Horn route would result in an estimated 31 day increase in shipping time. Under US administration, rates remained relatively stable from the opening of the Canal to 1974. Current transit cost averages around 8,000 dollars per vessel.

Tolls set merely to cover operational expenses cannot be guaranteed under the new isthmian treaty. Brigadier Omar Torrijos, Panamanian Chief of State, has repeatedly stated that the Canal is a natural resource and will be exploited as such. Torrijos' need for funds is certainly understandable. Panama's external debt which amounted to 167 million dollars when the civilian government was ousted in 1968 now totals 1.5 billion. Most of these debts are owed to US banks. Torrijos and his creditors need money and the Canal is the milch cow. Even Sol Linowitz formerly of Marine-Midland Bank and currently the State Department's co-negotiator has admitted that tolls will increase immediately 25 to 30 percent upon ratification of the treaty.

This initial increase in rates will also include petroleum shipments. Oil from Alaska's North Slope has already passed through the Canal. A super tanker from Valdez transhipped its cargo at Balboa into three regular tankers which carried the oil to US ports. Since Gulf ports are unable to accommodate super tankers anyway, off-loading at Balboa is currently the most feasible. Nevertheless utilization of the four existing 10 and 20 inch diameter US Navy pipelines running through the Canal Zone might prove more economical in the long run for supplying the energy starved East Coast. Thus the argument of proponents of the new treaty that the Canal is obsolete because it cannot take super tankers is redundent. Particularly so since vessels such as the *San Juan Prospector*, at 108,770 DWT and with a length of 972' have already transited the isthmus. Erroneous also is the contention that the Canal has already reached its limit. The Canal presently handles 30 to 40 ships a day. Maximum capacity is estimated at 70 vessels per day: a figure projected for 1990. Moreover, the Terminal Lake—Third Lock Plan initiated by President Franklin D. Roosevelt but halted in 1942 would almost double the numbers of ships that could be handled if it were completed.

The charge that the Canal is vulnerable to atomic attack and sabotage is partially correct. Nothing is completely impervious to nuclear warheads. But given the prevailing balance of terror this possibility is more potential than immediate. Especially now, since the Soviets through the application of sea power and subversion are gaining their objectives anyway. Sabotage can be minimized by proper security measures. Moreover, if the existing US garrison of 9,000 cannot assure the internal security of the Zone, how can the Panamanian National Guard of 6,000, tied down as it is with running the republic protect the Canal? Especially when it must confront 1,700,000 citizens who have been deprived of their civil rights since the military coup of 1968. The question of building up the Panamanian Armed Forces has a direct relationship to human rights and military dictatorship. If the National Guard, supported by US subsidies and increased Canal tolls, is expanded to a level to provide even only adequate police protection, not military defense, will not the US be responsible for strengthening the hold upon the Panamanian people of an already repressive military regime that has banned all political parties but has permitted the Communist Party to operate openly and whose Chief Negotiator Romulo Escobar Bethancourt is "an extreme leftist and friend of "Che" Guevara." [5]

Given Soviet interest in Panama, the political coloration of Escobar, and Torrijos' open admiration for Fidel Castro, other Latin American nations are beginning to wonder about the wisdom of turning over the Canal to Panama. Brazil has a burgeoning trade with the Far East. Some 8 percent of Brazil's foreign commerce is with Japan and rising. If the Canal falls into hands hostile to Brazil there are only two other sea routes to the Pacific. One around the Cape of Good Hope is monitored by the Soviets. A second around Cape Horn is "precarious." [6] Given the hazards of the Cape of Good Hope and Cape Horn, Brazil will probably have to seek a peephole on the Pacific. The most feasible is a transcontinental route from Santos to Arica, passing by way of Bolivia and Chile or Peru. For the Brazilians like the Russians are avid students of geopolitics. They believe that since 70 percent of the world's population and 70 percent of the globe's unexploited natural resources lie along the rim in the Pacific basin which includes the Indian Ocean, that the Pacific is the ocean of the future. And Brazil is an emerging power—a land of the future.

The Pacific coast states of Latin America are also wary about the Canal, for they are even more dependent than Brazil. Thirty-four percent of Chile's maritime trade passes through Panama; 41 percent of Peru's; 51 percent of Ecuador's; 66 percent of El Salvador's; and 76 percent of Nicaragua'.[7] Higher tolls are going to hurt. Conversely, Mexican commerce will be the least effected. The Mexicans, however, should realize that as the Canal slips out of US hands Yankee interest is going to increase in the Gulf of California and the Isthmus of Tehuantepec. Argentina finds itself in a similar situation. Like many of the other Latin American nations they have vociferously supported a Panamanian take over. As the date draws near they are not so certain. For the Argentines want the British-held Kalkland Islands and fear that as US sovereignty over the Canal slips away an enlarged North American presence will be felt in the Falklands and Cape Horn as well. Neither of these prospects are welcome in Argentina. Victims of their own rhetoric, Latin American politicians are beginning to look to the US Senate to save them from Panamanian economical extortion and mounting American pressure. Many would prefer to leave the situation as is for they are aware of the similarity with Suez. They could then continue to berate the US and at the same time have their national interests preserved.[8]

But who speaks for America? In general the backers of the new treaty are the same ones who decried the reputed errors of Presidents Eisenhower, Kennedy, Johnson and Nixon for involving the US in Southeast Asia. Simultaneously these supporters salute these same chief executives for their statecraft in Panama. The concessions of 1959, 1963, 1964, 1967, 1970, 1973 and 1974 have, however, only provoked an escalation in Panamanian demands. Could it be that these presidents who supposedly followed a bankrupt policy in Viet Nam also erred in Panama? Our negotiators Ellsworth Bunker and Linowitz have assured us that the US retains the right to intervention and that US warships will receive immediate dispatch through the Canal. This appears to be a private revelation since both Torrijos and Escobar deny this interpretation. Moreover, our diplomats have protested that the only way to protect the Canal was to deed it to Panama. The Panamanians, the argument went, would never destroy their prime natural resource. Torrijos has a different view. On October 7, 1977 he proclaimed that "Senate rejection of the treaty could lead to the closing of the Canal." [9] Who are we to believe? Bunker and Linowitz or Torrijos and Escobar?

Who speaks for America? Once sovereignty is lost, the Panamanian Government will have every legal right under eminent domain to expropriate the Canal, treaty or no. Moreover, the U.S. has no assurance that Torrijos will not ally himself with his idol Fidel Castro. Nor do we have any guarantee that succeeding Panamanian governments will honor the agreement. This is a chancy business.

The Panama Canal is one of the world's major maritime choke points. Since 1959 the Soviet Union has emerged as a great maritime power. Challenging the United States and its allies—the Sea Peoples of the Mackinder thesis and the Kennan Containment Doctrine—on all the oceans of the world, the Russians have intruded into every inland sea, canal and passage point on the globe. Now as the United States withdraws into the shell of Fortress America even maritime communication between our own Atlantic and Pacific coasts is endangered. As the four former Chiefs of Naval Operations warned the President; "under the control of a potential adversary the Panama Canal would become an immediate crucial problem and prove a serious weakness in overall United States defense."

Gentlemen, I urge you to reject the proposed Panama Canal Treaty.

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[6] Interview with high Brazilian General Staff Officer, August 1977.

[7] Interviews Brazil, Uruguay, Argentina, Paraguay and Bolivia, August–September 1977.

[8] Council of the Americas, *United States, Panama and the Panama Canal* (New York: 1977), pp. 15–16.

[9] A P. dispatch, Stockholm in *Phoenix Gazette* October 8, 1977, p. 1.

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STATEMENT BY PHILLIP HARMAN

Mr. Chairman and distinguished members of the Senate Foreign Relations Committee:

I am honored to be here today. I have been waiting for nine years to be a witness ever since the Oct. 11, 1968, overthrow of Panama's constitutional and pro-U.S. government of President Arnulfo Arias, to give testimony as to how the current Panamanian government came to power and what their objectives are that are detrimental to the best interests of the United States and of the gagged people of Panama who have lived in a police state for the past nine repressive years.

As I have been involved directly and indirectly with Panama since 1941, many people believe that I am a Panamanian. I am not. I am an American. At one time I was appointed by President Roberto Chiari as an Honorary Consul General of Panama in California. Concerning Panama, a country that was founded by my grandfather-in-law, José Agustín Arango, and a country that I have lived in and know well, especially the judicial and political background, I would be derelict in my moral obligations to my country and to myself if I did not devote all of my time and efforts in exposing the illegal and pro-Cuban-Russian military dictator-

ship in Panama that is dedicated to bring Panama under Cuban-Soviet domination. When I started my campaign in November of 1968 to expose the military regime in Panama, I was the only one doing so. After the Kissinger-Tack agreement on Feb. 7, 1974, numerous organizations emerged to protest this agreement and today this issue has engulfed most of the United States.

Today, I would like to outline three factors that I believe are pertinent as to whether or not the U.S. should ratify a treaty with the current de facto Government of Panama.

My first factor concerns the illegality of Panama today to sign a treaty with the United States. On Oct. 13, 1968, the Executive Board of the Panamanian Bar Association in a declaration addressed to the people of Panama and all professional, labor and student organizations stated:

"These events (the seizure of the Government of President Arnulfo Arias on Oct. 11, just two days ago) must be evaluated in the light of Article 2 of the nation's Constitution which clearly provides that the public power emanates solely and exclusively from the people and that it is exercised through legislative, executive and judicial agencies. Consequently, any act by an organization, institution or group other than those authorized under the national Constitution to exercise the public power is illegal and a flagrant violation of the basic principles underlying the democratic system."

I am enclosing with my statement the complete report of the Panamanian Bar Association. It should be noted that on Oct. 11, 1968, the Government of Panama ceased to be a constitutional organ and therefore any amendments to the legal 1946 Constitution would be non-constitutional and invalid as stipulated by Article 252:

"This Constitution may be amended only by a legislative act enacted by the National Assembly in regular sessions, which must be published and transmitted by the Executive to the Assembly in the first regular sessions following new elections for Deputies, so that it may again be debated and approved by an absolute majority of its members."

According to the 1972 spurious amendments of the 1946 Constitution enacted by the current Panamanian government, any new treaty must be submitted to plebiscite. However, as the Panamanian government today is non-constitutional as outlined in Article 2 and with all political parties banned and their National Assembly dissolved in 1968, even a plebiscite would not have the force of law as outlined by Articles 2 and 252 of the 1946 legal Constitution of Panama. As the United States acknowledges legitimacy of the present Panamanian government based on de facto control, it should take into consideration the possibility that any treaty ratified with Panama could be disregarded by future generations and by the constitutional governments that no doubt will come in the future. We should be reminded as to how the 1903 treaty with Panama has been so severely criticized throughout the years.

My second factor concerns the violation of human rights in Panama and in particular to the murder of a Catholic priest, Father Héctor Gallego, on June 9, 1971. On August 21, 1972, the French Press Agency from Barranquilla, Colombia, reported the statement made by Father Pedro Hernández Rabadal. I will quote a part of his official statement and will include the total news release with my statement:

"Father Gallego perished. This was the information given to me by one of the guards who seized him by order of the government. He was captured at midnight. Father Gallego was reluctant to leave the house, but, since he was a guest in the home of friends whom he did not wish to compromise, he agreed to leave.

"The guards forced him into an official car. Father Gallego, thereupon, cried out for help. But the guards struck him with a revolver until he fainted. Since he did not recover from the beating, he was taken to a military hospital, where the doctor diagnosed the case as a skull fracture. While still under observation in the hospital and without recovering consciousness, Father Gallego suffered an embolism which paralyzed him."

Faced with this emergency, the authorities in Veraguas saw themselves obliged to consult the central government and the news reached General Torrijos.

"He lamented the situation and emphasized that it was not because of his orders that this had happened, but that 'now there was no remedy.' He added that it was better that the priest perish and not all those charged with government. He also expressed fears that, if the news became known, he and his associates 'would be ousted'. It was better, under the circumstances, for the invalid priest to disappear, to be 'taken up in a plane and to be tossed into the sea'."

Furthermore, the Government of Panama prevented the Catholic Church from hiring a special investigating team from Mexico to investigate the disappearance of the priest. On July 20, 1971, the government sent an official note to the Church stating:

"Your petition cannot be accepted, since this might be interpreted almost as an attempt to lessen the legal and moral value of our demands to the United States Government concerning our right to jurisdiction in the Canal Zone. It would appear as if one were doubting the capabilities of our authorities to investigate crimes and find the responsible ones at a time when we are demanding this right in the Canal Zone."

An essentially and profoundly Christian nation, the people of Panama can forgive but they will never forget the sadistic death of Father Gallego that was ordered by Omar Torrijos. Bishop Legarra of Panama has described the priest as "an authentic witness of the Gospel" and that Father Gallego had been persecuted for defending the cause of the poor, the peasants of Santa Fe."

I also would like to quote a statement made by Ruben D. Carles, Jr., a former cabinet member of a previous Panamanian administration. Mr. Carles, an officer of the Chase Manhattan Bank in Panama, was arrested by the Secret Police (G2) of the National Guard on January 20, 1976. He is now in exile in Honduras. In a report that he made last year about his arrest and deportation, he wrote:

"The case of the Panamanian exiles of January 20, 1976 testifies to the repressive and oppressive attitude of the military dictatorship. In contrast to the statements made by the military government there has never been a conspiracy or any kind of subversive action. In spite of the fact that people in Panama officially talk about ideological pluralism and the existence of freedom in the country, there is no freedom. In spite of the fact that the Constitution permits the existence of political parties, there are no parties except the Communist Party (Partido del Pueblo—The People's Party). While the government of Panama speaks for the freedom of the people at international meetings and organizations, it treads upon the freedom of the Panamanian citizens: Panama is a country occupied by the National Guard."

Mr. Carles further wrote about his arrest prior to his deportation:

"Our guards were more human and obliging than the officers who frequently visited us. Gradually the tension subsided and soon a sympathetic and cordial relationship was established between the guards and the prisoners that contrasted with the arrogance and rudeness displayed by the officers.

After we had spent some time in that room under the previously described conditions two officers told us that we had to file individually into the adjoining building. They did not say why. We complied. There they searched us and took away our personal documents and identification cards. When we went to the next room, they snapped pictures of each individual and subsequently ordered us to step inside a hall where we faced six guards commanded by two officers. We were told to remove our clothes and hand them over to them. When we asked whether we had to strip completely they used obscenities and ordered us to even remove our socks. They put our clothes to one side and while standing next to each other we watched the guards searching our billfolds and examining the papers they found. I did not understand why there was a need to search them.

Maybe this was some sort of a phychological scheme designed to offend and morally debase prisoners. They very rudely examined and registered the contents of my billfold and allowed me to keep only my identification card. The guards kept the credit cards and other documents. Finally they removed my wife's picture. The officer very rudely told me that I won't need it where I am going.

They also took away our belts and neckties. Luckily they gave me back my buckle and my cash. Although I told the officers that I could not stand naked in a drafty place they mockingly replied that nakedness meant just what it said. Still I did not know whether they were satisfied; they wanted to see us in the nude. I just cannot understand what the chiefs in the National Guard have been teaching their subordinates."

Although racial discrimination is a form of violating human rights, I would like to bring to the attention of this Committee, a list of ten races that the current Government of Panama bans from immigrating to their country. The ten races are:

"Restricted immigration. (a) The following listed categories of persons are considered to be persons of restricted immigration to the Republic of Panama:

(1) Arabs.
(2) Armenians.
(3) Gypsies.
(4) Hindostanians.
(5) Lebanese.
(6) Negroes (whose language is other than Spanish).
(7) North Africans (of Turkish race).
(8) Palestinians.
(9) Syrians.
(10) Turks.

(b) The prohibitions against the immigration of persons of the above-listed categories is directed at the race of such persons rather than their nationality at the time of arrival."

I will include a copy of this list with my statement.

The third and last factor that I want to elaborate on pertains to communism in Panama and it is a subject that I am closer to, I believe, more than any other American. Back in the fifties and sixties, I headed what was known as the "anti-Communist world" in the Republic of Panama. Let me explain this. Within the Secret police (comparable to the FBI in our country) of any Latin American country, there is a small group of men who do nothing but try to eliminate and counteract as well as exposing communism in their country. This is a very secretive type of operation because one is not only dealing with the Communists in their country but the power of the Soviet Union behind them who supports and advises the Communist parties in all of the Latin American countries. It is a never ending battle.

Regarding Panama, the Communist Party was organized in 1930 with two basic objectives.

a. To gain control over the Government of Panama from within. This would be accom-

plished by gaining control over the armed forces of the nation.

(b) After the first objective was finalized, they would then attempt to gain control over the sovereignty of the Canal Zone through a massive propaganda campaign. Once the sovereignty is surrendered through treaties, the Canal would then be nationalized.

In 1943, during the war years, a directive was sent from the Kremlin to the Party in Panama to change their name from the Communist Party of Panama to the Peoples' Party. In Spanish it is called "Partido del Pueblo." The psychology behind this was to give the impression to the Panamanian people that their Party was for the people. However, in referring to the Party, the Panamanian people still call it the Communist Party.

The basic policy of the Kremlin concerning the Communist parties in the countries throughout the world is for these parties to be self-sufficient. However, because of the Kremlin's maritime strategy to control all the main waterways of the world, and they have classified the Panama Canal as the most important, the Panamanian Communist Party was placed in a special category with top priority which allowed the Party to receive outside aid in the form of money, propaganda material and experts in subversive and propaganda fields. This outside assistance came primarily from the Russian embassies in Cuba, Colombia and Mexico.

The Communists in Panama first showed their strength in 1941 when hiding behind other people they maneuvered the first of three overthrows of President Arnulfo Arias' governments. There were three reasons why the Communists had to remove President Arias in 1941:

a. In 1939 during his campaign for the 1940 presidency, Mr. Arias publicly said "the Soviet Union wants my country as a stepping stone to gain control over the Panama Canal."

b. During his presidency in 1941, he enacted into law Panama's Social Security System.

c. He passed a law for the right for women to vote.

These three points were negative ones to the Communists. They finally decided that President Arias was the Panamanian that should be targeted in on and be kept out of office.

On November 24, 1949, Dr. Arias again became the President. On April 1 of 1951, sensing the Communist threat to the country, President Arias signed a bill banning all Communists from holding public office. His bill was rejected in the National Assembly on April 11. A few weeks later on May 10, the agents of the Kremlin who hide behind other people in Panama, were able to topple his government and influence the Assembly to take away his civil rights for 10 years.

On the afternoon of July 22, 1956, I met with Secretary of State John Foster Dulles, in Panama at the request of President Fulgencio Batista of Cuba. I explained to the Secretary the objectives of the Communist Party of Panama and the danger to the security of the Panama Canal if and when the Communist Party gained control over the Panamanian government. I told him that when the Communists felt they had control of the National Guard, they would then seize the nation.

I further explained to the Secretary what had to be done to counteract the initiatives of the Communists in their strategy of indoctrinating the officers of the National Guard. Mr. Dulles was very receptive to what I had to say but, unfortunately, for me and Panama, Nasser grabbed the Suez Canal four days after our meeting and the Communist problem in Panama was set aside for the time being.

During the years that I exposed communism in Panama, I had profiles on over 2800 Communists whom I had identified as being associated with 22 Communist fronts, outright members of the Communist Party or who were guilty by close association with well known Communists.

In November of 1956, I gave the CIA station chief in Panama the names of Captain Omar Torrijos and his brother, Moises, also known as "Monchi" as being identified with various Communist fronts. Moises Torrijos was a very well known columnist in Panama who always slanted his columns in favor of Russia. Concerning his younger brother, Omar, he was a member of a Marxist organization in Veraguas Province called "Young Veraguas." Drew Pearson later identified him in his column on Nov. 19, 1968, as a member of the Communist Party.

Also, I gave the CIA the names of two of Omar Torrijos' sisters, Toya and Berta. In October of 1966, Toya Torrijos de Jaén (married to Marcelino Jaén who signed the economic pact with Russia last July) was arrested at Tocumen Airport in Panama for attempting to bring in two suitcases of Marxist literature. Today, she controls all scholarships at the Institute for the Formation and Exploitation of Human Resources.

Berta Torrijos is now President of the Panamanian Institute of Special Education and is prominent in women's movements. Whenever Mrs. Hortensia Allende, the widow of Salvador Allende of Chile comes to Panama, Berta Torrijos is her host.

It should be brought out at this time that 39 relatives of Omar Torrijos hold key government positions. I am enclosing a list of the relatives with my statement.

Regarding the 1964 riots in Panama from January 9-11, we documented the names of the Panamanian Communists who played a major role that caused the lives of 21 Panamanians and 4 Americans. For example, Adolfo Ahumada, now one of the treaty negotiators and currently the Minister of Labor, was one of the engineers of the riots. Ellsworth Bunker, then the Ambassador to the OAS, stated that it was Communist inspired. With my statement today I would like to enclose an article from the Washington Daily News of Jan. 31, 1964, in which they list several names among the Communists who were responsible for the riots. Of the names listed are Eligio Salas, now the head of the University of Panama, Ruben Dario Souza, currently the Secretary General of the Communist Party of Panama and Carlos Nuñez, a well known Communist who is the editorial page columnist for the government controlled newspaper, "Critica." He is also a past President of CONADESOPAZ, a Communist front organization.

The riots had nothing to do with the Panamanian people protesting the presence of the United States in the Canal Zone although this is the propaganda that the Communists wanted the world to believe and, unfortunately for us, they were successful.

The real motive behind the riots concerned Fidel Castro. In October of 1963, the Kremlin told Castro that further aid would be contingent upon his ability to produce another victory in Latin America for the Soviet master plan. As Castro's plans for Venezuela that year had failed and President Betancourt had filed aggression charges against him with the OAS, Castro decided to foment an explosion in Panama that could serve to blacken the image of the U.S. and possibly compel the OAS to give priority to the newer case and defer action on the Venezuelan charges against himself.

All the elements for a successful diversionary operation were available in Panama. Waiting to fall on the prey was an efficient and well organized Communist Party, with allied "fellow-travelling" organizations, whose activists had been skillfully trained in Cuba, Prague, Moscow and Peking for that purpose. The explosion occurred on the night of January 9. The Venezuelan charges against Castro were given a lower priority for Panama filed accusations against the U.S. before the United Nations and the OAS. Within a few days Castro flew to Moscow and was warmly embraced by Khrushchev. On January 17, accompanied by Castro, Khrushchev in a public speech at Kalinin, Russia, referred to the Panama crisis "These events in Panama were not organized by Comrade Castro. These events are the result of the predatory policy of the U.S. imperialists. He further said "They want to free themselves from the oppression of the U.S. imperialists. This is a legitimate desire and we are on the side of the people of Panama." No one expected Khrushchev to confess publicly that Castro's red hand had dipped deeply into the banks of the Canal to produce a crisis.

The start of the power of the Communist control in the National Guard finally surfaced on March 24, 1968, when the National Assembly, the Congress of Panama, impeached President Marco Robles for using government funds, to back ex-Finance Minister David Samudio, his National Liberal's choice for president, in the scheduled May 12 election.

The Assembly voted 29–0 to oust Robles. It then installed First Vice President Max Delvalle as Presid nt. As the Deputies voted, the National Guard surrounded the Assembly building and issued a statement saying that the force "cannot support the decision of the National Assembly" and would wait for a verdict from the Panamanian Supreme Court. The nine member Supreme Court ruled on April 5 that Robles' impeachment and conviction had been unconstitutional. Actually, the ruling of the Supreme Court was not valid inasmuch as the Constitution of Panama clearly states that only the National Assembly can impeach the president of the country.

By the National Guard forcing the Supreme Court to make an illegal ruling showed the strength of the Communist indoctrinated officers led by Major Boris Martinez and Lt. Col. Omar Torrijos and it was a handwriting on the wall of things to come. Vice President Max Delvalle, who was in line to assume the presidency after the impeachment of President Robles, is a member of the Jewish faith and a very prominent businessman. For reasons only known to Martinez and Torrijos, they did not want a Jewish president in the Western hemisphere even though it was for only a period of six months.

Regarding the overthrow for the third time of President Arnulfo Arias' government on Oct 11, 1968, it would take too long in this statement to go into all of the mechanics as to how the coup was done and the names of the numerous Communists who were involved. What is not known is that there were two attempts to overthrow President Robles on September 26 and 29 of that year in order to prevent President Arias from taking office on October 1. Unfortunately for the Communists, President Arias was able to take office on October 1. Actually, he still is the constitutional president as by Panama's legal Constitution he has never served his term of office.

The people of Panama were very touched by President Arias' inaugural speech especially when he talked about the rural development of the country. He was aware that only 28 percent of the farmers in his country have legal title to the land they till and he had plans for them to obtain titles that would not be costly. He knew that the farmers would be more willing to better utilize and improve their land if they had the security of ownership. A World Bank report of April, 1976, still confirm that 28 percent of the Panamanian farmers do not have title to their land. I am enclosing a copy of President Arias' inaugural speech in which he refers to "Rural Development" as a part of my statement.

One of the many fallacies that the military regime in Panama have exploited is that Omar Torrijos was the one that did the revolution against President Arias. This is not so. The coup was led by Major Boris Martínez, a former Communist leader of students at the University of Panama. Torrijos was kept innocent of the coup because of his excessive drinking problem.

After the overthrow of President Arias' government, I called Drew Pearson in the latter part of October of 1968 and asked him to do a column on the situation in Panama. I gave him the names of Boris Martínez, Federico Boyd, Omar Torrijos and others and told him that the CIA had profiles on these people. On November 19, 1968, he devoted his whole column to the coup entitled "Paint Panama Junta Pink" and identified Omar Torrijos as being a member of the Communist Party. I am enclosing a copy of his column with my statement.

On October 27 of 1968, I notified the Department of State that President Johnson and Secretary of State Dean Rusk should take into consideration that a precedent had already been set in Latin America that would allow the President not to recognize the military coup in Panama. This precedent involved the 1933 illegal government of Dr. Ramón Grau San Martín of Cuba. The U.S. withheld recognition of Dr. Gran San Martín's government because it did not represent the Cuban people. His government quickly fell. For whatever reason, President Johnson decided not to abide by this precedent and recognized the Military Junta in Panama on Nov. 13, 1968.

One of the four requisites for reopening diplomatic relations with the Military Junta was their promise to hold free elections. Actually, Panama had free elections just six months before. However, the regime in Panama did hold elections on August 6, 1972, but they were not "free." These elections were to elect 505 Community Representatives who were already chosen by the Communist controlled military.

These 505 representatives then installed the already provisional president, Demetrio Lakas, as the president and Omar Torrijos as the Chief of Government.

I would like to explain how Omar Torrijos became the Chief of Government and what happened to Boris Martinez who actually did the coup. As I was cognizant of the Communists' post-seizure strategy in Panama which was not to alarm Congress, it had to be one of "low profile." Although Martínez brought in Torrijos immediately after the coup and allowed him to share power with him, Martinez wanted to move too fast and this frightened the top members of the Communist Party such as Rómulo Escobar Bethancourt, Marcelino Jaen and Juan Materno Vásquez. Incidentally, after the coup, Escobar Bethancourt made himself the head of the University of Panama, Jaén assumed the presidency of the National Legislative Commission that makes all the laws and Vásquez appointed himself as the president of Panama's Supreme Court. The country was their's.

Five months later on March 6, 1969, the Communists "purged" Martínez and brought in Omar Torrijos, who is a brother-in-law of Jaén, to be in complete control of the National Guard and the strongman of the country. On March 14, they made him a Brig. General.

Concerning the current president of Panama, Demetrio Lakas, I would like to explain how he assumed this high position. First of all, Mr. Lakas owns all of the houses of prostitution in Panama (I am enclosing the Congressional Record of July 22, 1971 regarding Mr. Lakas with my statement). As prostitution is illegal in Panama it meant that the officers of the National Guard had to be paid off in order to stay in business. Of the many officers that Mr. Lakas made friends of in the National Guard was Omar Torrijos. On Dec. 15, 1969 Torrijos and Lakas were in Mexico City supposedly attending a horse race when the Assistant National Guard Commander Ramiro Silvera and Chief of Staff Amado Sanjur issued a communique over the signatures of the two provisional junta members, Cols. Jose Maria Pinilla and Bolivar Urrutia, proclaiming the overthrow of Omar Torrijos.

Hearing of the attempted overthrow, Lakas and Torrijos flew by chartered plane to David, a western Panamanian city 210 miles from Panama City, where he was greeted by local National Guard officers. In the meantime, Silvera and Sanjur had failed to consult in advance with most of the staff officers and commanders of the 10 National Guard districts in the interior of the country. When word of Torrijos' planned return spread, these officers rose to support him. The National Guard then arrested Silvera and Sanjour and provisional President Pinilla and Vice President Urrutia were placed under house arrest in the Presidential Palace.

A two-man civilian junta was sworn into office on Dec. 19 to replace Pinilla and Urrutia. Lakas was appointed provisional president and has been there ever since. Albert Sucre, the National Lottery director, was named Lakas' deputy.

At this time I would like to mention a few facts about the intelligence gathering forces in Panama. Prior to the coup in 1968, Panama had two intelligence sources in their country; namely, the CIA and the DENI which is the intelligence branch of the Panamanian government. They both worked together closely and in harmony. Today, there are now four intelligence agencies working against the CIA and the suppressed people of Panama:

a. The DENI of the Panamanian government.

b. The G2 of the National Guard.

c. The DGI of Cuba that operates out of the Cuban Embassy.

d. The KGB who are in Panama with the Novosti Press Agency.

Prior to the coup, the CIA had several Panamanian informants working for them. Today, the story is different as these informants are reluctant to work for the CIA due to the close surveillance of the four anti-CIA agencies who are constantly trying to find out who are the Panamanians working for the CIA. Because of this lack of Panamanian informants, the intelligence gathering of the CIA in Panama has been diminished.

To sum up the Communist picture in Panama, several factors should be noted:

a. On April 8, 1974, Omar Torrijos brought a planeload of "Montoneros" from Argentina to Panama on a Panamanian plane. The "Montoneros", if you recall, is the Marxist group in Argentina that have been doing and still are, all of the kidnappings, assassinations and riots in Argentina. How many trips they have made to Panama, we do not know. They were brought specifically to Panama to train Panamanians in subversive activities. I am enclosing with my statement a picture and article concerning their trip to Panama.

b. In 1975, Escobar Bethancourt, the chief treaty negotiator, and Aristides Royo, the deputy negotiator and Minister of Education, formed an "Anti-Fascist" Committee which included 38 Communist organizations including the "Peoples' Youth Party" which is the youth organization of the Communist Party. On July 26 of that year, their Committee celebrated Castro's 22nd anniversary of his attack on the Moncada Barracks. I am enclosing with my statement an article about this Committee formed by Bethancourt and Royo.

c. From June 28 to July 5, a Russian mission of three visited Panama to discuss the possible opening of diplomatic relations. I am enclosing an article about their visit as a part of my statement.

d. On July 11–19, another Russian mission came to Panama where they signed an economic agreement with Marcelino Jaén, Torrijos' brother-in-law. After the signing, Jaén said "with the signing of this document that constitutes the final draft of an agreement in which the Governments of the USSR and Panama have participated, is an event of deep historic significance, not only for our country but for the American continent as well, who are always facing strong forces that represent a philosophy that is contrary to the destiny of Latin America." I am enclosing a copy of Mr. Jaén's remark with my statement and the agreement that was signed.

e. Also, during this visit, the Soviets visited the fishing port of Vacamonte on the Pacific side of Panama near the Howard Air Force Base concerning a possible Russian naval base for the future.

f. On August 6, 1977, at a farewell press conference in Bogotá, Colombia, a question was asked of Torrijos by Jaime Arango of Super Radio "General Torrijos, are you a Communist?" Torrijos refused to answer but Bethancourt did by saying "Each individual has the right to choose the political ideology he likes." I am enclosing Bethancourt's complete answer with my statement.

g. On Sept. 9, 1977, after signing the treaty with President Carter, Torrijos sent a telegram to Fidel Castro when he was flying over Cuba on his way home saying "I salute you with my everlasting friendship." I am enclosing a copy of his telegram with my statement.

In conclusion, I would like to show the Committee how the current government in Panama permits our American flag to be sold in the stores to be used as rags to clean your shoes or wash your car. I cannot think of any other country in the world today that desecrates our American flag.

Thank you Mr. Chairman.

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TESTIMONY OF MR. FRANKLIN DELANO LOPEZ

Mr. Chairperson, Distinguished Senators: I appear before you on behalf of the New Democratic Party-Puerto Rico, an organization of thousands of Puerto Ricans and residents of the island. Mr. Juan M. Garcia Passalacqua our counsel is here with me today.

Early on January, 1976 we decided to endorse the candidacy of Jimmy Carter on the basis of a message sent to us through his then field operation director, Mr. Tim Kraft. That message included his vision for a new policy towards Latin America.

The President has kept his promise to us. This has been excellently stated by Graham Hovey in a recent issue of the New York Times, as follows:

"President Carter has launched a Latin American policy shorn of the traditional rhetoric and prodigal promises, with strong emphasis on human rights but enough flexibility to conclude new canal treaties with Panama and to reopen relations with Cuba.

"It is a policy that relies heavily on personal contact but shuns both the visions of lavish economic aid that ushered in the alliance for progress in 1961 and the oratory of Pan Americanism—Simon Bolivar's dream of a united continent—that clothed most earlier Washington approaches to the Western hemisphere."

In fact it is not a single policy, as Carter himself emphasized in a Pan American Day speech in April, but a series of approaches to individual problems, many of which cannot be solved in the hemispheric context or through the machinery of the Inter-American system.

The President contributed the most dramatic chapter, not only with the signing cer-

emony for the Panama treaties, attended by officials of 28 hemisphere governments on September 7, but with 16 individual meetings at that time with visiting heads of State. This demonstrates the interest of Latin America in the new Panama Canal treaties. Other contacts made by administration representatives over eight months include the following:

Rosalyn Carter's official visits to seven Latin American and Caribbean nations last spring.

Secretary of State Cyrus Vance's trip to Grenada in June to attend the General Assembly of the Organization of American States and to hold individual meetings with 18 foreign ministers.

Four trips by Terence A. Todman, Assistant Secretary of State for Inter-American Affairs, including the first visit by an American official to Havana since 1961.

The 10-nation Central American and Caribbean tour in August by Andrew Young, the Chief United States delegate to the United Nations.

Two trips, covering five countries, by Patricia M. Derian, the State Department, Human Rights Coordinator and one trip to five countries by another Human Rights Specialist, Allard K. Lowenstein, an alternate United Nations delegate.

President Carter will further the process by visiting Venezuela and attempting to repair relations with Brazil at the start of his eight trips to four continents later this year.

We agree that by communicating new policies and attitudes, and by listening to the problems and suggestions of Latin leaders, the United States has regained a position of trust, confidence and leadership in the hemisphere, that indeed had badly eroded during the Johnson, Nixon and Ford presidencies.

This erosion of trust, confidence and leadership is the result of the lack of interest of previous administrations in Latin America. Our past policies with our neighbors have been characterized by improvization. We only react to Latin America when there is a threat to our national security. Example of this are the cases of Cuba, the 1965 Dominican Republic revolution, and Chile.

For that reason, for the reason that President Jimmy Carter has kept his promise to us regarding a foremost place to Latin peoples in his foreign policy, we have come to endorse his action regarding a new Panama Canal treaty. The reasons for that endorsement have been well expounded by Ambassador Sol M. Linowitz, as follows:

First, the Panama Canal issue involves far more than the relationship between the United States and Panama. It is an issue which affects all U.S. Latin American relations, for all the countries of Latin America have joined with Panama in urging a new treaty with the United States. In their eyes, the canal runs not just through the center of Panama, but through the center of the Western Hemisphere. Indeed, the problem significantly affects the relationship between this country and the entire third world, since the nations of the third world have made common cause on this issue, looking upon our position in the canal as one last vestige of a colonial past which evokes bitter memories and deep animosities. So in going forward with a mutually satisfactory basis for a new treaty with Panama, the United States will find itself in a position to improve relations with virtually all the countries of this hemisphere and, indeed, the people of the entire developing world whose attitude toward us as a nation will be importantly influenced by how we conduct ourselves on this Panama Canal issue. Second, our primary interest in the canal is to assure its free, open and neutral operation on a nondiscriminatory basis. I am convinced that the greater threat to the operation of the canal would be to try to insist upon retention of the present outmoded treaty and its anachronistic provisions which have in the past and can so easily again trigger hostility and violence. If we do not approve a mutually agreeable basis for a new treaty, we may find ourselves in the position of having to defend the canal by force against a hostile population and in the face of widespread, if not universal, condemnation. Third, in the light of these facts, I believe that the best way to preserve the canal's operation and to maintain its permanent neutrality is to substitute for the 1903 Panama Canal Treaty a new arrangement which will be mutually fair, which will properly provide for Panama's just aspirations, and which will take into full account our own national needs. Putting it another way, a new treaty is the most practical means for protecting the interest we are trying to preserve in the canal.

We live in a country inhabited by 3 million American citizens. However, we live in an American colony, just like the Canal Zone. Puerto Rico is still a colony because we do not enjoy social, economic, and political equality with our fellow citizens living in the States, because we don't have voting representation in Congress, because we don't vote for President or Vice President; in summary, because we have been kept—even after a pro-statehood party won there in 1976—in a position of inferiority. Living in a colony, you can understand why we fully endorse the President's statement upon signing the treaty that "the time for colonialism is over." We hope it will be over for us too, very soon. It will be our task—the people of Puerto Rico—to solve in the very near future our political status on the basis of equality with mainland citizens.

It is difficult for us to understand the objections to the treaty, particularly in view of a basic fact:

The United States has never had sovereignty over the canal. The 1903 treaty specifically gave the United States certain rights and authority which it would have "if it were the sovereign." Obviously, these words would not have been necessary if the United States were in fact intended to be sovereign.

For the aforesaid reasons, we can also understand that pride and happiness of the Panamanian people upon signing of the treaty, as well as its endorsement by the leaders of our sisters republics. The end of colonialism is always a happy day for those that have suffered it.

As stated by Ambassador Ellsworth Bunker, we also favor the treaty because its terms:

Assure the efficient operation of the canal.

Enable the United States to protect the canal.

Guarantee the canal's neutrality indefinitely.

Provide an economic settlement that is fair and reasonable.

Let me elaborate briefly on that position taken by our negotiators:

The United States will retain control of both operation and defense of the canal for the remainder of this century—that is until December 31, 1999. During that period Panama will take part in both operational and defense activities. This arrangement will insure that the United States can guarantee the uninterrupted, efficient operation and security of the canal after the new treaty goes into effect. At the same time it will provide Panama both the time and the opportunity to develop the experience and capability needed to assume responsibility for canal operation and defense beginning in the year 2000.

The new canal agreement will provide the basis for assuring to the United States continued access to a canal which is open and secure. As Ambassador Bunker has stated, under the new treaty U.S. forces will have the primary responsibility for maintaining canal defense until year 2000. But the United States will have important rights extending beyond that date.

A separate neutrality treaty, which will take effect simultaneously with the new Panama Canal treaty, will commit the United States and Panama to maintain a regime of permanent neutrality of the canal. Under the rules of neutrality to be set forth in the treaty, the canal is to be open to merchant and naval vessels of all nations at all times without discrimination as to conditions or charges of transit. A special provision authorizes U.S. and Panamanian warships to transit the canal expeditiously in both peace and war without being subject to any restriction as regards means of propulsion, armament, or cargo.

The treaty gives the United States defined rights to assure that the canal's permanent neutrality is maintained and places no limitations on our ability to take such action as may be necessary in the event that the canal's neutrality is violated.

It is most important to point out and reemphasize that unlike the treaty governing canal operation, the neutrality is of indefinite duration. In short, the neutrality treaty will provide a firm foundation for assuring that our long term interest in the mainteance of an open, accessible, secure, efficient canal is preserved.

For the first time since the presidency of the late John F. Kennedy, there is a serious and sincere effort to establish a new relation with Latin America. President Carter as well as our Latin American neighbors are aware that the Panama Canal treaty symbolizes the aspirations and dreams for a new hemispheric relation.

Each one of you have a grave and serious responsibility with our Nation. We should not tolerate that the Panama Canal treaty becomes the prey of political cannibals, who are more interested in their political future that the future of our Nation.

The President is actively seeking new ways to establish a strong and sound relation with Latin America and Third World countries. If you don't ratify the Panama Canal Treaty you will be undermining his leadership and weakening the role of our nation in the hemisphere and in the world. You will be ratifying in 1977, the 1903 cowboy diplomacy of Theodore Roosevelt, which stirred up a vast amount of criticism in our Nation in 1903. The press then called the terms of the Hay-Bunau Varilla treaty "piracy," "scandal," "cooked up republic," "disgrace and dishonor."

You have before you not only the Panama Canal Treaty and the future relationship of the United States with the Republic of Panama, but a potential and dangerous situation that might be detrimental to the security of our Nation. We cannot afford another Vietnam, this time in Latin America. We learned the hard way that the arrogance of power did to our Nation in Southeast Asia.

The days of confrontation are over. Our Nation has to be conscious of those prophets of doomsday who use fear as a means of intimidating our people. Let's look back at our history. Let's rediscover those deeds that makes us proud of what we are. As President Franklin Roosevelt said in March, 1933, "This great nation will endure as it has endured, will revive and will prosper . . . the only thing we have to fear is fear itself."

We believe the treaty clauses we have summarized represent an equitable agreement to liquidate a colonial situation. We are proud and happy that our President has achieved this historic breakthrough together with the Panamanian people. We do hope that very soon, under Jimmy Carter's leadership in his effort to elimimnate all points of friction in the Americas, colonialism will also end in Puerto Rico.

Thank you.

POLITICAL FACTS ABOUT MR. FRANKLIN DELANO LOPEZ, CHAIRPERSON, NEW DEMOCRATIC PARTY OF PUERTO RICO

1966, Founder of the University of Puerto Rico Young Democratic Clubs.

1967, Founder and President of the University Youth for Statehood.

1967, Vice-president of the United Statehooders Youth.

1967, Founder of the New Progressive Party.

1968, Press Secretary to the Mayor of San Juan.

1975, Chairperson, Puerto Rico Charter Americans for Democratic Action.

1976, State Campaign Director for Jimmy Carter, February 22, 1976, Democratic Caucuses.

April, 1976, Hispanic Campaign Director for the Pennsylvania Primary for Jimmy Carter.

June, 1976, Hispanic Campaign Director for the Ohio Primary for Jimmy Carter.

July, 1976, Vice-chairperson, Puerto Rico Delegation to the National Democratic Convention.

August, 1976, National Hispanic Field Coordinator for the Jimmy Carter-Walter Mondale Campaign.

November, 1976–January, 1977, Member of the Transition and Planning Staff of the Carter-Mondale Administration.

January 1977, Elected Chairperson, the New Democratic Party of Puerto Rico.

May 1977, Appointed by President Carter as Members of the First Circuit Advisory Commission on Judgeships.

Mr. Lopez is 31 years old.

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STATEMENT OF ROBERT M. BARTELL

Mr. Chairman and Members of the Committee:

I am Robert M. Bartell, public relations director of Liberty Lobby. I appreciate this opportunity to appear today and present the views of Liberty Lobby's 25,000-member Board of Policy, as well as the quarter of a million readers of our weekly newspaper, The Spotlight.

Mr. Chairman, Liberty Lobby opposes the ratification of new treaties with Panama, which will, in effect, pay Panama to take the Canal Zone and all the property in it, off our hands. I know this committee has had a considerable number of witnesses covering a wide range of subjects directly bearing on ratification. However, we would like to approach the subject from a slightly different point of view from those that may have been presented in the past: the importance of ratification of the treaties to the international banking community.

I should like then to avail myself of the kind indulgence of this committee to take a look at the proposed Panama affair as future observers—say historians of the year 2000 and beyond—might view it.

To such dispassionate analysts of the future, the Canal giveaway—to give this utterly one-sided transaction its proper name—will surely appear as the most baffling mystery of the decade, perhaps of our generation. Why deed over our sovereign waterway—and a good chunk of our public funds with it—to an alien regime with unsavory antecedents and an unstable political prognosis? The American people do not want to do it; there is growing evidence that the voters of this country are overwhelmingly against the planned giveaway, and I surmise no one knows this better than the distinguished legislators of this Congress. The American military do not want it. Except for the serving Chiefs, obligated not to dissent in public from the incumbent Administration, there has been near-unanimous testimony from some of our most distinguished generals and admirals expressing concern over the delivery of this vital strategic asset of ours into the hands of what Admiral Thomas H. Moorer, a brilliant former Chairman of the Joint Chiefs of Staff, aptly identified as the "Torrijos-Castro-Moscow Axis."

American diplomacy does not really want it. In private conversation many of our leading foreign policy experts give voice to deep reservations with regard to the regime of Gen. Omar Torrijos, which is, as you know, a usurper cabal without real constitutional legitimacy in its own country. The last legally elected and inaugurated chief executive of Panama is now an exile in this country, and were he to return to office in the near future—a turn of events many of his American supporters devoutly hope for—then any treaty signed by General Torrijos would be exposed and denounced for what it really is: a worthless piece of paper.

The American security and intelligence agencies, the so-called "intelligence community" does not want it. Their Latin American experts view General Torrijos as the most unsavory, unstable and unpredictable of all serving Latin chief executives. There are reports that our narcotic enforcement agents have acquired evidence linking General Torrijos and his brothers with the illicit drug trade aimed at the U.S. The CIA is reported to have accumulated a fat dossier on the contacts between Torrijos and Fidel Castro; another dossier containing reports of contacts between Torrijos, his brother-in-law and other Panamanian negotiators on the one hand and Soviet agents on the other is said to be growing rapidly at CIA headquarters in Langley.

When Torrijos came to Washington last month to sign the Panama treaty, his principal press aide—travelling on a Panamanian diplomatic passport—was the well-known Cuban propagandist and secret agent, the Colombian-born novelist, Gabriel Garcia Marquez. And on his return to Panama from the triumphant visit to our seat of government, the first person to receive greetings from Torrijos, via aircraft radio, was none other than Fidel Castro.

Thus the most baffling question confronting future historians trying to explain the Canal giveaway will be: Who did want it? We know the Torrojis clique will reap a windfall of benefits, but keeping our eye for the moment on our side, the real question is: Cui bono? Who shall profit?

That there is a real mystery here, a set of unanswered questions lurking beneath the surface, was already adumbrated by Admiral Thomas H. Moorer, who, in the course of his testimony, demanded to know what will happen to the "Two thousand per cent increase over the $2.3 million she (Panama) received last year as income from the Canal? To me that appears to be a fantastic amount for a country with a population not much larger than Detroit. Where will the money go?"

A substantial share of the money is earmarked, of course, to the U.S. and international banks who have loaned Panama disproportionately large sums in recent years and now, in order to recover their outlay and profits, cheer on the Canal giveaway. But beyond this adroit arrangement to lure U.S. taxpayers into indemnifying the mortgageholders of the profligate Panamanian regime, I expect that future observers desirous of solving the Panama puzzle will begin by looking deeply into the hidden connections between the world of international banking and certain small countries such as Panama.

They will find that in the mid-1970's multinational mega-banking went through some extraordinary changes which the American public barely noticed. International banking grew from a trickle into a great subterranean river. In 1960, only eight U.S. banks had overseas branches, with assets of $3.5 billion. By June 1976 more than 100 U.S. banks had offices abroad, with assets totaling an incredible $181 billion—over 26 per cent of total American bank assets! In fact, for the dozen or so largest American banks, overseas operations became more important and profitable than domestic activities. In 1975, foreign financial ventures accounted for 56 percent of the Chase Manhattan's total earnings. At Citicorp, the foreign share was even larger: a full 70 per cent of total earnings. (International Debt, the Banks, and U.S. Foreign Policy, a Staff Report prepared for the Senate Foreign Relations Subcommittee on Foreign Economic Policy, August, 1977.)

The boom in offshore banking has been little short of miraculous. From 1970 through 1975 the overseas earnings of the 13 largest U.S. multinational banks shot up precipitously, from $177 million to $836 million. To appreciate this spectacular growth figure, we need only recall that during the same period the domestic earnings of the same financial group rose by less than $50 million.

And how was this stupendous upsurge in volume and banking profits attained by the giant U.S. banks? By expanding operations in the traditional centers in world finance—Zurich, Paris or London? No, not at all; so-called "offshore money centers" account for most of the boom—remote, tropical enclaves such as the Cayman Island and the Bahamas . . . and Panama.

What are offshore money centers? They are tolerant, insouciant sovereignties which are nice to banks. They ignore such common corollaries to banking as audits, supervision, taxation or oversight. What is known among financiers as the "regulatory climate" is always sunny for big banks in these nations. There are no reserve requirements and no demand for banks to disclose anything about their daily activities; in fact, some such countries have inaugurated very strict secrecy laws making it a crime for anyone to disclose what goes on in the banking world. There is no obligatory record-keeping, no prying by central bankers; in fact, once a bank sets up shop in such a protected environment, it is pretty much free to do as it pleases.

The major U.S. banks have been quick to perceive the extraordinary advantages of this sort of setup. By January 1975 there were 124 U.S. branch banks in the Bahamas and on the Cayman Islands—a remarkable number, if we recall that there are only 112 such branches in all of Europe! More than 300 U.S. and European banks have been chartered in the Caymans alone since 1970. And Panama is a close third, moving up fast: more than 110 banks chartered since 1973, more than 90 U.S. branch banks of recent establishment.

Why do the giant banks of New York, London and Paris require such far-flung branches? Most of them are only brass-plate" operations, with a nameplate on the door and a single receptionist holding the fort behind it. But on paper—when it comes to bookkeeping—these one-room branch banks are mighty finance centers. For the intricacies of international mega-finance allow the giant multinational banks to make deals in the tens of millions of dollars—deals which take place between the head offices of banks in, say New York and Paris—and then to book off" these deals via their offshore branches, thereby effectively exempting them from regulation, audits and oversight.

It is said that General Torrijos, who is given to immoderate anti-American demagoguery in public, speaks the language of the new international banking system quite ingratiatingly in private. While out of favor with most segments of our government, Torrijos has contrived to establish close relations with a number of multinational finance conglomerates, from whom he has received loans out of all proportion to his regime's known assets. Moreover, Torrijos has converted Panama into a specially protected banking enclave, where dubious deals—especially dicey currency speculation—have

found a haven from prying regulators and examiners.

Is General Torrijos about to become the beneficiary of the most senseless and ruinous giveaway in our modern history because certain high supporters in the multinational banking world have secretly promoted and advanced his cause? Unless we want to leave the solution of the Panama riddle to the historians of the 21st century, it might be well to take a close look at this question before the Carter Administration's canal transaction becomes the law of the land.

In the light of the many unanswered questions surrounding the Panama Canal question, it is evident that more information is needed. Gentlemen, the American taxpayers deserve and require answers to these questions even if the answers might step on the toes of the special interest groups which have so much at stake in the proposed giveaway, and you must supply these answers.

I therefore recommend and urge that this committee seek the answers to the following questions before any determination is made on the ratification:

1. Have the principal negotiators and official promoters of this deal—Sol Linowitz, Ellsworth Bunker, Cyrus Vance—embroiled themselves in felonious conflicts of interest? Particularly Mr. Linowitz, who is reported to have served as a paid agent for the Torrijos government in late 1973 and early 1974?

2. Who sponsored and paid for the original research and development that went into the draft canal treaty? Is it true that most of this preliminary work was done by a special adviser to Mr. Linowitz, Dr. Robert Pastor, on funds provided by the Rockefeller family holdings?

3. What was the role of the Council on Foreign Relations in drafting and developing the early position papers which led to the canal treaty draft?

4. What is the full truth about the debts owed by Panama to various U.S. and European multinational banks?

5. What is the truth of persistent reports that General Torrijos and his brothers have accumulated a large fortune in their private dealings with multinational banks and in the dope trade? How large is this fortune? Where is it banked?

6. Does the U.S. government possess true data on the volume of transactions by U.S. banks in Panama? If not, is it not true that the real purpose of Panama banking is to frustrate and in effect to nullify the entire U.S. bank regulatory process? In effect, does this not amount to a criminal conspiracy by U.S. banks against the U.S. government, the taxpayers and voters who must, in the final analysis, pay for it?

7. Is it not true that under cover of the concealment afforded by Panama, multinational banks venture into highly hazardous speculative deals, in the safe knowledge that if they incur serious losses, the U.S. taxpayer must foot the bills?

8. Why is the U.S. public not told of the highly incriminating data held in the files of U.S. intelligence and enforcement agencies, particularly the CIA and the DEA, describing the scandalous and criminal narcotics dealings of the Torrijos family? Who has sponsored the coverup of this explosive data, indicating General Torrijos and his brothers have made millions of dollars to corrupt our youth, provide safe haven and diplomatic transport for major international drug smugglers, among them the notorious Rene "Lips" Fluelen?

9. To what extent is the Soviet Bank Narodny involved in Panama, and with which American capitalists? Our newspaper, The Spotlight, has reported this involvement of the Kremlin with U.S. banks and bankers, including Robert Anderson, former Secretary of the Treasury. This matter needs a full airing and the American people should be told the truth about these questionable deals and what threat they may hold for our national security.

10. Obviously, Mr. Chairman, there is a great need for expanded supervision and oversight of the international banking community. We feel the impetus for such an expansion could well originate within this committee and so recommend.

In summary, Mr. Chairman, we applaud the intention of the committee to investigate fully all aspects of the proposed treaties, feeling that such an investigation will lead to an emphatic denial of demands America willingly sacrifice her national treasure on the altar of Third World opinion.

Mr. Chairman, we know what Panama will gain in profit from the canal. We urge you to ask yourselves what your constituents will profit from giving the canal to Panama . . . along with a sizable chunk of their tax dollars.

Thank you again for this opportunity to appear today and present our views.

## BUFFALO BILL DAM POWERPLANT REPLACEMENT

Mr. HANSEN. Mr. President, I wish to join with my good friend, the distinguished Senator from Montana, in cosponsoring S. 2187, legislation authorizing the replacement of the power generating equipment at the Buffalo Bill Dam in northwestern Wyoming.

Today, while the Senate continues consideration of President Carter's national energy plan, it is important that we look to the development and utilization of alternative and, as yet, untapped sources of energy. One such source is that provided by hydroelectric powerplants. Such plants utilize a renewable resource, have long term dependability, are particularly adaptable to peaking power operations and are more environmentally acceptable. While there presently exist some 50 hydroelectric powerplants under the Bureau of Reclamation throughout the 17 Western States, many of these facilities are capable of expanded power and energy production through the upgrading of hydroelectric generator and turbine units. Thus, with minimal environmental impact, with relatively minor expenditures, the West and the Nation can make real progress in tapping new sources of energy. In the words of a recent Department of Interior report:

> Uprating existing hydroelectric generator and turbine units at Reclamation powerplants may be one of the most immediate, cost effective, and acceptable means of developing additional electrical power in the West.

Such is particularly the case with regard to Wyoming's Buffalo Bill Dam. Constructed from 1905–10, power production was added to the Shoshone project in 1922. Now over 55 years old, the powerplant needs to be replaced simply due to its advanced age as well as a result of requirements of the Occupational Safety and Health Administration.

Replacement of the plant will permit an uprating to a larger power output given the as yet unused potential for developing power at the site. Presently, the powerplant yields 5.6 megawatts. Replacing this obsolete equipment will result in a capacity of 20 megawatts, a nearly fourfold increase, yielding an additional 63.7 megawatt hours of energy annually.

Mr. President, this is the type of energy legislation which this Nation and the West needs. I urge early adoption of this bill.

## THE PANAMA CANAL AND THE SUEZ CANAL—SOME SIMILARITIES

Mr. HARRY F. BYRD, JR. Mr. President, an editorial in the October 9 Moline, Ill., Daily Dispatch drew an interesting parallel between the United States relinquishing control over the Panama Canal and the withdrawal of British military forces from the Suez Canal Zone in Egypt in 1956.

Clearly there are differences between the two cases, but there are enough similarities to give pause for thought.

I ask unanimous consent that the text of this editorial be printed in the RECORD.

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

PANAMA CANAL TREATY

There has been expression by some politicians that the United States Senate would, and probably should, act forthwith and without delay in ratifying the Panama Canal treaty. There are some columnists and commentators who are overburdened with dire implications of what will happen if the treaty issue gets involved in the 1978 elections.

We do not share this view that there is need for quick action on the canal issue. Instead, it would be good to take the time to examine all the implications, possible alternatives and options and to review the recent history of another canal.

For some years prior to 1956 there had been agitation in Egypt (just as there has been in Panama) for the withdrawal of British military forces from the Suez Canal zone in Egypt. The Suez was owned by an international company, primarily owned by the British and French, with the British in actual charge of canal operation and security.

Convinced it was doing the "right thing" as it shed its colonial empire, the British evacuated its military forces from the Suez and Egyptian territory on June 18, 1956. But if there was a tear in the British eye there was also a secure feeling that the canal would continue to be operated as an international waterway and Britain's great contribution to international commerce would continue. Even though the Egyptian flag now flew on the staff where the Union Jack had been, the canal was secure, wasn't it?

It wasn't. On July 26, 1958 Egyptian President Gamal Abdel Nasser shocked the British and French, and most of the rest of the world, by nationalizing the Suez Canal.

No longer was it an international waterway, owned by an international company: It was Nasser's ditch and he would say which nation's ships could use the canal and what the terms would be. It was international blackmail under the guise of "national destiny." (Nasser was a dictator who led his country into close ties with the Soviet Union. Gen. Omar Torrijos, the Panamanian chief of state, has been described by William F. Buckley Jr., who supports treaty ratification, as a "left-leaning, demogogic tyrant.")

After several months of fruitless negotiations Britain and France determined to reoccupy the Suez, and on Oct. 31, 1956, they launched air attacks against the Egyptian forces opposing their return. (Sen. Dole has released a classified document which reveals there is no provision for U.S. reoccupation of a crisis situation.)

Under pressure from the United States, which supported a UN measure which condemned the British and French action, the invasion and attempt to reoccupy were aborted. But by that time the Suez Canal was blocked by sunken and scuttled ships. It remained that way for 19 years. Governments came and went in the nations involved, Nasser passed from the scene and Egypt eventually broke its ties with the Russians. Early in this decade negotiations for reopening the canal were resumed with the United States playing a helpful role and finally, on June 5, 1975, the Suez was reopened to the world's commerce. But for 19 years any arguments about who owned or controlled the Suez were academic, it was unusable anyway.

Is there a parallel between what happened in the Suez and what could happen with the Panama Canal? Is there a lesson to be learned? We think there is.

Let us not enter into this agreement with some vague faith that all will be well or with some conscious-salving feeling that we are righting a sin of our colonial past.

If the Senate ratifies the treaty let it do so with its eyes open to all the implications and possibilities and alert to the best interests of the United States.

## 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:

James S. Brady, of Michigan, to be U.S. attorney for the western district of Michigan for the term of 4 years vice Frank S. Spies.

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 Tuesday, October 18, 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:

Thomas C. Brennan, of New Jersey, to be Commissioner of the Copyright Royalty Tribunal for the term of 7 years from September 27, 1977.

Mary Lou Burg, of Wisconsin, to be Commissioner of the Copyright Royalty Tribunal for the term of 7 years from September 27, 1977.

Frances Garcia, of Texas, to be Commissioner of the Copyright Royalty Tribunal for the term of 5 years from September 27, 1977.

Clarence J. James, Jr., of Ohio, to be Commissioner of the Copyright Royalty Tribunal for the term of 5 years from September 27, 1977.

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 Tuesday, October 18, 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.

## UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time agreement as follows on S. 1303, the unfinished business:

For debate on the bill, 4 hours, to be equally divided between Mr. JAVITS and Mr. NELSON; that there is a time limitation on any amendment of 1 hour; that there be a time limitation on any debatable motion, appeal, amendments in the second degree, or a point of order, if such is submitted to the Senate, of 30 minutes; and that the agreement be in the usual form.

Mr. JAVITS. Mr. President, reserving the right to object, a number of points are to be made in this connection.

First, I will properly yield, out of time which I have as manager of the bill on the minority side, a reasonable and fair amount of time to the opponents of the bill and to the proponents of the various amendments which we contemplate, so that those Members may not feel that just because Senator NELSON and I are on the same side, time is not available to them.

The minority leader assures me that where we are on the same side in a given issue, the time goes to the minority leader, who then may yield it to those who need the time. Of course, they have their own time on amendments.

Mr. President, the Senate should know that we have discussed a number of matters which are susceptible of resolution if a time agreement is arrived at for voting on the bill. These issues are the following:

First, the duration of the bill.

Second, the authorization for appropriations.

Third, the provision in the bill which relates to how privately donated funds may be used.

Fourth, the assurances from my colleague the Senator from Wisconsin respecting oversight areas.

Fifth, the isue of what is to be the role of so-called backup centers—that is, centers for research, technical assistance, and so forth—and the effort to limit those to that function, rather than having them as some seed bed for broad-scale public service litigation.

Sixth, the issue of initiation of organizations. There, the intention is, if this works out, to stay with the present law, rather then to undertake the new amendments we have.

Also, we have agreed that on a number of issues in which we could not come to agreement, we would have votes, and the Senator from Utah has named specifically the following in respect of votes——

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

Mr. JAVITS. I yield.

Mr. HATCH. I think it would be better if we did not go through the specific votes tonight but go through the basic changes in the bill to which we are agreeing.

Mr. JAVITS. All right.

That is all. Those are the ones about which we have understandings. As to the others, there may be any number of votes on amendments, and the Senator from Utah is going to endeavor to hold down the number. We are going to endeavor to meet his views on as many as we can and also make a contribution toward holding down the number.

I ask my colleague whether this is generally in accord with his understanding.

Mr. NELSON. Yes. The Senator from New York states it the way I understand it.

I suppose it is clear that no final agreement has been reached here until the Senator from Utah has a chance to confer tomorrow with some of the other Members who may have amendments; that there is no final agreement until a specific time to vote is agreed upon.

I take it that it is the understanding that this will remain the pending business until it is finally disposed of.

Mr. JAVITS. We are going to agree on this unanimous-consent request.

Mr. ROBERT C. BYRD. This unanimous-consent agreement would be in place. It is just that, as I understand it, there is no agreement as to the time for final action on the measure.

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

Mr. JAVITS. I yield.

Mr. HATCH. I ask this question of the distinguished majority leader: If this is in the regular form, would that preclude nongermane amendments?

Mr. ROBERT C. BYRD. Yes; it would.

Mr. HATCH. Then, I would have to ask unanimous consent that nongermane amendments be in order on this bill, because I know of at least one that may fit in that category. We will try to keep them down.

Mr. JAVITS. Could the Senator specify the area of the nongermane amendments that he has in mind?

Mr. HATCH. The only one I know of would be the one by Mr. DOMENICI, which would go toward attorneys' fees in unsuccessful situations.

Mr. JAVITS. In cases where the Federal Government was the defendant.

Mr. HATCH. Right. But there may be others, so I would like to amend the regular form, and to that extent I ask unanimous consent that it be so amended.

Mr. JAVITS. That amendment then, it is understood, will be qualified.

Mr. HATCH. Yes; but I am not sure there will not be others. I am not sure.

(Mr. CRANSTON assumed the chair.)

Mr. DURKIN. Mr. President, reserving the right to object, under no set of circumstances would the nongermane amendment in any way apply to passive restraint systems.

Mr. ROBERT C. BYRD. No; they do not have that.

Mr. HATCH. No.

Mr. JAVITS. I am still in a little bit of a quandary as to how we leave this.

Mr. HATCH. It is my understanding we are agreeing this evening to a 4-hour

limitation on the bill, a 1-hour limitation on amendments, and a 30-minute limitation on amendments in the second degree, as stated by the distinguished majority leader.

Mr. ROBERT C. BYRD. That is right.

Mr. HATCH. It is my understanding we are agreeing this evening to the following affected changes in the bill and to work out language on some of the changes:

No. 1, we will reduce the authorization time of the bill from 5 to 3 years; we will agree to the authorization at $205 million for 1978, and use the language of the bill for 1979 and 1980 of such sums as may be necessary.

No. 2, that we will make it clear in the bill that private funds will not be used for prohibited purposes.

No. 3, that we will be guaranteed oversight to the extent—and we will have oversight hearings in the last few months of this year or the first 3 months of next year in accordance with the scheduling problems of the distinguished ranking majority member of the subcommittee having oversight of this particular problem; and that these oversight hearings will go into matters that have been raised by various Senators on the floor of the Senate, and any other matters that may be raised by responsible persons.

Mr. NELSON. May I say, Mr. President, if the Senator will yield, we certainly will have oversight hearings. I do not wish to be bound by the commitment to have them this year since, as I mentioned this afternoon——

Mr. HATCH. No; I said either this year or the first 3 months of next year.

Mr. NELSON. I have a substantial number we are undertaking in November and December. But we will have oversight hearings certainly in the first 3 months of next year.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, I would like to know what happens to the passive restraint item we discussed previously. Is it my understanding that we are willing to have a vote by 5 o'clock? Is it part of this agreement that we will put this matter aside for an hour between 4:30 and 5:30 and vote on passive restraint by 5:30?

Mr. JAVITS. I would feel compelled to object. I feel we should finish this and then we can go to the other. I was hoping we could have a finished unanimous consent tonight.

Mr. STEVENS. Then I am compelled to object to this agreement.

Mr. BAKER. I hope we would not do that quite yet. I would hope, if the distinguished minority whip would indulge me for just a moment, he would not object at this time. I think we made real progress here.

Mr. HATCH. I think we have.

Mr. BAKER. In trying to reach this point, and I think it is clear that under the existing unanimous-consent order, that we proceed after the completion of this measure to the passive-restraint matter, and I think we are a lot closer to getting to the passive restraint now than we were 30 minutes ago.

Mr. JAVITS. Mr. President, will the Senator yield to me? I am more than happy to agree to the passive restraint if we can get a time to vote. My problem is Senator Hatch is in no position to give us any agreement respecting the conclusion of this matter.

Mr. STEVENS. I want the Senator to know I am not acting in my capacity as minority whip. I was a member of the Commerce Committee that made the assurance that there would be a vote on passive-restraint matters. As I understand the situation, tomorrow is the last possible day we can act and still leave enough time for the House to do likewise. It is my understanding that the House will be in session on Thursday, but not on Friday. If that is, indeed, the case, then we must vote tomorrow to insure that the House has the opportunity to consider this matter.

I feel that this Legal Services Corporation is being used, in effect, to hold hostage the commitment we made as members of the Commerce Committee that there would be a vote on the Senate floor on passive restraint.

Let me make it clear that I am not going to agree to any time limitation on the legal services bill unless it includes an agreement for a vote on the Senator from Michigan's air bag resolution tomorrow. I have already told him that I am going to oppose his resolution, and that I plan to urge the Senate to oppose it as well. But he is entitled to a vote under the commitment made in the Commerce Committee when he first authorized this procedure.

I have been waiting around, and I would be happy to paritcipate in any conversation other Senators want to participate in. But as far as I am concerned there are only 2 days left for action on this issue: One for the Senate, and one for the House, and basic fairness dictates that the Senator from Michigan be entitled to a vote on his resolution tomorrow. If we do not guarantee that vote, then, as far as the Senator from Alaska is concerned, we do not have a unanimous-consent agreement.

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

Mr. STEVENS. Yes.

Mr. DURKIN. I was not a part, expressly or impliedly, of any agreement that the Senator from Michigan would definitely get a vote.

Mr. STEVENS. At the time we passed the bill that authorized this legislation we made a mistake in not putting into that bill the privileged resolution provision that we discussed, and I think the members of the committee who were there will admit that. Had we included it there would be no problem. It is not a commitment made this year, but a commitment made at the time we first authorized the making of these regulations dealing with passive restraint.

Mr. DURKIN. Reserving the right to object, if the Senator will yield, I would hope the Senator from New York would reconsider his inclination to object, because, if the legal services battle wears on into the night tomorrow night, and if it is on the eve of a long weekend, then, if our votes drift away, I think the burden falls upon us to talk this air bag thing into the dashboard. I do not want to do that, and the Senate does not vant to do that. So, if I could renew the request and ask my friend from New York if we could get a vote on the air bag, passive restraint, say, between 4:30 and 6 o'clock——

Mr. BAKER. Mr. President, reserving the right to object for just a second, I reiterate what I said earlier. I think we made good progress in getting this far in the agreement. I fully appreciate the statement made by the distinguished Senator from Alaska, and I am entirely in accord with it. We owe the obligation to the Senator from Michigan and, indeed, to ourselves to have a vote on this matter, in my view, tomorrow.

Let me ask this question. First, I would like to say I think tomorrow we can improve on this unanimous-consent agreement. I think in the morning we probably can get a time certain to vote, and that will liquidate this problem. What is in the morning is not now where we ' ave problems with it now.

So I wonder if we can consider an hour, even a very late hour, that would guarantee a vote to the distinguished Senator from Michigan?

Mr. STEVENS. Mr. President, if the minority leader will yield, I rely very greatly on my good friend from West Virginia and trust him. If he will assure me that there will be a vote on the air bag or passive restraint problem tomorrow, then I will withdraw my objection.

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield, the question was addressed to me.

Mr. President, I think we owe the two Senators from Michigan a vote on the air bag resolution, and I am going to do everything I possibly can, and I believe all Senators will, in good faith to try to secure a vote on that matter tomorrow.

I believe, as the distinguished minority leader has said, if we can go forward with a time agreement we have proposed here, that we will have made great steps in that direction, and I have a feeling that the rest of it will be worked out in the morning.

I will do everything I possibly can within my power to see that a vote does occur on that resolution tomorrow at some point.

Mr. DURKIN. Mr. President, will the Senator yield for a suggestion?

Mr. ROBERT C. BYRD. Yes.

Mr. DURKIN. Could we maybe even draft an agreement that the vote on the passive restraints would come an hour after final passage of the legal service bill or 5 p.m., whichever comes sooner?

Mr. NELSON. Mr. President, I would object to that. We are unable to reach an agreement, because there are certain Members who are not here who still may have a different viewpoint. But if an agreement is reached tomorrow morning on a time limitation on the pending legislation, as far as speaking only for

myself, I would be happy to set it aside at any time on an agreed time to vote so, if tomorrow morning at 10 a.m. or 11 a.m. we reach an agreement after talking with our other colleagues and then if we want a time to set aside the bill and debate and vote on the passive restraints, it is perfectly satisfactory with me, but I would want to see the settlement of a final agreement on time to vote on the pending legislation.

Mr. ROBERT C. BYRD. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. 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. 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.

Mr. ROBERT C. BYRD. Mr. President, I would modify my proposal further in the following manner:

That at 1 p.m. the Senate temporarily set aside the unfinished business and proceed to the consideration of the resolution that deals with passive restraints, Senate Concurrent Resolution 31, that there be a 1-hour time limitation for debate thereon, to be equally divided between Mr. FORD and the minority leader or his designee, and that at the close of 1 hour, to wit, at 2 p.m. there be a vote, with a motion to table in order, that if the motion to table is made and fails the vote occur immediately without further intervening motion or debate or point of order on the resolution up or down, that upon the disposition of that resolution the Senate then resume consideration of the unfinished business and that a vote occur on final passage of the unfinished business, the legal services legislation, which would include the House bill, which would include substituting the Senate language, at no later than 5 p.m. on Tuesday next.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object.

Mr. JAVITS. Mr. President, I yield to the Senator from Utah.

Mr. HATCH. Mr. President, with regard to our agreement here this evening, in addition to the guaranteed oversight, we have agreed that staff counsel will get together and work out language which will suffice for both sides in this matter with regard to the backup centers provided for in the bill.

Mr. JAVITS. Mr. President, about the backup centers, as I understand the agreement, the staff is to work out language, so we might as well specify it, which will make it clear that backup centers are to be used solely for research, training, and technical assistance, and as a clearinghouse for information and will not engage in broadscale efforts to build up public service cases.

Mr. HATCH. Or social legislation type cases or class litigation.

Mr. NELSON. I am assuming the law remains the same as to its current authority of the backup center to assist any of the local legal services programs in the representation, in any way, of an eligible client of the local legal services program.

Mr. HATCH. Except one thing: it cannot contract out these services.

Mr. NELSON. Pardon?

Mr. HATCH. It cannot contract out these services. They would have to be done in house, according to our agreement.

Mr. NELSON. I hope we are not talking about two different things.

Mr. HATCH Under current law.

Mr. NELSON. Under the current law the backup center may assist the local legal services organizations in the representation of their clients. These services are contracted out under current law.

Mr. HATCH. That is right.

Mr. NELSON. That is what the law is now, and we are not proposing to change that. What the Senator is limiting is the research activities, is that right?

Mr. HATCH. That is right. The distinguished Senator from New York did want to have one exception to that and that is with the right of the backup center or the services corporation to employ university professors, if I recall correctly.

Mr. NELSON. That is a further question.

As I understood the unanimous consent order, I did not think the central issue concerning research activities had been resolved.

We would allow, however, contracts with a university for a 5-day training program of new legal services counsel in newly created organizations. That would be a permissible kind of contract for training purposes.

Mr. HATCH. That is right. All right, now, the next step is that with regard to eligibility determination. The bill will have a language change. We will have a right to bring up an amendment to provide for judicial determination, but the bill itself will have a language change which will be appropriate under the bill to be enacted here. As I understand it, the corporation shall give an automatic right of review to any litigant who desires to have the corporation look into the eligiblity requirements, and shall give the appropriate consideration to that appeal, or an automatic right of appeal. We want to have definite language with regard to that, and still have the right to file an amendment with regard to judicial review of eligiblity determinations.

Mr. JAVITS. As to the amendment, you can have that voted on if you desire to go to that extent.

Mr. HATCH. Right.

Mr. JAVITS. But as to the corporation itself, what I said and what I have in mind is that the corporation will say that it will consider—we will say the corporation will consider any appeal to it on the question of eligibilty.

Mr. HATCH. Right; and we will work out the appropriate language to that extent.

Now, with regard to section 1007(b)(5), we will go back to the old language in the bill, and strike out all of the new language, which begins:

To initiate the formation of any association, federation, or similar entity, except that this provision shall not be construed to prohibit the provision of legal assistance to eligible clients;

Mr. JAVITS. Yes; we will go back to the law as it stands.

Mr. HATCH. Go back to the law as it stands.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, might I inquire of the Chair on one point in relation to the air bag matter? We made provision for a vote on a motion to table the air bag resolution, and if that fails, an immediate vote without intervening debate on the resolution itself.

Could I inquire of the Chair, is the resolution of disapproval amendable?

The PRESIDING OFFICER. The law is silent on that issue, but the specific language of the resolution would have to be construed, the Chair believes, to prohibit amendments.

Mr. BAKER. So the Chair would rule, then, that amendments were not in order; and, of course, this unanimous-consent request makes no provision for amendments, but I just wanted to make it clear that we are not providing amendments.

The PRESIDING OFFICER. The Chair has so ruled.

Mr. JAVITS. Reserving the right to object, Mr. President, I want to have two things clarified. One is that the unanimous-consent request provides for the substitution of the text of the Senate bill for the text of the House bill, and action on the House bill.

Mr. CRANSTON. It does.

Mr. JAVITS. And as to the germaneness of amendments, we are reserving an amendment respecting legal fees which relate to suits by the Federal Government as nongermane. Now, is there anything else?

The PRESIDING OFFICER. That one nongermane amendment would be in order.

Mr. HATCH. Could I ask one other thing? It is my understanding that all amendments can be filed so long as final passage is no later than 5 o'clock p.m. next Tuesday.

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. Well, now, is the Senator speaking of nongermane amendments?

Mr. HATCH. I am speaking of all amendments, including the Domenici amendment, which may be nongermane.

Mr. JAVITS. That is fine, but I would not want to agree to some nongermane amendment which might become a major issue of our time.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Mr. President, reserving the right to object, so that the present occupant of the chair (Mr. CRANSTON) and I can send out appropriate notices, in any case there will be a vote on final passage of the legal services bill no later than 5 p.m. Tuesday?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. And that the provisions of rule XII be waived.

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

The text of the agreement is as follows:

*Ordered,* That when the Senate proceeds to the consideration of S. 1303 (Order No. 145), a bill to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes, debate on any amendment in the first degree shall be limited to 1 hour, to be equally divided and controlled by the mover of such and the manager of the bill; debate on any amendment in the second degree shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received except for an amendment to be offered by the Senator from New Mexico (Mr. DOMENICI) dealing with legal fees.

*Ordered further,* That on the question of final passage of the said bill, debate shall be limited to 4 hours, to be equally divided and controlled, respectively, by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. JAVITS): *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

*Provided further,* That a vote on final passage of either the House or Senate bill will occur no later than 5 p.m. on Tuesday, October 18, 1977.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators for their patience and cooperation.

## VITIATION OF ORDER FOR THE RECOGNITION OF SENATOR EAGLETON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of Mr. EAGLETON tomorrow be vitiated.

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

## ORDER FOR RESUMPTION OF THE UNFINISHED BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the order for the recognition of Mr. ALLEN tomorrow, the Senate resume the consideration of the unfinished business.

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

## ORDER FOR RECESS UNTIL 9:45 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 9:45 a.m. tomorrow.

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

## SENATE CONCURRENT RESOLUTION 52—A CONCURRENT RESOLUTION AUTHORIZING PRINTING

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The second assistant legislative clerk read as follows:

S. CON. RES. 52

Authorizing the printing of additional copies of the booklet entitled "The Senate Chamber, 1810–1859"

*Resolved by the Senate (the House of Representatives concurring),* That there be printed for the use of the Commission on Art and Antiquities of the United States Senate fifty thousand additional copies of the booklet entitled "The Senate Chamber, 1810–1859".

Mr. ROBERT C. BYRD. Mr. President, I am advised by the Commission on Art and Antiquities that the booklet, "The Senate Chamber, 1810–59" will be out of stock within a few weeks. This resolution is identical to the 1976 reprint resolution, except that it specifies 50,000 copies instead of 30,000.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

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

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

The motion to lay on the table was agreed to.

## PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate will convene at 9:45 a.m. tomorrow.

After the two leaders or their designees have been recognized under the standing order, the Senator from Alabama (Mr. ALLEN) will be recognized for not to exceed 15 minutes, after which the Senate will resume the consideration of the unfinished business, S. 1303, to amend the Legal Services Corporation Act, under a time agreement.

Rollcall votes will occur during the afternoon on that measure. At 1 o'clock p.m. tomorrow, the Senate will set aside temporarily the unfinished business and will proceed to the consideration of Calendar Order No. 446, Senate Concurrent Resolution 31, a concurrent resolution to disapprove Federal Motor Vehicle Safety Standard 208 transmitted on June 30, 1977.

After 1 hour of debate, to be equally divided and controlled, the Senate will proceed to vote. A motion to lay on the table will be in order, and i fsuch motion to lay on the table is made and carries, the Senate will immediately resume the consideration of the unfinished business. If such motion to lay on the table fails, the Senate will proceed, without intervening debate, motion, amendment, point of order, or appeal to vote up or down on Senate Concurrent Resolution 31.

Upon the disposition of Senate Concurrent Resolution 31, the Senate will resume the consideration of the unfinished business, S. 1303.

I would expect tomorrow to be a fairly long day, with rollcall votes throughout. It is hoped that the Senate will complete action on the unfinished business, the Legal Services Corporation Act, tomorrow, but in the event that action is not completed thereon tomorrow, it is the intention of the leadership to go over until Monday, and at that time to continue the consideration of the unfinished business, if not completed prior thereto.

The leadership has decided on this course of action in order that the Finance Committee may meet without interruption on Thursday and Friday to further its consideration of the energy tax bill, and also to accommodate Senate conferees in the necessary meetings with House conferees on the various measures that are in conference between the two houses.

## RECESS UNTIL 9:45 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 9:45 a.m. tomorrow.

The motion was agreed to; and at 8:51 p.m., the Senate recessed until tomorrow, Wednesday, October 12, 1977, at 9:45 a.m.

## NOMINATION

Executive nomination received by the Senate October 11, 1977:

DEPARTMENT OF STATE

Robert E. White, of Massachusetts, a Foreign Service officer of class one, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Paraguay.