2:00 p.m.
Appropriations
Transportation Subcommittee
To hold hearings on budget estimates for FY 79 National Transportation Safety Board and the ICC.
1224 Dirksen Building

MAY 1

10:00 a.m.
Banking, Housing, and Urban Affairs
To mark up proposed legislation authorizing funds for those programs which fall within the committee's jurisdiction.
5302 Dirksen Building

MAY 2

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on budget estimates for FY 79 for the Office of the Secretary, DOT.
1224 Dirksen Building
Banking, Housing, and Urban Affairs
To continue markup of proposed legislation authorizing funds for those programs which fall within the committee's jurisdiction.
5302 Dirksen Building

MAY 3

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue markup of proposed legislation authorizing funds for those programs which fall within the committee's jurisdiction.
5302 Dirksen Building

MAY 4

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue markup of proposed legislation authorizing funds for those programs which fall within the committee's jurisdiction.
4200 Dirksen Building

MAY 5

10:00 a.m.
Banking, Housing, and Urban Affairs
To continue markup of proposed legislation authorizing funds for those programs which fall within the committee's jurisdiction.
5302 Dirksen Building

MAY 17

10:00 a.m.
Banking, Housing, and Urban Affairs
International Finance Subcommittee
To hold hearings in connection with restrictions employed by foreign countries to hold down imports of U.S. goods.
5302 Dirksen Building

CANCELLATIONS

MARCH 7

10:00 a.m.
Environment and Public Works
Transportation Subcommittee
To continue hearings on S. 2404, proposed Federal Highway Improvement Act.
Room to be announced

MARCH 8

9:30 a.m.
Environment and Public Works
Resource Protection Subcommittee
To consider pending legislation.
4200 Dirksen Building

MARCH 9

9:30 a.m.
Environment and Public Works
Resource Protection Subcommittee
To consider pending legislation.
4200 Dirksen Building

MARCH 13

10:00 a.m.
Foreign Relations
To hold hearings on U.S.-U.S.S.R. relations.
4221 Dirksen Building

MARCH 14

10:00 a.m.
Foreign Relations
To continue hearings on U.S.-U.S.S.R. relations.
4221 Dirksen Building

MARCH 15

9:00 a.m.
Judiciary
Citizens Shareholders Rights and Remedies Subcommittee
To hold hearings on S. 2390, the Citizens' Access to the Courts Act.
6226 Dirksen Building

10:00 a.m.
Foreign Relations
To continue hearings on U.S.-U.S.S.R. relations.
4221 Dirksen Building

MARCH 21

9:30 a.m.
Environment and Public Works
Nuclear Regulations Subcommittee
To hold hearings on proposed legislation to provide a means of safe nuclear waste disposal.
Room to be announced
Veterans' Affairs
To mark up S. 364, to provide for judicial review of administrative decisions promulgated by the VA, and to allow veterans full acces to legal counsel in proceedings before the VA, and S. 2384, the Veterans and Survivors Income Security Act.
412 Russell Building

10:00 a.m.
Foreign Relations
Foreign Assistance Subcommittee
To resume hearings on S. 2420, proposed International Development Cooperation Act, and FY 79 authorizations for foreign assistance programs.
4221 Dirksen Building

MARCH 23

10:00 a.m.
Foreign Relations
To hold hearings to receive testimony from Secretary of State Vance on the Administration's proposed arms transfer policy.
4221 Dirksen Building

SENATE—*Tuesday, March 7, 1978*

(Legislative day of Monday, February 6, 1978)

The Senate met at 11:30 a.m., on the expiration of the recess, in executive session, and was called to order by Hon. ROBERT MORGAN, a Senator from the State of North Carolina.

PRAYER

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

O worship the Lord in the beauty of holiness: fear before Him all the earth.—Psalms 96: 9.

Let us pray.

God of all grace and love, in the midst of these troubled times and demanding days, we are grateful for the quiet cloisters of the spirit and moments of reverential calm when we regain our perspective and restore our souls in the light of Thy holiness. Forgive us all the subtle sins and hidden evils which lay waste life—the unfounded suspicion, the inward rejoicing at the failure of others, the readiness to believe the worst about others, the harboring of grudges, the hasty condemnation. If in any human relationship we have been untrue, unfair, unbrotherly, O Thou who takest away the sin of the world, forgive us, cleanse us, renew our souls, and lead us in paths of righteousness for Thy name's sake. With Thy benediction upon us may we face the toil of this day in the knowledge that Thou art within us to guide us, above us to lift us up, and around us to protect us.

In Thy holy name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 7, 1978.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia (Mr. ROBERT C. BYRD).

LEAVE OF ABSENCE

Mr. ROBERT C. BYRD. Mr. President, in accordance with rule V of the Standing Rules of the Senate, I ask unanimous consent that Mr. BURDICK be granted a leave of absence from the Senate today because of a death in the family.

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

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. ROBERT C. BYRD). Under the order that was entered on yesterday, the Senator from North Carolina (Mr. MORGAN) is now recognized for not to exceed 15 minutes.

Mr. MORGAN. I thank the Chair.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

IMPLEMENTATION OF THE UNITED STATES-TURKISH DEFENSE COOPERATION AGREEMENT

Mr. MORGAN. Mr. President and Members of the Senate, this morning, I should like to draw the attention of my colleagues to a problem which has been of serious concern to me for quite some time. I am speaking of the deteriorating security situation in the eastern Mediterranean and our inability to assist Turkey in her attempt to upgrade her forces in order to fulfill her vital defensive function within the framework of NATO. The value of Turkey's military contribution to NATO has been declining, and thus also her support for our national security, because we have been unable or unwilling to implement the Defense Cooperation Agreement of March 1976. As you may recall, Joint Resolution 204 was never reported out of the Foreign Relations Committee because we linked Turkish intervention in Cyprus to our willingness to provide military assistance for Turkey. For the sake of NATO and our national security, we must finally separate these two issues. Our military preparedness in the Mediterranean must receive the high priority which it deserves. There is an immediate danger that allied military forces can no longer adequately protect our strategic interests.

The geopolitical situation in the eastern Mediterranean is critical. The uncertainty surrounding the Arab-Israeli conflict aggravates the problem. Greece has already withdrawn her military forces from NATO. Italy is a longstanding member of NATO, but we must face the possibility that the Italian Government may soon contain Communist ministers. Spain and Portugal control the western approaches to the Mediterranean, and each country is still struggling with its attempt to restore democratic government. Libya, on the northern shores of Africa, has become a military bastion for Soviet intentions. Thus, when considering the southern flank of NATO, Turkey's role within the alliance is vital and irreplaceable.

My overwhelming concern right now is that by further delaying any action on the Defense Cooperation Agreement, we may force Turkey to reconsider their commitment to the West and to NATO. If this would come to pass, the present power equilibrium could be seriously imbalanced. The NATO Defense Planning Committee has repeatedly underscored this danger and calls aid to Turkey an urgent priority. They realize, as should we, that Turkey controls Soviet naval access to the Mediterranean; it faces 12 Soviet divisions along her northern borders and is the only country preventing direct Soviet ingress to the Near East.

This embargo is being upheld for the apparent reason that Turkey has not offered concessions acceptable to Greek Cypriots. We know that discussions are progressing satisfactorily, and it is now time that we end the almost 3-year impasse by separating the Cyprus issue from the need for a strong defense posture in the Mediterranean.

I am sure that Congress does not intend today, nor wanted in 1975, to seriously impede the military capability of NATO and disrupt relations with a major ally. This is, however, exactly the present effect. Turkey has already substantially increased its diplomatic contact with the Soviet Union and has become a major recipient of Soviet economic aid and credits.

The events in the Middle East and the developments in Italy and Libya should dictate that the southeastern flank of NATO once again rely upon stable and reliable alliance partners. Our security is directly linked to a favorable solution of the current stalemate. We must insure that Turkey's 480,000 troops committed to NATO (which, by the way, makes Turkey proportionately the largest alliance contributor) will have the up-to-date equipment to fulfill their NATO obligation. For this reason, I am urging my colleagues to take the immediate steps necessary to implement the Defense Cooperation Agreement.

PRIVILEGE OF THE FLOOR

Mr. MORGAN. Mr. President, I ask unanimous consent that Mr. John Stirk and Mr. Alfred Pollard, of my staff, have the privilege of the floor during the debate on the Panama Canal treaties and votes thereon.

The PRESIDING OFFICER. Without objection, as in legislative session, it is so ordered.

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

Mr. MORGAN. I yield.

IN DEFENSE OF CHILD LABOR

Mr. HAYAKAWA. Mr. President, in the Washington Post this past Saturday, a New York City high school teacher, Mr. Herman Arthur, brilliantly describes the situation of teenage unemployment in this country.

As I have said time and time again, boys and girls cannot possibly grow up to be responsible and contributing citizens unless they are allowed to work. Work is essential to the maturing process. We simply cannot continue to deny our young people the opportunity to work because of outmoded, and tremendously destructive, child labor laws and an ever-rising minimum wage which keeps them from getting a job. I would like my colleagues to read Mr. Arthur's very thoughtful article, "In Defense of Child Labor," and I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Post, March 4, 1978]

IN DEFENSE OF CHILD LABOR

(By Herman Arthur)

"Child labor" is a dirty phrase. It conjures up visions of weeping 5-year-olds struggling to stay awake at their machines; of boys breaking lumps of coal in the dust and gloom of the mines; or even contemporary images of lice-ridden, malnourished migrant children picking peas under a broiling July sun.

Child labor of that nature prompted laws to protect young people from abuse. Those laws have excluded most children from any paid work until age 16, and from a vast range of occupations until 18. Work per se, under any conditions, was defined as exploitative of children.

However, the central issue is not child labor, but abused labor. It is equally criminal to mistreat an adult miner by making him cut coal on his knees in a 4-foot-high mine shaft laden with dust and methane gas, or to house adult farm laborers 20 to a room with one filthy latrine. The abuses visited upon working children were by-products of an era in which human beings were treated as commodities to be used up and dumped on the scrap heap, an attitude that hasn't completely vanished.

What to do with teenagers once they were sheltered from the rigors of work? The alternative was the expansion of public education with extension of compulsory attendance into the teen years. Originally, public schools taught the Christian-American ethic, patriotism and the three Rs, all that was deemed necessary to prepare for responsible adulthood. Those tasks were completed by the eighth grade at the latest. It was well into the 20th century before compulsory education was extended to include older teenagers. The Great Depression added urgency to the exclusion of young people from a shrunken job market. Acting on the Puritan precept that idle hands were the devil's playmates, the government compelled teenagers to attend school and also to refrain from work. In school, presumably, they would be prepared for life by being excluded from life. The manufacture of adolescents, an artificial class created by legislative fiat, became a major American industry.

Without denying the potential of education at any age, it's appropriate to question the use of school as an excuse to deny work experience and minimal financial self-sufficiency to adolescents. Education and work can exist side by side and reinforce each other, as they already do for millions of college students and fully employed adults.

Actually, it's inaccurate to say that children are not allowed to work or are legally protected from strenuous and dangerous occupations. It is perfectly legal for a 12-year-old to muck out his father's barn, or to run a hay mower from sunup to sundown. Thanks to the political muscle of newspaper publishers, they have maintained the authority to hire children as news deliverers, working at all hours and subject to all weather. Children as young as 9 can spend up to six hours daily in the exhausting training grind of competition swimming or figure skating. Boys 14 and 15, too young to work for pay, put their bodies on the line on high school football teams, or run five miles daily practicing for track.

Steve Cauthen was handling thoroughbred stallions, those powerful and dangerous animals, long before he was licensed to ride. Tracy Austin at 14 engaged in grueling competition that would exhaust most of her adult audience in 15 minutes.

Most of those strenuous and demanding activities are legal and are socially acceptable for children *as long as they are unpaid*. (Interestingly enough, many children enjoy them.) But any employer who hires a 15-year-old football player fresh from a workout on the blocking sled, to sweep out his storeroom, is inviting trouble.

This contradiction between paid and unpaid work arises out of the "either-or" syndrome that produced such phenomena as Prohibition. (Either we ban every drop of alcohol or most of us will become broken-down drunkards.) Either children are walled off from work or they will become helpless victims of brutal exploiters, and grow up to be ignorant adults as well. Instead of "either-or" we have "neither-nor"—masses of young people who are neither students nor workers.

"Either-or" happens to be a myth. School and work can be complementary and reinforcing factors in adolescent life. Adult status and self-image in America derive from two factors: money and occupation. Those who have neither remain children indefinitely. The school day and school year are flexible enough to permit students to combine school with part-time or seasonal paid work. It would give them their first taste of earning their own money and undertaking adult responsibilities. It might even motivate some of them to perform better in school and focus on more realistic goals. Some positive results are guaranteed—greater self-esteem and growth in maturity.

Any suggestion that children might work for pay arouses violent animosity from the education industry and organized labor. Educators fear that work will lure children away from schools and encourage legislators to slash school budgets. They issue familiar warnings about the stunting of intellectual growth and physical development. Underlying these altruistic arguments is concern for self-preservation. Labor unions have always seen children as potential threats to adult workers, capable of robbing them of jobs and eroding wage scales.

The same arguments have been used against immigrants and the aged. They account for the restrictions on wage-earning by the retired elderly, who are penalized for working by losing their Social Security benefits.

The unhappy results of these attitudes can be seen in the schools and on the streets. Teenagers as a group are regarded by adults with fear and uneasiness. They are seen as potential menaces to be segregated from the adult world for as long as possible. On their 18th birthday, by some miracle, they will spring full-grown from the chrysalis and become responsible adults.

Judging from the New York experience, neither compulsory-education laws nor laws against child labor have prevented abuse and exploitation. Nor have they succeeded in educating children or even physically confining them inside schools. A staggering number of children in New York are involved in illicit occupations: peddling drugs, stealing and stripping cars, shoplifting, prostitution, selling stolen merchandise, setting fires for hire. Others work illegally "off the books" in the manner of unregistered aliens.

There are many alternative and socially valuable tasks teenagers can perform for pay, which would not disintegrate the schools or threaten the jobs of adults. Most of those tasks are being skimped or left undone because it is too costly to hire adults for them. Some of them, in fact, are inside school walls.

Children can recycle bottles and cans, shop for the elderly and housebound, walk dogs, wash windows, sweep sidewalks, paint park benches, plant shrubs and flowers, shelve library books, gather beach litter, read to the blind, bag groceries, assist in day-care centers, collect fares, stamp mail, deliver prescriptions, tutor pre-teens, help out behind store counters, clear crosswalks after snowstorms. The list is endless.

For children to do that and other work calls for more than lifting prohibitions. In all probability, separate federal and state youth wage minimums would be required, a point that raises the hackles of the AFL–CIO. With present wage laws, even 18-year-olds have difficulty finding jobs. Each quantum jump in the minimum wage produces a corresponding upward blip in youth unemployment, with the familiar depressing consequences.

Regulations could restrict youth work to 10 or 15 hours a week, exempt earnings from taxation, and require consent from *both* home and school.

Current demographic trends will only reinforce the need for youth labor. As our population ages and birth rates slide, the need will grow for workers at both ends of the age spectrum. Barring economic catastrophe, the future holds forth the prospect of labor *shortages* in place of the present surfeit. But before teenagers can undertake the tasks waiting to be done, the wall separating them from paid work will have to be breached.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized, as in legislative session, for not to exceed 15 minutes.

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

The PRESIDING OFFICER. Will the Senator ask that the time remaining under Mr. MORGAN's order be under his control?

Mr. GRIFFIN. And that the quorum call be charged against that time.

The PRESIDING OFFICER. Without objection, the time remaining for the order of Mr. MORGAN will be allotted to the Senator from Michigan and will be charged against the quorum call, and without prejudice to the Senator from Oklahoma.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore (Mr. MORGAN). Without objection, it is so ordered.

Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized, as in legislative session, for not to exceed 15 minutes.

HUMPHREY-HAWKINS FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1977

Mr. BARTLETT. Mr. President, the brave new revision of the Full Employment and Balanced Growth Act of Senator Humphrey and Representative HAWKINS declares itself to be a bill "to translate into practical reality the right for all Americans who are able, willing, and seeking to work to full opportunity for useful paid employment at fair rates of compensation; to assert the responsibility of the Federal Government to use all practicable programs and policies to promote full employment, production and real income, balanced growth, adequate productivity growth, proper attention to national priorities, and reasonable price stability; [and] to require the President each year to set forth explicit short-term and medium-term goals." As such, it is a bill that flirts with wishful thinking.

It is naive to imply that the Federal Government is the wise, loving father, capable of guaranteeing that all of his children shall forever be happy, well-fed, secure, and productively employed. Yet this bill carries that implication.

History alone should convince us of the foolhardiness of believing that any national government can manage, plan, or decree matters in such a way as to insure that each of its citizens is in his own economic heaven-on-Earth. When such a belief has been acted upon, even with strictly benevolent methods and motives, it has inevitably reduced the economic well-being and potential of the country that tried it. Look at Great Britain, at what is happening to Japan, and at what has begun to happen to us.

For years, we have been diverting money needed for job formation into public spending. Since 1950, Government employment has grown four times as fast as private employment. Government spending, much of it on unsuccessful attempts to relieve unemployment or the effects of unemployment, has increased eightfold, while private spending for job formation has increased only fivefold. Since 1960, America's rate of productivity growth has been the lowest of all the industrialized countries. And yet we are seriously asked to consider this bill which would be the crowning touch to ideas about how to handle unemployment that were originally mined in the thirties and which are largely irrelevant and counterproductive in today's situation.

Just as the Humphrey-Hawkins bill's implied faith in the powers of the Federal Government to achieve universal economic prosperity and stability cannot be justified by historical experience, neither can it be justified by our most deeply-rooted economic traditions. It is obvious and true that the American economic system is, and always has been, a mixed economy. That is, it is a system in which both public and private institutions exercise economic influence. This can be all for the best.

An unrestrained market system might dictate that some people starve from lack of income while others get adequate incomes, so we have established programs to maintain minimum standards of living. In addition, the Government provides services without which community life would be untenable, and which by their nature would not be provided by the market system, such things as the maintenance of national defense and of internal law and order, for example.

But that is not to say that the Government has been, or should be, considered the most important actor in our economy. Our mixed economy has always relied on, and believed in the primacy of the private market system to solve our economic problems. What our society produces, how it produces it, and for whom it is produced has been worked out, in most cases, by the interaction of the forces of competition, profit seeking, scarcity, and consumer demand for goods and services. While this bill pays lipservice to the virtues of free competitive enterprise, it attempts to shift completely the emphasis and responsibility to the Federal Government for achieving economic growth and efficiency in our society.

The bill repeatedly calls for the Government to establish programs, policies, and legislation to "achieve full employment, production and real income, balanced growth, adequate productivity

growth, proper attention to national priority needs, and reasonably stable prices." The bill asserts that the policies, programs, and budget of the United States shall be arranged in such a way as to achieve a 4-percent unemployment rate among the entire civilian labor force, ages 16 years and over, within 5 years.

The bill provides a mechanism for insuring that monetary policy is in close "conformity to the purposes" of the act. The bill also authorizes the President to "establish reservoirs of public employment and private nonprofit employment projects" that are supposed to provide "useful and productive" jobs. And it is supposed to accomplish all this without harming the private sector. I find it hard to believe that anyone would be so blind to the lessons of our recent history as to not realize that giving the Government such a mandate would bring about anything other than the slow, or perhaps not so slow, strangulation of our economy and our prosperity.

I believe it is unreasonable to expect that the Government could accomplish any of these grand goals, let alone that it should be given explicit instructions to try to do so in the first place. The attempt would very likely cause terminal overload to the bureaucracy, massive inflation in the economy, and severe disruption of what would be left of the private marketplace.

The Full Employment and Balanced Growth Act of 1977 establishes unobtainable goals. As economist John Kenneth Galbraith has said before the Senate Banking Committee,

> At a four percent unemployment rate, there is no question, the American economy can be disastrously inflationary . . . I must specifically and deliberately warn my liberal friends not to engage in the wishful economics that causes them to hope that there is still undiscovered fiscal or monetary magic which will combine low unemployment with a low level of inflation.

This bill promises things to the American people that the Government cannot, and does not know how to, deliver. The bill itself reveals this by its lack of specifics on how to accomplish the goals it establishes. At most of the crucial places where it establishes a goal, for example, a 4-percent rate of unemployment by 1983 with reasonable price stability, it then says it is to be accomplished by programs and policies "which the President deems necessary," or "the President may, in his or her judgment, recommend," or which the President "deems appropriate," or as he or she "deems it desirable." The bill reads more like a laundry list of campaign promises than a piece of Federal legislation.

The bill gives the impression that somewhere, someone has a Federal program that will solve all our economic problems, and that all we have to do is pass a law that says "this, this and this are our goals; somebody do something." It embraces the philosophy that says if the Government tinkers long enough, some expert must surely be able to find the one perfect arrangement of programs which will guarantee our future happiness.

The Humphrey-Hawkins bill is neither reasonable nor realistic, and is based upon misleading assumptions. If the history of Federal economic programs is any guide, what we need is less Government tinkering and more reliance on the initiative and drive of American entrepreneurs. We need to alter minimum wage laws and labor laws that cause unemployment and inflation, that kill initiative, and that are a deadweight to the economy. We need to foster competition by enforcement of the antitrust laws. We need to reduce the tax burdens placed on savings and investing in order to foster capital formation. We need to encourage work rather than laziness by reforming our unemployment compensation laws so that unemployment is not the relatively attractive alternative to work that it now is for so many people. In short, what we need is a little creative absence of Government. We certainly do not need any version of the Humphrey-Hawkins bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of Executive N, 95th Congress, 1st session, which the clerk will report.

The second assistant legislative clerk read as follows:

> Executive N, 95th Congress, 1st session, Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

The ACTING PRESIDENT pro tempore. Under a previous order, the Chair now recognizes the Senator from Virginia (Mr. SCOTT).

Mr. SCOTT. Mr. President, I ask unanimous consent that Jim Roberts, of my staff, be accorded the privileges of the floor during the remainder of the consideration of these measures.

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

Mr. SCOTT. Mr. President, before determining the action to be taken on the treaty proposals, it seems reasonable to consider what is in the Canal Zone, how much the land and improvements are worth, and other factors, including military installations, their use and their value to the United States. We, as Senators, need this information and the American people have a right to know what is involved in this transfer of title of the Canal Zone to Panama.

Some may consider the Canal Zone only from the viewpoint of a canal, a "path between the seas," or a big ditch. Actually, there are many military and civilian facilities located within the approximately 650-square-mile Canal Zone area and I ask unanimous consent, Mr. President, to have presented in the RECORD, a miscellaneous tabulation of values of the Canal Zone at this point.

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

MISCELLANEOUS VALUES OF THE PANAMA CANAL

(Source: Panama Canal Company)

	Million
1. Original Cost of Building the Canal*	$387
2. Original Cost Value of the Panama Canal Enterprise:	
Lands, titles and treaty rights	$14.7
Interest during original construction	50.9
Canal excavation, fills and embankments, dry dock excavation	324.9
Canal structures and equipment	203.5
Other Marine facilities	29.6
Supporting and general facilities	176.7
Plant additions in progress	25.1
Schools, hospitals and other facilities	111.9
Other	55.8
Total	993.1
3. Book Value of the Panama Canal Enterprise (Plant and Equipment (6/30/75)):	
Panama Canal Company	$501.8
Canal Zone Government	59.6
Total	561.4
4. Replacement Value of Canal Operations (including armed forces):	
	Billion
Property, Plant and Equipment	$3.573
The Panama Canal	5.000
Military, naval and air plant	1.245
Total	9.818
	Million
5. Value of Unused Canal Zone Land	$115
6. Annuity Payments to Panama since 1903	70.5
7. Canal Zone Gross Payments and Income Flow to Panama**	
1975 $253.2 million	
1976 243.1 million	
Since 1963, 1.8 billion	

* Includes $10 million paid to Panama under the 1903 Treaty.

** Includes the annuity, wages and salaries to Panamanians, direct purchases, retirement payments and resident expenditure.

Mr. SCOTT. This one-page tabulation was made available by the Department of State and is entitled, "Miscellaneous Values of the Panama Canal." It was prepared in September 1977 by the Panama Canal Company and shows a replacement value of canal operations of $9,818 million. This does not include the value of unused Canal Zone land of $115 million, nor does it include the annuity payments made to Panama since 1903 of $70.5 million.

It is interesting to note from the tabulation that the country of Panama has received gross payment and income flow from the Canal Zone since 1963 alone of $1.8 billion. That is for a period of 17 to 18 years and includes the annuity, wages, and salaries to Panamanians, direct purchases, retirement payments, and

resident expenditures. It does not include the foreign aid rendered by the United States to Panama, which I understand is the greatest per capita of aid by this country to any country in the world.

It would also be well for us to remember that there is no privately owned real estate within the Canal Zone, although some buildings have been constructed under lease arrangements with the United States and except for personal property of civilian and military personnel, as well as those holding leases from our Government. All property, both real and personal, is owned by the United States.

Senators will note, Mr. President, that we have obtained from the Panama Canal Company a computer printout in four volumes, which I am using here today as a podium. It weighs 47 pounds, it is more than a foot high, and it makes a very nice podium. These volumes will be left on my desk for a period of time, so that Senators who may care to thumb through them may do so. The volumes do not reflect the current replacement value but they do indicate the original cost and the current book value.

The first item is the cost of $10 million paid to Panama under the 1903 treaty. The second item, $3,965,000 paid for depopulation of the Canal Zone. Depopulation, of course, is the compensation as determined by a commission of Panamanians and Americans of the market value of claims of the Panamanians, those who owned in fee or were squatters, upon Canal Zone property.

The next item is $326,000 paid for the land rights acquired from the French Company; then the Madden area land rights, $437,000, making a total payment for the private rights of $4,728,888.61.

Now, Mr. President, this is the fair market value of the private or proprietary rights, paid to individuals or organizations, and does not include the $40 million we paid to the French Company for its rights in the Canal Zone due to its efforts to construct a canal before the United States obtained treaty rights in 1903. The $40 million payment included whatever the French Company owned, which, of course, eliminated its rights to construct a canal across the Isthmus of Panama. It included the equipment the French Company had located on the property, the housing and other improvements, as well as payment for the excavations it had made, part of which were able to be utilized by the United States. It did not include the $10 million we paid to Panama or the $25 million we later paid to Colombia for any interest it might have or claim to have in the Canal Zone.

The next item is interest during construction, simple interest at 3 percent per annum on net treasury withdrawals for the period from 1903 through August 14, 1914, for the purpose of financing the construction of the canal and appurtenances. This amounts to $50,892,000.

Then, skipping down further, I note the cost of constructing a canal channel through Gaillard Cut, $194,076,000; the canal channel through Gatun Lake section, $13,716,000; the Cristobal Inner Harbor, $7,197,000; the Balboa Inner Harbor, $8,774,000; the Cristobal Outer Harbor, $4,450,000; the relocation of the Panama Railroad, $9,800,000; and, Mr. President, we could go on through this book and find various items; such as, truck forklifts, compressors, milling machines, bandsaws, planer machines, lathes, boring machines, shaping machines, sanding machines, derricks, pumps, base radio consoles, hammer piledriver, front-end loaders, pipes and fittings, floating booms, fencing, pipes, and tanks, telemeters, and that is just thumbing through the first of four volumes of computer printouts of the money that we have paid, in the Canal Zone, for the property that we have there.

What I would like to do today is to dispel any doubts regarding the rights the United States has in the Canal Zone.

There might be no Panama without the United States. The country enjoys the highest standard of living in Central America, because of the United States constructed canal. It enjoys the fourth highest standard of living in all of Latin America for the same reason. It has sanitary water and sewage, has lost the dread of yellow fever and can control malaria, because the United States constructed this canal.

In addition to the computer printout, Mr. President, we have been able to obtain various maps and pictures of the Canal Zone which I would like to exhibit on the floor and ask unanimous consent that they might remain on display in the Senate Chamber for the remainder of today and through tomorrow to afford Senators an opportunity to examine them.

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

Mr. SCOTT. These exhibits provide a chance for Senators who have not previously examined our facilities in detail to see pictures and maps of the various installations, not only for the canal itself but those for civilian employees of the Canal Company, the Canal Government, and the various military installations we have within the Canal Zone. First, let us look at the civilian facilities.

Our office was recently furnished with a recent copy of an inventory of assets of the Canal Zone Government and the Panama Canal Company, both of which are administrative agencies of the United States. The General Service Administration in its annual report of real property owned by the United States included separate one-page reports listing the real property owned by our Government and utilized by these civilian agencies as of September 30, 1977. I ask unanimous consent, Mr. President, that these tabulations be included at this point in the RECORD.

There being no objection, the tabulations were ordered to be printed in the in the RECORD.

GENERAL SERVICES ADMINISTRATION

ANNUAL REPORT OF REAL PROPERTY OWNED BY THE UNITED STATES

CANAL ZONE GOVERNMENT, CANAL ZONE

LAND (HOUSING)

Methods of acquisition	3
Dates acquired	1917–67
Area: Urban (acres)	8,365
Cost (thousands)	$7,349

BUILDINGS

Usage	Number of buildings	Dates acquired	Gross floor area (outer dimensions) Total (square feet)	Gross floor area (outer dimensions) Percent occupied	Cost (thousands)
Office	10	1918–67	125,862	100	$1,620
Hospital	32	1916–70	509,301	100	16,611
Prison	3	1932–71	15,818	100	418
Schools	110	1916–72	1,464,659	100	26,026
Other institutional uses	22	1907–71	139,605	100	2,323
Housing	6	1941–43	18,705	100	403
Storage	6	1919–71	18,587	100	250
Service	2	1909–62	569	100	209
Research and development	5	1915–67	38,014	100	351
All other [1]	70	1905–73	150,917	100	1,875
Total buildings	266	.....	2,482,037	.....	50,086

[1] The cost of this property is offset by economic and defense valuation allowances in the amount of $1,845,000. EVA and DVA are special valuation allowances established to reduce the recorded value of plant assets to the amount that is recognized as the estimated usable value of the assets. Necessity of establishing EVA and DVA is due to overbuilding and incorporation of national defense features.

OTHER STRUCTURES AND FACILITIES

Usage:	Cost (thousands)
Airfield pavements	$1,799
Harbor and port facilities	1
Storage (other than buildings)	34
Service (other than buildings)	40
Utility systems	11,537
Communications systems	14
Navigation and traffic aids	83
Roads and bridges	21,366
Railroads	373
Monuments and memorials	56
All other	5,410
Total cost other structures and facilities	40,707
Total cost: Land, buildings, and other structures and facilities	98,142

LAND (FLOOD CONTROL AND NAVIGATION)

Method of acquisition	3
Date acquired	1903
Areas (acres):	
Urban	74,278
Rural	283,200
Cost (thousands)	$15,776

BUILDINGS

Usage	Number of buildings	Dates acquired	Gross floor area (outer dimensions) Total (square feet)	Gross floor area (outer dimensions) Percent occupied	Cost (thousands)
Office	34	1914–72	352,504	100	$5,005
School	2	1921–41	34,251	100	262
Other institutional uses	1	1918	7,485	100	57
Housing	2,005	1906–77	6,360,319	100	54,850
Storage	161	1900–74	1,358,339	100	7,672
Industrial	29	1914–77	145,584	100	5,112
Service	151	1900–77	1,393,489	100	14,888
All others [1]	264	1900–77	804,518	100	9,382
Total buildings	2,647	.....	10,456,489	.....	97,228

[1] The cost of this property is offset by economic and defense valuation allowance in the amount of $78,984,000. EVA and DVA are special valuation allowances established to reduce the recorded value of plant assets to the amount that is recognized as the estimated usable value of the assets. Necessity of establishing EVA and DVA is due to overbuilding and incorporation of national defense features.

OTHER STRUCTURES AND FACILITIES

Usage:	Cost (thousands)
Harbor and port facilities	$319,593
Power development and distribution	6,946

OTHER STRUCTURES AND FACILITIES—Continued

Usage:	Cost (thousands)
Flood control and navigation	$96,421
Storage (other than buildings)	6,812
Industrial (other than buildings)	5,509
Service (other than buildings)	12,024
Utility systems	39,315
Communications systems	5,343
Navigation and traffic aids	909
Roads and bridges	20,272
Railroads	8,431
All other	67,711
Total cost other structures and facilities	589,286
Total cost: Land, buildings, and other structures and facilities	702,290

Mr. SCOTT. For the Canal Zone Government, a total of 266 buildings having a gross floor space area of 2,482,037 square feet, is listed. This includes buildings of various types, 10 of which are used for offices, 32 for hospitals, 3 prisons, 110 schools, 22 for other institutional uses, 6 for housing, 6 for storage, 2 for services, 5 for research and development, and 70 for all other purposes.

A similar report of U.S.-owned real estate in the Canal Zone under the jurisdiction of the Panama Canal Company includes 2,647 buildings of various kinds having a total gross square foot area of 10,456,489; thirty-four of which are used for offices, 2 for schools, 1 for other institutional purposes, 2,005 for housing, 161 for storage, 29 for industrial purposes, 151 for services, and 264 for all other purposes.

Mr. President, let me now turn to a breakdown, first of the facilities utilized primarily by civilians and later on to facilities primarily by civilians and later on to facilities primarily utilized by our miltary forces.

CIVILIAN FACILITIES

Mr. President, civilian facilities within the Canal Zone constitute by far the most costly of the improvements and acquisitions there. These facilities are under the jurisdiction of two U.S. agencies, the Panama Canal Company and the Panama Canal Government. According to our Government manual, the U.S. Government manual, the Canal Zone Company was incorporated as an agency of the United States in 1948 and the charter was later amended. The Chief Executive Officer, Harold R. Parfitt, is the president who also serves as Governor of the Canal Zone. He is also an active duty major general in the Army Corps of Engineers.

These civilian facilities, some of which will be described individually and illustrated by pictures, have an estimated replacement value of approximately $8.6 billion. The descriptions, however, do not include such other costly items as libraries, fire stations, Panama Railroad facilities, office buildings, and retail stores of various kinds, theaters, bowling alleys, post offices, tank farms, police stations, gasoline service stations, and other facilities much the same as we have in continental American towns and cities.

The first picture, Mr. President, is a pier complex at Cristobal.

Mr. President, in the rear of the Chamber we have Mr. Roberts who will point out these items on the maps that we have on display.

This is the pier complex, along with the city of Colon, Panama, in the background. The Panama Canal Company has estimated the replacement cost of these industrial and port facilities to be $122 million. Numerous buildings housing dredging, maintenance, and related operations are located here, in addition to piers and docking facilities.

The second picture is the Panama Canal Industrial Division at Mount Hope. This complex includes extensive railroad connecting lines to major industrial facilities relating to the canal. They include a supply division warehouse area, storehouses, drydock, lumber shed, numerous shop buildings and offices, and a powerplant and infiltration plant.

The third picture is Rainbow City. This is a community owned by the United States. It has schools for Rainbow City in center of picture. Homes primarily occupied by Panamanian workers and their families.

Then the next picture of Coco Solo. This has primarily housing and school facilities. Naval installations are also in background. Fort Randolph Army installation at top.

This next picture is Margarita. It has homes for civilian Canal Zone employees. It looks somewhat like one of our subdivisions in the suburban area.

Then we come to Gatun locks on the Atlantic side. We also have a larger view of Gatun locks showing the Gatun dam and lake at top of picture. Now this view shows the locks in the opposite direction, from the first picture looking toward the lake rather than Atlantic. At Gatun locks a ship is raised 85 feet in three series to the level of the lake and each Panama Canal lock complex has two sets of chambers or lanes which permits two ships to be locked through at the same time. Each lane operates in both directions permitting large-scale movement of naval vessels in times of emergency.

We have a third picture that shows the massive gates at Gatun. The size can be realized by comparison with workman in the foreground.

And next we have the Panama Canal Dredging Division at Gamboa, located at the mouth of Chagres River. Now this is headquarters for the dredging division showing barges for deposit of dredged material. Houses and office buildings shown in lower right corner.

I might state, Mr. President, there are two dredging boats which operate continuously within the canal.

Next is a picture of the Madden Dam, which provides additional water reserve on the Charges River hydroelectric plant. The zone has other generating plants—both water and oil generated.

Gaillard cut is the next picture—located between Gamboa and Piedro Miguel locks, it was the major excavation necessary at this point within the zone. It was named for the Army engineer who supervised the greatest earth-moving job ever attempted. Over 200 million cubic yards of dirt and rock were dug, blasted and hauled away. Originally dug to a minimum 300-foot-wide channel, the cut has, over the years, been widened to a minimum 500 feet between banks over its 9-mile length.

The next picture is of Piedro Miguel locks, one-third of the locks on the Pacific side of the zone. The railroad from east to west coast is on the right side of the picture. Two of the tugs used in assisting ships through the canal are at the lower part of the picture. Maintenance shops are between the railroad and locks. Openness adds to security measures for protection of locks.

Now we come to the Miraflores locks, remaining two-thirds of the locks on the Pacific side. The water filtration plant is at the lower right. The power-generating plant is at the left side.

Next is a closeup view of an electric locomotive known as a Panama Canal "mule" weighing 55 tons and with its two towing wires it can pull up to 70,000 pounds. Ships up to 600 feet require only four mules to help the pilot position his ship in the lock chambers. Larger ships, however, may need six to eight mules to assist them through a given lock.

The next picture is another view through an opening in a ship transiting the canal showing the locomotive in its entirety. The original cost of a fleet of these engines was roughly $112,000 to $115,000 per locomotive but they are presently being replaced at a unit cost of $720,000 to $725,000 apiece. An increase of roughly 600 percent in cost.

They are being replaced even though the United States, if the treaties are ratified, will only remain there for 22 years.

Next is a picture of Balboa Harbor and pier complex at the Pacific entrance to the canal. This industrial area includes, in the center of the photograph, a drydock large enough to accommodate any ship which can transit the canal. Facilities also provide shops to repair ships, lock gates, and other canal equipment. The port captain's office is at the lower right. Upon ratification, virtually the entire complex which is now owned by the United States and has a present replacement value—according to the Canal Company—of more than $115 million, becomes the property of Panama.

The next picture shows the townsite of Balboa. All American property including Fort Amador, the fortified island protecting entrance to canal at the Pacific side, is shown at the top of the picture. The Canal Company headquarters building is on the hill at center. Balboa High School is at the lower center. Inhabitants of Balboa are families of canal employees.

The next picture shows the Thatcher Ferry Bridge above the channel near the Pacific side of the canal. This bridge is a part of the Inter-American Highway, and was constructed in the early 1960's at a then cost of $20 million. Below the bridge is a portion of the Canal Zone Junior College.

The next picture shows the Gorgas Hospital, one of two American hospitals within the Canal Zone used for the treatment of both military and civilian employees and their families. This is a large, modern, general hospital. I understand that an addition was recently added at a cost of several million dollars.

In addition to the civilian facilities we have referred to, Mr. President, there are numerous defense-related installations. According to testimony by Lt. Gen. Dennis P. McAuliffe, Commander in Chief of our Southern Command, before the Committee on Foreign Relations, we have at present roughly 3,300 American citizens residing in the Canal Zone who are employees of the Canal Government, with approximately 6,200 dependents of these employees. However, the American military forces roughly consist of 8,500 members with somewhat over 11,000 dependents, plus an additional 1,200 civilian employees assisting our military forces, for a combined total of 30,186 Americans presently in the Canal Zone.

The military installations in the Canal Zone are said to have a replacement value of $1.2 billion, but their value to our Government cannot really be expressed in terms of money. They are the most southern of our military bases in Latin America, and this fact alone would appear to give them strategic importance in addition to the protection they provide for the American Canal Zone.

Let me mention some of the principal bases individually:

On the Pacific side of the canal, we first have Fort Amador. This is on the large map at the rear of the chamber, and interested Senators can, of course, view the location of this fort and other military facilities if they desire to do so, either now or at their convenience. Fort Amador is the tactical headquarters of a U.S. Army brigade charged with the responsibility of providing security for the canal to insure its continued uninterrupted operation. Should the security forces required to maintain order within the Canal Zone surpass that of the police forces, the military personnel stationed there could be called upon to supplement the local police forces in maintaining order and security.

The military installations on the Pacific side contain not simply buildings but, in fact, an entire military complex, with facilities to insure prompt response when necessary to any threat and to provide assistance when required.

A number of Army, Navy, and Air Force installations are located somewhat near to one another on each side of the canal zone strip. On the Pacific side, at Balboa, is the U.S. Naval headquarters and communications station. There are a number of family living quarters and community facilities complementing the complex.

Quarry heights contains the headquarters of the U.S. Southern Command, commanded by General McAuliffe, and is the control headquarters for all U.S. military forces in Panama—Army, Navy, and Air Force. It is also charged with contingency planning, military or tactical operations within Central and South America. Of course, Quarry Heights contains the headquarters building, an underground bunker complex, houses the command post and communications facilities, and many other buildings necessary to support a command and control headquaters of this magnitude.

The map indicates an east and west Albrook Airforce station. It indicates that the U.S. Airforce Southern Command Headquarters is in the west and depot facilities are in the east. I am told, however, that at the present time, Albrook is not divided and that the combined facilities contain the headquarters of the U.S. Army 210th Aviaiton Battalion. That is a helicopter unit with necessary facilities to conduct tactical air operations required to maintain control over the extensive and rugged terrain within the zone. Military personnel have advised that these helicopter assets are critical to the success of any counter-insurgency operations. There are many support facilities, such as an operations building, hangars, maintenance facilities, as well as community facilities. It has operational and maintenance facilities and the international air force academy, family housing and various community facilities.

The map also designates a Navy pipeline. It is understood that there are several pipelines of differing dimensions going across the isthmus from one ocean to the other. While they are not generally used to transfer oil from one side of the isthmus to the other, they would be available if necessary to do so.

The map indicates that Curundu Heights is also located in this same Pacific area, and I understand it provides housing for both military and civilians working for the military, and headquarters for the inter-American Geodetic Survey. Adjoining the housing facilities is an antenna farm which provides high frequency transmitting and receiving capabilities to the Air Force.

Fort Clayton is a training area for infantry and mechanized forces. It also has family housing, service-support facilities and headquarters for the tropical test center. This center tests military equipment to determine its suitability for combat in any tropical area of the world. One of the three infantry battalions within the Canal Zone is also located at Fort Clayton.

Nearby Corozal is a separate industrial area containing engineering, communications, and industrial facilities as well as troop housng.

Rodman Naval Station is listed first on the west bank of the canal. This station has pier and support facilities, U.S. Navy receiving facilities, family housing, marine barracks, and small craft instruction and training team facilities.

Fort Kobbe is next on the map, located next to Howard Air Force Base, where another infantry battalion of the infantry brigade is located. I understand it also includes training areas, troop housing, and family housing.

Howard Air Force Base houses the tactical air squadron. This Air Force base is headquarters of the 24th Composite Wing, the only jet-capable air strip in the Canal Zone, with fuel storage and ammunition storage. The base will become the headquarters for the commander of Air Forces South. It is also illustrated on a color photograph in the rear of the Chamber, which shows the air field, the hangars, the support facilities and the housing. Perhaps it should be added that all the facilities previously referred to, as well as those elsewhere in the zone, have schools, churches, and medical facilities.

Directly below on the map is Fort Davis where one of the three infantry battalions of the brigade is stationed. I understand this is the main Army infantry force on the Atlantic side of the zone. Among other facilities on the Atlantic side are the terminal for the ITT cable and tranisthmian microwave. The Armed Forces also operate a radio and television station from this fort which can be heard by military and civilians throughout the zone and in portions of Panama on the Atlantic side. I understand there is a companion broadcasting system on the Pacific side of the zone.

Returning to the top of the map on the Atlantic side we come to Fort Sherman which has the notation "jungle operations." It is my understanding that U.S. Army troops are brought here from many bases within the States and divisions throughout the Army. It is the only U.S. jungle training area in existence. As a matter of fact, I understand this is one of the few jungle areas in the world with a triple canopy of vegetation, making it a very dense irreplaceable training area. The training center contains a small air strip, troop housing, barracks and training area. This is a very large jungle area and as indicated by an additional designation of the training area some distance below on the map. Let me add the understanding that the Air Force also has a jungle survival school located somewhere near the center of the canal which was utilized extensively during the Vietnam era primarily to train pilots for survival within a jungle area.

The only remaining military facility listed on the map is the Pina Range for light weapons and artillery fire.

Having reviewed all of the designations on the map, I should add that according to military personnel, the Army, Navy and Air Force all have bases within the Canal Zone, as well as the headquarters for the Southern Command.

Empire Range.—On the Pacific side of the canal, we come to the Empire Range, designated on the map as "infantry weapon Ranges." These firing ranges are used by the Army. Further toward the center portion of the Canal Zone is the Air Force bombing range.

Semaphore Hill and Summit Navy Communication Station.—Directly across the canal from these two facilities is first, the semaphore hill radar, which is a long-range radar facility and, below it, is the Summit Navy Communication Station transmitting facility.

That generally concludes the military facilities on the Pacific side of the Canal Zone and now going to the Atlantic side.

Galeta Island.—At the top of the map is Galeta Island designated as a "naval communication facility" about which you may have read something in the newspapers recently. Without touching any classified material, it might be said that this facility supports a high frequency direction-finding system and provides communications and related support, including communications relay, commu-

nications security, and communications manpower assistance to Navy and other defense elements within the area.

Coco Solo.—Reading down the map, we come to "Coco Solo Housing." This complex houses military families and civilian employees within the zone.

Fort Gulick.—Directly below is Fort Gulick which houses a special forces battalion and the U.S. Army School of the Americas. This school of the Americas provides training for Latin American military officers and men and is said to have a very favorable influence upon inter-American relations. Included within this complex are troop facilities, family housing, ammunition storage depots, a dispensary and dental facilities, and community service areas.

I am told that this school provides military personnel from various Latin American areas an opportunity to meet with each other and U.S. military personnel which broadens their military perspectives and gives them an appreciation of hemispheric defense issues and promotes standardization of military doctrine among nations of the hemisphere. Even the Panamanian military forces utilize the facilities of this school. Every U.S. military officer I have discussed this school with has spoken very highly of it.

Let us turn now to some of the financial aspects of the canal treaties.

On February 1, 1978, President Carter in a nationally televised address to the American people stated:

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

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

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

Later in his testimony before the Senate Foreign Relations Committee, Chairman SPARKMAN asked Secretary Vance concerning the so-called implementing legislation:

Will there be a necessity for the usual appropriations action?

Secretary Vance answered: "No."

Then Chairman SPARKMAN asked: "What, if any, budgetary impact would this have?"

Secretary Vance answered: "No appropriations will be required." And Chairman SPARKMAN replied "no appropriations will be required. I think those are two questions that have concerned people."

I believe these quotes from administration officials are representative of many statements made by many treaty supporters concerning the cost of the treaties. Even if these statements are technically correct they are still misleading, intentionally or not, concerning the cost of these treaties to the American taxpayer.

Let me mention some of the various direct costs to the American taxpayer.

FOREGONE INTEREST FOR THE U.S. TREASURY

The Panama Canal Company has the statutory obligation to pay interest to the U.S. Treasury on the interest-bearing portion of the U.S. investment there. Currently this amounts to about $20 million per year. The State Department has indicated that implementing legislation will relieve the new Panama Canal Commission (to be established if the treaties are ratified) of the obligation to pay interest.

This will be a loss of income to the Government or indirect cost to the American taxpayer of at least $440 million within the next 22 years. That is, this is money that will not accrue to the U.S. Treasury if the treaties before us are ratified.

In this regard, the Comptroller General of the United States, Elmer B. Staats, stated that the $20 million estimated annual interest payment, "could be substantially more" per year over the next 22 years. He said:

> We, I do not believe, are familiar with the rationale of avoiding the interest payment, except that it would mean that the toll rates could be kept lower. We do not see the basis for forgiving the interest payment.

EARLY RETIREMENT BENEFITS

Additional early retirement benefits to present Panama Canal Company employees, both American and Panamanians are being negotiated. These benefits would be paid through the Civil Service Commission and would not be charged to the new Panama Canal Commission accounts. As I understand it, whenever an additional charge is made upon the civil service retirement fund, Congress is obligated to appropriate additional money so that the fund will remain actuarially sound. The Civil Service Commission and the Congressional Budget Office estimate the annual costs of the various proposals being negotiated range from $6.5 to $8.5 million a year. If we take the midpoint of this range—that is, $7.5 million per year—it would mean that the total cost to the taxpayer of the early retirement provisions would be $165 million.

This early retirement provision is in title 5 of the United States Code, and it is so referred to in one of the annexes to the treaty. That is the provision which provides that, if someone is separated from the service through no fault of his own, involuntarily, he can retire, regardless of his age, if he has 25 years of service; or he can retire after 20 years of service, if he has reached age 55.

DEPARTMENT OF DEFENSE SUPPORT COSTS

Certain support functions under the new treaties, now paid from toll funds, such as hospitals and schools, will be transferred to the Department of Defense. This would mean an additional estimated cost to our Government of $5 million per year, or $110 million over the next 22 years.

BASE RELOCATION COSTS

The Department of Defense estimates that there will be a one-time cost of $43 million for the relocation of certain U.S. military bases in the Canal Zone.

TOTAL DIRECT COSTS

Let us add up these direct costs to U.S. taxpayers:

Loss to the U.S. Treasury, $440 million.

Early retirement costs, $165 million.

Certain Department of Defense costs, $110 million.

One-time base relocations, $43 million.

This is a sum total of $758 million minimum cost to our taxpayers for the privilege of giving Panama a $10 billion Canal Zone.

COSTS OF U.S. BASES ELSEWHERE IN THE WORLD

Mr. President, there are those who argue that, since we pay billions of dollars for our base rights in Spain, the Philippines, and other places around the world, that we should not quibble over several hundred million dollars that it will cost the United States to give its $10 billion canal to Panama. A million dollars or a billion dollars here and a million dollars or a billion dollars there could add up to real money. That is the reason why we have a national debt of more than $700 billion at the present time.

The situation is greatly different between Panama and our bases elsewhere. We built the canal in Panama—a country that would probably still be a province of Colombia with French locomotives and equipment rotting in its jungles. And we hear about the Frenchman Bunau-Varilla, and what a scoundrel he was in the history of the canal. If it were not for him, the canal might never have been built in Panama but in Nicaragua, where Senator John Tyler Morgan of Alabama and others wanted it. To say that because Bunau-Varilla may have profited from his efforts is to miss the point. France aided the United States in our Revolutionary War, not because of any great love for the United States, but primarily because they wanted to get at their arch enemy, England, through its colonies. So it is in human history.

The United States built the canal and developed Panama's only natural resource which Panama could never have developed itself. Under the treaties, we would be giving up a canal and related properties in the zone with a replacement value of about $10 billion. In addition, Panama has benfited tremendously from the presence of the canal in their country. Panama has the fourth largest per capita income in Latin America. Just suppose for a moment the situation in Panama and Nicaragua if we had constructed the original canal in Nicaragua and not in Panama, as could well have happened. Nicaragua would now have the higher standard of living, not Panama. According to the table prepared in September 1977 and made available by the Panama Canal Company, and inserted in the RECORD earlier today, gross payments and income flow to Panama by the Canal Company from 1963 to 1977 was $1.8 billion. This, of course, does not include the foreign aid our country gave to Panama, reported to be more, per capita, than we have given to any nation in the world. So, any suggestion that we have mistreated Panama is nonsense.

POTENTIAL PANAMA CANAL OPERATING LOSSES

The costs to the taxpayers previously mentioned in no way involve potential Panama Canal operating losses under the treaties. There is serious question whether or not revenues will be sufficient to meet expenditures, including the payments to be made under the treaty.

Let me quote from testimony of Comptroller General Staats, the head of our General Accounting Office, in his testimony before the Armed Services Committee:

If the canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the costs of the Commission, including the scheduled payments to Panama. In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through the congressional appropriations or by allowing the Commission to borrow from the U.S. Treasury.

Looking at the possibilities of increased costs over the company's initial estimates, Mr. Staats concluded:

It seems to me there are some very real concerns as to whether we can adjust tolls upward, assuming you do all these things that I have just listed, and still make it possible to operate the canal without serious deficits.

While one can make different assumptions on factors affecting future canal revenues and arrive at different conclusions as to whether the canal operation will be financially sound, there is a substantial possibility that the canal will suffer operating deficits during the life of the treaty, and if so, it will be our taxpayers who will make up the deficits. I might add that these payments from our Treasury would, in effect, amount to a payment from the U.S. taxpayers to Panama.

On page 92 of the Foreign Relations Committee report, there is this statement:

The treaty provides that the new Panama Canal Commission will make three different annual payments to Panama. The revenue for these payments will come exclusively from canal tolls and not from the American Treasury.

This contrasts with Mr. Staats' testimony before the Armed Services Committee, which I will repeat because I believe it is important, since he is the chief accountant for our Government:

If the canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the costs of the Commission, including the scheduled payments to Panama. In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the Commission to borrow from the U.S. Treasury.

PAYMENTS TO PANAMA UNDER TREATIES

As Senators know, payments to Panama from tolls under the treaties are:

First. Per canal ton $.30—estimated at $40 million per year—for a total of $880 million for 22 years.

Second. Per year $10 million—fixed expense—$220 million for 22 years.

Third. Per year $10 million for certain services such as police, fire protection—$220 million for 22 years.

Fourth. Per year $10 million if revenues exceed expenditures, should economic conditions permit—$220 million for 22 years.

This is a potential total of about $1.5 billion for the next 22 years, at a minimum, since some of those payments will be adjusted for inflation. This sizable sum will be made to a country of 1.7 million people, or a total of $880 for every man, woman, and child in Panama.

IMPLEMENTING LEGISLATION

Concerning the importance of the implementing legislation, the Comptroller General stated that—

The treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission. We did make an effort to obtain the implementing legislation, even in draft form, because we thought it would be helpful to us, but we are unable to obtain it.

Mr. Staats further noted, "If I were a Senator, I would want to see the legislation before I voted."

When Mr. Staats was before the Armed Services Committee, he outlined some of the issues to be addressed in the implementing legislation:

What form of U.S. Government Organization should the proposed Panama Canal Commission take?

Who will audit the new organization?

What should be done to assure an orderly transfer of property and continued efficient operation of transferred functions?

How to resolve Panama's $8.4 million debt for past services?

What should be done to relate payments to Panama for public services to the actual costs incurred?

How can the quality of these services be assured?

How should the annual contingent payment to Panama of up to $10 million be treated in financial and toll setting plans?

Should the canal organization be relieved of its obligation to pay interest on U.S. investment?

Should the United States attempt to recoup its investment through accelerated depreciation charges?

What is the magnitude of other treaty-related costs for personnel terminations and relocation costs to be borne by the U.S. Government?

Will toll revenues be sufficient to cover costs?

Who will bear the burden of increased toll rates?

In addition, Mr. Hansell, legal adviser, to the Department of State, indicated in his testimony before the Foreign Relations Committee on September 29, 1977, that the implementing legislation will "be an essential component of the overall program of implementation of the treaties." Later Mr. Hansell responded to a question from Chairman SPARKMAN as to when this proposed implementing legislation would be submitted to the Congress:

We hope to have a complete draft available for submission to both Houses within several weeks. We have been at work on it for some period of time. Certainly well before the end of October we expect to have it to you.

Here it is March, over 4 months later.

Only today did our office receive a letter accompanied by a 60-page bill to implement the treaties from Mr. Hansell on this matter. My staff tells me that someone in the Chamber indicated yesterday they had received theirs yesterday. I have not had an opportunity to study the proposed bill but the letter does state that it is still under study and review by other agencies and clearance by the Office of Management and Budget is being sought. Changes may result by virtue of that process.

So the executive branch still has not completely made up its mind as to what implementing legislation is necessary. But each Senator will, of course, want to review the tentative suggestions in detail.

Yet, there seems to be little disagreement that these treaties will cost the American taxpayer at least $750 million over the next 22 years and that fact has been, to say the least, downplayed by treaty proponents until the work of the Senate Armed Services Committee and others brought it out. Without knowing the administration proposals we are considering the financial aspects of the treaties in a vacuum. However, Mr. Staats pointed out in his testimony before the Senate Armed Services Committee that there will be other treaty related costs that will be borne by other agencies of our Government but that "only sketchy details are available at this time."

Mr. President, during this presentation, I have attempted to outline and to illustrate what it is that the American people have in the Canal Zone: The civilian and military improvements, the uses made of the zone in addition to the commercial and military value of the canal itself so that the Senate and the American people will be in a better position to determine whether or not we should give away this property valued at $10,000,000,000 and to be obligated to pay hundreds of millions of dollars within the next 22 years only to lose all rights in the canal on December 31, 1999, less than 22 years from now.

In my own judgment, these treaties should be rejected. They are vague. They are uncertain. There are numerous supplemental agreements, annexes, exchanges of notes and letters of which we are aware that are not subject to ratification or change as a part of the advice and consent proceedings. Should the treaties be ratified by the Senate, the agreements can be changed by executive action alone.

In the practice of law, we learn that a simple will, or a simple contract oftentimes is more easily understood and is subject to less litigation in the future. These complex treaties before us about which the legal adviser of the Department of State has only recently sent us a 59-page letter making tentative suggestions, even though they are still under review within the executive departments and agencies, illustrates that even the executive branch that has studied these proposals for 13 years still does not know what to recommend by way of implemented legislation.

When a contract or a treaty is so vague and uncertain, it seems foolhardy for us to give up all of our interests in the canal, remove our civilian and military employees with only the promise, vague though it be, that we can return and assist Panama in the defense of the canal. I would submit quite candidly that if we do not at this time have the fortitude to keep what is ours, what we

constructed and made a great artery of commerce, we will not have the necessary determination and fortitude to return to defend it in the future, barring some catastrophic war.

Mr. President, that concludes my statement. I am glad to yield to the distinguished Senator from Nevada.

Mr. CANNON. Mr. President, on February 22, Senator BROOKE presented a perceptive statement to this body expressing some of his concerns regarding the Panama Canal Treaties. He emphasized his particular concern over the uncertainties in the financial provisions of the treaties, pointing out that it is the responsibility of the Senate to have full understanding of any potential obligations that the United States could be assuming as a consequence of the treaties.

Mr. President, I would like to compliment my colleague, Senator BROOKE, for his sincere expression of concern, concern based not on a position for or against the treaties but concern based on a conviction that it is the duty of each and every Senator to be fully aware of all the implications for the American people before casting a single "aye" or "nay" vote.

Mr. President, this Senator and many of my other colleagues share the concerns expressed by Senator BROOKE. In fact, in my statement on the Panama Canal treaties which appeared in the February 6, 1978, issue of the CONGRESSIONAL RECORD, I voice similar reservations over the lack of clarity in the treaties regarding financial operations. I noted in that statement that the Armed Services Committee had recently held hearings dealing to a large degree with the economic and financial aspects of the treaties. I reviewed the four principal economic issues addressed by the committee and highlighted some of the testimony of our witnesses. I will not repeat that summary here but rather I refer my colleagues to the record and to the report of the Armed Services Committee on the hearings (Rept. No. 95–633).

Subsequent to the hearings, the committee completed a staff study of the financial aspects of the treaties, and has submitted this study to the Secretary of State for his review and comment. Our committee chairman, Senator STENNIS, entered into the record the complete staff study, the Secretary of State's comments on this study, and brief additional remarks on the State Department's reply. I commend to my colleagues those brief submissions to the record as necessary and important reading.

Mr. President, even after the diligent and conscientious efforts, as outlined above, on the part of the committee members and staff to unravel the economic and financial aspects of the treaties, I regret to report that the full financial obligations of the United States are not known. What is known is that the potential liability of the U.S. Government to Panama is substantial, perhaps as much as $2 billion to be passed on to the American taxpayer. The point here is that the magnitude of the commitment is unknown, and even the bounds are not well defined. I assert again that it is vitally important that the Senate understand before it votes on these treaties the full financial implications.

To achieve this the changes in the operation of the canal with their associated cost must be clarified. The toll structure required must be estimated based on a clear delineation of what costs or payments are to be passed on to the customer and based on realistic traffic projections, including the impact of toll increases. These considerations are especially important for the period beyond 1984 when the canal may not be self-sustaining according to expert witnesses. In the Secretary of State's recent reply to the Armed Services Committee staff study, the question of anticipated revenues being sufficient to avoid operating loss was not addressed beyond 1984.

Mr. President, I have repeatedly urged, along with many of my colleagues, that the administration forward to us the implementing legislation so that the Senate could make an adequate assessment of the costs involved and the financial obligations to be incurred by the United States as a result of these treaties. Finally, after much delay the implementing legislation has now been provided. Unfortunately, Mr. President, our first examination of this document shows it to be inadequate. It does not sufficiently clarify many of those financial issues which concern us. We need more, Mr. President. We need more than an expression of intentions. We need more than a contention by the President that the American taxpayer will not incur any cost. We need more and our constituents will settle for no less.

Mr. President, I will not summarize the outstanding financial issues at this time but refer my colleagues again to the previously mentioned insertions in the record, especially the succinct summary of the staff study. I do plan to offer amendments which will address some of these issues and I look forward to that debate. It is instructive, however, to itemize some of the potential costs to be incurred by the United States in the form of payments to Panama, lost revenue to the U.S. Treasury, and required appropriations resulting from the treaties as we now understand them. Tables I and II contain these costs.

Mr. President, the direct costs listed in table II, totaling $766 million, will unequivocally be borne by the U.S. taxpayer. The degree to which the guaranteed payments to Panama, totaling more than $1 billion, will be borne by the taxpayer is yet to be determined. This will depend on the extent to which the canal is self-sustaining. As previously mentioned, there is considerable doubt that the canal can be self-sustaining, especially beyond 1984.

I wish at this point to remind my colleagues of the profound recent statement of our distinguished majority leader who advised us of his view that we owe our constituents not a blind response to an opinion poll but our weighed judgment based on facts.

I concur with the distinguished majority leader's view, as I quite often do, that we owe our constituents our judgment—a judgment deduced from facts. I exhort my colleagues now to accept the challenge and insist that we be fully informed by the administration of the facts concerning the financial implications of these treaties—only then can we venture a reasonable judgment that we owe not only our constituents but ourselves.

Mr. President, I ask unanimous consent that the table to which I have referred be printed in the RECORD at this point.

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

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

	Millions
I. Payments to Panama from toll revenues (over 22-year life of treaties):	
$40 million per year (estimated) based on guaranteed payment of $0.30 per ton transiting canal (without adjustment required to reflect change in wholesale price index)	$880
$10 million per year guaranteed annuity	220
$10 million per year for services provided (re-negotiable after three years)	220
$10 million per year from surplus revenues (unpaid balance is carried over)	220
I. Total	1,540
	($1.54 B)
II. Resultant direct costs to U.S. (over 22-year life of treaties):	
A. Lost Revenue from Panama:	
$20 million per year interest payment to U.S. to be forgone (assumes no rise in interest rate)	$440
$8 million debt to U.S. if forgone	8
Subtotal	448
B. Required appropriations:	
$7.5 million per year cost for early employee retirement allowed by treaty	$165
$5 million per year for dependent benefits (principally schooling) formerly provided by Panama Canal Company	110
$43 million for base relocation	43
Subtotal	318
II. Total	766
I and II grand total	2,306
	($2.306 B)

Mr. CANNON. I would point out that these tables do not take into consideration the value of the assets which the Senator from Virginia was talking about in his remarks, which we make no recovery from here, but these tables refer to the guaranteed payments based on the tonnage through the canal, that $10 million per year guaranteed annuity, and the services which start at $10 million a year and are negotiable after 3 years.

I would point out that in our hearings before the Armed Services Committee, General Parfitt, the Governor of the Canal Zone, pointed out that the cost of those services to Panama was, I believe, if I remember correctly, $4.8 million at

this time, based on Panamanian costs. So we are giving them a windfall of about $5 million at the taxpayers' expense, right at the start of the agreement, and then that would be negotiated, supposedly upward, after a 3-year period.

I hope we will have an amendment that will make it clear that that would be negotiated downward as well if the costs do not amount to that much.

Then there is the question of the $10 million a year from the surplus revenues, over which there is some dispute, because the State Department and others have stated that there is no obligation on the U.S. Government for a rollover of that $10 million cost.

I have talked with several of my colleagues who have visited Panama, and who stated to me that they were told that the Panamanians understand that to be an accumulation. We agreed to turn over the canal free and clear of any liens or obligations at the end of the 1999 period; so if there are no profits, and that $10 million a year is not paid and mounts up for a period of 22 years, that would total $220 million.

I was not at Panama myself. I thought that they had enough problems with most of my colleagues having gone down there to find out not much more than they could read in the newspapers; but, in any event, I was told by several of our colleagues that the Panamanians told them that they believe that to be a rollover provision and accumulation which the United States would owe.

Now, there is one way that can be clarified. That would be spelled out in the implementing legislation. If it is not put in this legislation in the treaty by an amendment, the implementing legislation could make it absoluely clear and then find out what the intent of Congress is and what the reaction of the Panamanians are for that particular provision.

And then, of course, the second chart refers to the lost revenue from Panama, which is the interest payment which is now approximately $20 million a year and would go up, according to the formula, the cost escalation, as the interest rate rises. Then, the unsettled issue of the $8 million debt to the United States, if that is to be forgone. Then, of course, the required appropriations for the early employee retirement, which is allowed by the treaty, and which is again referred to in the implementing legislation that is up here now, and the $5 million a year for dependent benefits for the schooling formerly provided by the Panama Canal military, and then the $43 million for defense reallocation.

(Mr. CLARK assumed the chair.)

Mr. SARBANES. Will the Senator yield?

Mr. CANNON. Yes; I am happy to yield.

Mr. SARBANES. I would like to address the treaty provision for a contingent payment of a $10 million annuity to Panama, if the tolls should produce sufficient revenues to make that payment to Panama. I know the Senator chaired meetings where this matter came up and he was repeating, as I understood it, reports from other Senators that the Panamanians felt that the annuity accumulated and would be a debt which we will have to discharge at the end of the century.

Mr. CANNON. I may say that both General Parfitt and the Comptroller General Staats agreed with that proposition that it was not clear and that that point ought to be covered by implementing legislation to make it so that there is no dispute with respect to this country and Panama, if the treaty is approved.

Mr. SARBANES. Well, let me just read from a recent question and answer session where this issue was addressed.

One does not know what somebody or other in Panama may be asserting, but let me read a question and answer with Dr. Nicolas A. Barletta, Minister of Planning and Economic Development of Panama, who is their chief economic official, at a recent question and answer session in San Francisco at a public forum hosted by the World Affairs Council, the trade association of the Chamber of Commerce, and Latin American Section of the Commonwealth Club.

Quoting the moderator of that forum who posed the question:

If there is an accumulated unpaid balance under article XIII (4) (C) of the contingency payment stipulated in the Panama Canal Treaties? Would the U.S. be liable for payment of the accumulated unpaid balance?

And the response from Dr. Barletta:

Actually this question refers to the fact that in the treaties Panama should be getting $10 million a year from the revenues of the Canal operation and an additional $10 million if the revenues permit. If revenues do not permit, the deficit will be accumulated to be paid by revenues from later years. If there is an accumulated deficit by the time the treaty ends, in 1999, that's it, the U.S. is not committed to make it up if such amount has not been able to be collected from the revenues of the canal operation. We do not hope in our interpretation of this clause of the treaty, that the U.S. is committed to pay any such deficit that might have accumulated. However, I would like to say, that in our estimation, the revenues of the canal and all the projections and studies that have been made should be able to cover this second $10 million that should come to Panama if revenues permit, so I don't foresee much of a problem in respect to deficit. But if such a deficit is accumulated and is pending when the treaty ends, then the U.S. is not committed to make it back from the U.S. Treasury.

Now, of course, that is the view which our negotiators and officials have set out as the proper interpretation of this clause, and I think that is the proper interpretation of the clause and it is being agreed to by the Minister of Planning and Economic Development of Panama.

As the Senator points out, we will have implementing legislation before us and we can deal with the implementing legislation any way we choose.

I did not point this out earlier to the Senator from Virginia, but I think it is important to underscore that any implementing legislation the administration submits is but their proposal. Congress is free to do as it wishes with the implementing legislation; and by the Congress, in this instance, we mean both the Senate and the House, and you are talking about legislation which would have to pass both Houses.

The treaty provision for that extra $10 million annuity, if the revenues make it possible, is clear that it does not carry over beyond the termination date of the Panama Canal Treaty in 1999.

Mr. CANNON. I thank the Senator for his views and, of course, he believes one way and I happen to believe another way. Mine is reinforced somewhat.

I chaired the hearings of the Armed Services Committee on this particular point and if the present Governor of the Canal Zone, General Parfitt, and if our Comptroller General Staats do not think it is clear it ought to be at least clarified. Then, I would not think that the press conferences held by the planning minister of Panama would necessarily be binding on the Congress, either on Panama or the United States.

So, I would say that if we are in fact in agreement on it, if it is clear that it is not to be paid, then either an amendment to the treaty to that effect or a provision in the implementing legislation to that effect should be of no harm, if everybody is in accord, and the thing we want to do is to be sure that there are no loose ends that are going to cause disagreement between the parties at a later period.

Now, as I said, the planning minister's statement at a press conference is not binding on Panama any more than our President's statement at a press conference, when he said that these treaties would not cost the taxpayers a dime, and the record is clear that they will cost the taxpayers a dime. They will cost them an awful lot of dimes, any way you look at it.

If you take the best possible case for the United States, it is going to cost the taxpayers a very substantial amount of money.

Now, the treaty itself says:

In the event the canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Now that manner to be mutually agreed is one that we can clarify and thus avoid a lot of disputes at a later period, if we have the will to do it.

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

Mr. CANNON. Yes; I yield to the Senator from Virginia.

Mr. SCOTT. I appreciate the Senator yielding.

A thought occurs to me that an amendment to the treaty would be the proper way to clarify what the distinguished Senator from Nevada is discussing rather than implementing legislation.

I wonder if implementing legislation unilaterally made by the United States, whether Panama would be in agreement with it or whether we would have some further argument between the two countries, unless they passed corresponding legislation to complement what we should enact.

Mr. CANNON. Well, I say to my col-

league, that obviously the implementing legislation would not have the same effect as the treaty itself. I, therefore, have an amendment proposed to the treaty on this precise point and I shall be offering it to make it absolutely clear on this point.

If Panama agrees with us, then I see no harm in making it clear that there is no rollover effect and that at the year 2000 we do not owe Panama, if they have never received anything out of the profits under this provision, $220 million at that time that we would have to pay under the treaty before we could turn the canal and the properties over free and clear.

I have not addressed in my remarks here, as I said, the value of the capital assets that I think the Senator may have in view with respect to a turnover free and clear.

Mr. President, just on one further point.

Yesterday, I heard the debate between two of my colleagues with respect to what was Admiral Holloway's position, and that was, did he firmly believe in the present, the real world today, that this was the best we could do and that he therefore supported it. He was quoted by one of the other Senators as saying that if he could have it the way he liked it he would prefer we maintain a presence there, and that that would be the best possible situation.

I would also like to point out to my colleagues that I asked Admiral Holloway what his feeling was with respect to whether or not this treaty was in the best interests of the United States. If my colleagues will check the record, they will find out he said, "Yes; I think it probably is."

I raised the question with Admiral Holloway that I was shocked at that statement because I had never heard him come before the Armed Services Committee and say, "I think we probably need another carrier," or "We probably need some other addition to our Defense Establishment."

He has always been very firm and very forthright. But he did answer my question that he thought that these treaties probably were in the best interests of the United States.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Are there further amendments to article II?

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

The PRESIDING OFFICER (Mr. SARBANES). If the Senator will withhold that request, the Chair will recognize the Senator from Iowa.

Mr. SCOTT. I will be glad to withhold it.

Mr. CLARK. Mr. President, I appreciate the Chair's recognizing me for an opportunity to speak about a particularly important aspect of the Panama Canal Treaty.

Mr. President, early in the floor debate over the Panama Canal treaties, I reviewed in detail the considerations that went into my decision to support the treaties, at least to support them as improved by the so-called leadership amendments. At that time I discussed my position on what I believed to be the significant features of the two documents.

I touched rather briefly on the economic impact of the treaties on Iowans whom I represent. I have been very alert to toll increases and their impacts on shipping costs for grain. The question of whether there will be toll increases and whether these can be expected to significantly increase shipping costs comes up frequently in my discussions with farmers and others in Iowa. Therefore, I would like to address myself today particularly to the question of toll increases, and whether they will have any noticeable impact on transportation costs of the grain Iowans sell abroad, although what I have to say has implications for others.

There is just no doubt that the Panama Canal is important to this Nation's grain exporters. According to the Department of Agriculture, of our approximately $23 billion in agricultural exports, roughly $8.5 billion goes to the Far East, and some 70 percent of that passes through the canal.

Iowa, as a major grain producer, is one of the leaders in the use of the canal. We produce between one-fifth and one-sixth of the Nation's corn and about one-sixth of our soybeans; 28 percent of that corn, and 40 percent of those soybeans, are exported.

The canal is an important, even crucial part of our transportation system to the Far East—primarily Japan, Taiwan, and South Korea—all major grain markets. It is the cheapest route—via the Mississippi River system to the gulf ports, and then through the canal.

(Mr. MELCHER assumed the chair.)

Mr. CLARK. Now before probing more completely the figures on what the current costs are and how they might be affected by toll changes, let me emphasize one point which is sometimes forgotten, and it is a critical point. The cost of transiting the Panama Canal is a very small fraction of the total transportation costs of shipping grain from Des Moines to Tokyo.

I suppose that is obvious, but it has to be kept in mind: The toll charge is a very small portion of the overall cost of transporting grain from the Midwest of America to the Orient.

It is important to emphasize that an increase in tolls for the Panama Canal may not actually increase shipping costs significantly, because the canal toll is such a small share of the total. I want to be more specific. I want to cite some statistics to make that point.

First of all, though, let me emphasize that I am using the projected 30-percent toll increase which Department of State witnesses have suggested would be probable. It is worth noting, however, that Gov. H. R. Parfitt suggests that 19.5-percent increase might be sufficient, and Arthur Anderson & Co., also suggested that the initial increase would not have to exceed 27 percent. But for my purposes here I will use the Department of State's projection of 30 percent, because even that figure does not significantly harm the interests of Iowa grain shippers.

Now let me turn to the figures on the impact on transportation costs. According to the Foreign Agricultural Service of the U.S. Department of Agriculture, it currently costs approximately $26.40 per long ton to ship grains from Des Moines to Tokyo. The per ton cost for that grain to transit the canal, according to the Canal Company, is under 84 cents. In other words, currently only 84 cents of the $26.40 it costs to ship a ton of corn between these two cities represents the cost of the canal transit.

Now, as is obvious, the expected 30-percent toll increase for that transit applies just to the 84 cents. Thirty percent of 84 cents is 25 cents, which makes a new total of $1.09 per long ton. Thus that 30-percent toll increase would raise the total cost of shipping a ton of grain from $26.40 to $26.65—an increase of less than 1 percent.

Put another way, it currently costs approximately 66 cents a bushel to transport grain from Des Moines to Tokyo. A 30-percent hike in the Panama Canal tolls would result in an increase of slightly more than one-half cent per bushel on that 66 cents.

But according to all the testimony we have heard, it is unlikely that even that half cent would be paid by the Iowa grain shippers. In most instances, the experts tell us, the purchaser would pick up the tab.

Let me talk about that for a moment.

During the course of these hearings I made a point of asking this basic question: What would be the impact on shipping costs, and who would pay it? Responding to my question to Undersecretary for Economic Affairs Richard N. Cooper, the Department of State supplied for the record the following statement:

> Midwestern farmers who grow corn, wheat, soybean and sorghum will be little affected one way or another by a 30-percent increase in Panama Canal rates. This is because the United States is by far the major supplier of grains and soybeans to the Far East; and the competitive position of U.S. suppliers will not be affected by such a toll increase. It will therefore be the importer in the Far East who would bear any additional cost.

Mr. Cooper is observing that toll increases that affect U.S. producers would affect our competitors just as much, and would not alter the competitive balance.

This statement was corroborated fully by the testimony of Mr. Ely Brandes, president of the International Research Association. Now, Mr. Brandes probably has more carefully examined the Panama Canal toll structure than any other person. Since 1964 he has authored or coauthored some 20 studies of this problem. Asked about the impact of a toll increase of 30–50 percent, Mr. Brandes agreed with administration witnesses who estimated that the impact on overall U.S. grain exports would be extremely small. I quote Mr. Brandes:

> We found that toll increases of 50 percent and more would reduce U.S. grain shipments through the Panama Canal, but they would not affect the level of U.S. grain exports as such.

He went on to say:

> We believe that the principal alternative

with respect to grain shipments would be the use of large bulk carriers of perhaps 100,000 tons or so and to ship the grain primarily from the Gulf via the Cape of Good Hope to the Far East. This is being done with respect to coal right now, which is bypassing the canal in substantial amounts. A substantial toll increase might lead to a similar diversion with respect to some grain shipments. But it would not affect the level of U.S. exports. It would affect, perhaps, the route by which those exports are shipped to the Far East.

After a lengthy discussion on the sensitivity of bulk shipments—that is, grain—to toll increases, Mr. Brandes further concludes:

With respect to grain, again, what we foresee is a rearrangement of shipping routes with no reduction in the amount of grain shipped from the United States and purchased by the principal buyers in the Far East.

Mr. Brandes is forthright in his conviction that, as he put it:

As a general principle, it was our finding that it is the buyer, the consumer, who pays for the transportation costs. This means, in effect, that for automobiles shipped to the United States through the canal, the consumer would be the ultimate payer of the transportation costs and toll increases. On the other hand, with respect to the major exports, such as grain, from the United States, the importers or buyers would be the payers of the toll increase.

Incidentally, Mr. Brandes had one further observation of considerable interest to Iowa shippers:

I would like to also add here that the Japanese were the principal buyers of grain shipped through the Panama Canal. They always purchase their grain FOB U.S. ports. They make all arrangements with respect to transportation. So, they are not only the ultimate payer; they are also the actual payer.

Mr. President, I have quoted Mr. Brandes at length because he has testified so specifically that: First, the increase in total transportation cost caused by the projected toll increase will be extremely small; second, that it is the purchaser at the other end who picks up the tab for whatever increase there is in transportation costs; and third, increases in tolls of less than 50 percent would not be expected to alter the U.S. competitive position in any significant way.

Now, I know, too, that there are those who say that, well, we can perhaps absorb this 30-percent increase in Panama Canal toll rates—this half cent additional on 66 cents that it costs to ship to the Far East—but that is only the start, there will be further increases after this 30-percent increase.

A number of witnesses testified on this point, and most do expect later toll increases. The projected toll increases will be largely to reflect the impact of inflation on operating costs. The cost of running the canal, like everything else, rises with world inflation. The important question is whether or not tolls will go up faster and higher as a result of the treaties.

Toll increases are inevitable with the treaties or without them. H. R. Parfitt, current Governor of the canal, testified that, assuming a 5-percent annual inflation rate:

. . . periodic increase in tolls will be required even without taking into account the impact of the (new) treaties.

Indeed, Governor Parfitt submitted tables showing that from 1979 to 1999, the cumulative toll increase without the new treaties would be 94.8 percent. With the new treaties, it would be 115.7 percent. That's a difference of only slightly more than 20 points in the cumulative toll increase over a 20-year period. And that calculated on a base which is now only $1.29 per canal ton. Thus the higher cumulative figure would yield a toll per canal ton of $2.78, while the lower would yield $2.51—a difference of only 27 cents per canal ton. Such a difference, expected only after 20 years, is hardly significant.

There is another charge worth examining in this regard. Some people say, well, that is all well and good, and so long as the United States manages the canal—and determines toll rates—as it will until the year 2000, we will establish tolls at a rational level. But, they caution, wait until the Panamanians take over the toll-setting responsibility and see how they skyrocket the rates.

Well, Mr. President, if there is one basic economic fact of life I learned from sitting through these hearings, it is that transportation rates are very, very sensitive to price changes. The competition is brutal. In a word, a lot more goes into determining the rates than just whether the Panamanians might like to raise these rates later. As a matter of fact, we have a lot of economic indicators which project pretty well what increases can reasonably be expected to increase revenues, and where an increase, because it diverts traffic away from the canal, actually results in less revenue.

It is not true that the more you raise rates, the more revenue you get. The world's shippers simply will not continue to use the canal if it is economically unfeasible.

Economic studies show that Panama could probably increase the rates somewhat, and still increase revenues. But the tables show that any really steep increases push down revenues, and the Panamanians, of course, know that. Over the years they have come to know the rules governing toll rates as well as we do.

As a matter of fact, the projections show that an increase in tolls of 150 percent would result in less revenue than an increase of 50 percent. So anybody who thinks that the Panamanians will boost the rates indiscriminately once they take over just overlooks that fact that the Panamanians do know the economics of the transportation business. If the Panamanians raise the rates beyond tolerable levels, there will not be any traffic going through the canal. We will all be going around Cape Horn or sending the grain by train to the west coast. The Panamanians know this full well.

As a matter of fact, those cost differences even now are narrowing. As I mentioned, it costs $26.40 right now to ship grain from Des Moines to Tokyo via the canal. But, even now, we can go around Cape Horn at $32.40, and by rail to the west coast and thence by ship for $32. This is still a tremendous difference. But using some of the supercarriers would gradually close the gap. So would more competitive prices the railroads could offer if the traffic really grew. Representatives of the railroads have already testified they could handle the traffic.

This Nation's coal exporters on the east coast serve as a good example of what we could anticipate for grains if tolls become unreasonable. The share of coal from Hampton Roads, which bypasses the canal, as contrasted with that which uses it, has increased sharply since 1975. This, of course, depends to some extent on the availability of large bulk carriers. But there can be no question that the increasing availability of alternative routes respresents a real constraint on increasing the Panama Canal tolls.

In a word, the pressures to keep rates at reasonable levels are enormous.

It is my view that, in very real terms, the concerns of Iowa grain shippers are identical with those of the U.S. Navy and military: What counts is keeping the canal open. The one thing which would have a really tremendous economic impact on Iowa shippers would be a shutdown of the canal, a closing of traffic completely. That could happen in one of two ways:

Either a mammoth natural disaster, such as the draining of Gatun Lake, or an economic one resulting from the refusal by international insurance firms to insure vessels using the canal because of a war-risk situation. In either case, the costs to shippers of alternate routes could increase transportation costs by as much as $5 to $6 per ton in the short run for corn and soybeans. The long run increase would be less, as we have shown, but still considerable.

This emphasizes, it seems to me, the absolute necessity of keeping the canal open. That is the critical point. And all of our current military chiefs argue that the best way to guarantee continued use of the canal is to approve these treaties.

Without exception, as they appeared before our committee, the heads of each of the services recommended the new treaties on that ground.

While I am addressing myself specifically to the concerns that this Nation's farmers may have regarding the treaties, let me discuss very briefly another point which has come to my attention. That is the contention that the Panama Canal serves as a barrier to the movement toward North America of aftosa, hoof and mouth disease and that somehow this barrier will be lifted by the treaties. Implicit in this concern was the thought that somehow the United States is doing something now to prevent spread of the disease, and that the Panamanians might not be as capable or as effective or, for that matter, as concerned, about controlling this disease.

Well, Mr. President, I looked into this matter very carefully. I contacted the Department of Agriculture and the Department of State, and it turns out that not only is the fear unfounded, but that the situation is much different.

Let me explain, for one thing, the barrier to hoof and mouth disease into North America is not the canal, but the Darien

Gap, an impenetrable marsh and jungle area located at the southeast extremity of the isthmus. That, in fact, is why construction of the Pan American highway through the gap was halted last year. Before cutting through the Darien Gap we wanted to insure that adequate safeguards exist against the northward spread of the disease.

Panama north of the gap—and that includes the zone—is free of hoof and mouth disease.

As a matter of fact, cattle presently are transported across the canal bridges without being inspected. This has not caused the spread of hoof and mouth disease. For that matter, the United States at present maintains no facility in the Canal Zone for the control of hoof and mouth disease.

Panama and the United States are parties to an agreement to cooperate in preventing hoof and mouth disease (23 USt. 3108 TIAS 7482). That agreement is independent of the canal treaties and would continue in force after the canal were transferred to Panama.

In other words, it is in no way dependent upon either the old or the new treaties.

Furthermore, Panama has a large cattle industry and hence has a strong interest in controlling hoof and mouth disease.

So, Mr. President, it seems that upon inquiry some of these concerns expressed turn out to be much less alarming than they appear at first. We all have a great and justified concern in preventing the spread of this disease. But the current United States-Panamanian cooperation will in no way be undermined by these two treaties.

In fact, Mr. President, I hope all those persons who have been so dubious about the ability of Panama to cooperate with the United States will take note of this fact.

Mr. President, to conclude let me summarize what I have said, particularly about the toll rate controversy: The impact of the projected 30-percent toll increase will be marginal on the cost of shipping grain from Des Moines to Toyko—roughly a half cent on the current 66 cents per bushel.

Rates would be expected to go from 66 cents a bushel to 66½ cents per bushel.

Economists are generally agreed that the transportation cost increase will be picked up by the purchaser. Japan, the major purchaser, already buys f.o.b. at U.S. ports, and therefore already pays the transportation itself. And, finally, there will in any case—treaties or not—be regular toll increases to the year 2000 because of inflation. But the difference, even over these 20 some years, will be only between an increase of 94 percent without the treaties and of 115 percent with them. That is only about a quarter of a dollar per ton, and surely of no great importance, particularly over that long a period.

I submit on the basis of this that Iowa farmers and shippers, and, for that matter, Midwest grain shippers in general, have nothing to fear from these treaties, and a very great deal to lose from not supporting them.

Mr. President, I ask unanimous consent that further elaboration of the grain transport problem excerpted from the most recent report by Mr. Brandes' International Research Associates, dated January 1978, be printed in the RECORD following my remarks.

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

2. COARSE GRAINS

BACKGROUND

The classification of coarse grains, as used by the Panama Canal Company, includes primarily feed grains such as corn, sorghum, barley, and oats. Of these four feed grains, corn is by far the most important, sorghum and barley rank second and third, and oat shipments are so small as to be insignificant.

World trade in coarse or feed grain has expanded much more rapidly in recent years than wheat trade, partly because of the very rapid increase in meat consumption in the developed areas, but mainly because most developed countries, other than the United States, do not have the agriculture potential for large scale feed grain production. Furthermore, only the United States has the production capacity for large scale feed grain exports on an assured basis. As a result, the United States has become the principal exporter of feed grains, by a wide margin; and in recent years such exports have totalled more than 50 million tons. Corn exports account for about 80 percent of the total, sorghum for about 12 percent, and barley and oats for the remainder. The principal importers of feed grains are Europe, and particularly the EEC countries, Japan, and the U.S.S.R.

THE ROLE OF THE PANAMA CANAL

More than 90 percent of coarse grain shipments through the Panama Canal are from the United States to the Far East, principally Japan. It is very significant that this movement, which in 1977 amounted to more than 12 million tons, did not start in any amount until 1950. Since then, the growth has been both rapid and consistent.

In addition to this large movement, there are smaller movements from the U.S. east coast to the west coasts of South America and Central America, and from the west coast of Canada to Europe, the latter consists primarily of barley.

Coarse grain shipments through the Canal, particularly of corn and sorghum, are generally made in large bulk carriers of 25,000 to 55,000 tons.

RECENT EVENTS AND PROJECTIONS

The future outlook for shipment of coarse grains via the Panama Canal is reflected in a projected rise in the total volume of movements from 15 million tons to 27.5 million tons by the year 2000. The basis for this optimistic outlook stems from an analysis of the current consumption pattern of feed grain in Japan and the growing importance of poultry and pork in the daily diet of the Japanese. It also reflects an analysis of the relative consumption levels of meat in Japan and the United States. Finally, the projections take into account the effect of competition and of the alternatives available to shipping via the Canal.

Recent events have indicated that the growing demand for meat in Japan is so well established that the rate of increase in consumption is hardly affected by temporary declines in the economy. (There was a drop in feed grain imports during 1975 and 1976 as a result of the inventory buildup during 1974. But in 1977 imports recovered sharply even though the recession continued.)

It is expected that this shift will continue in the long run since the per capita consumption of meat in Japan is far below that of the United States. In 1976, the Ministry of Agriculture and Forestry in Japan compared the annual per capita consumption of selected food items in Japan and the U.S., for 1960, 1971 and 1975. In 1975 the Japanese consumed about 35 pounds of meat per person as compared to 7 pounds per capita in 1960 and 29 pounds in 1971. In comparison, the consumption pattern in the U.S. went from 168 per capita in 1960 to 194 pounds in 1975 (Table 3.) It should be noted that even when fish is included in the comparison, there is still considerable room for increased meat consumption. Finally, the recent actions by many countries to impose a 200 mile fishing limit on foreign fishing may have the long run effect of reducing the growth in fish consumption in Japan. This will undoubtedly result in additional demand for meat and feed grain.

The Gulf ports will likely continue to be the major grain export region because of the large and efficient grain export terminals located there as well as the relatively low barge rates available for movements down the Mississippi River.

Most of the grain exported from the Gulf to Japan will be routed via the Canal. Although the freight rates on large bulk carriers, which are routed via the Cape of Good Hope, may be cheaper, there are at present certain economic and institutional barriers which thus far have prevented grain shipments of 100,000 tons or more to Japan. (There have been such large shipments to Europe.) However, there are indications that in the next few years, attempts will be made to ship a portion of the coarse grain exports to Japan via the Cape of Good Hope, and these bypass shipments are likely to grow with time and with increases in tolls.

D. Sensitivity estimates: Cargo tonnage and revenues

The sensitivity estimates for Panama Canal traffic were made separately for the 23 commodity categories for which traffic estimates had been made. Also, the estimates are expressed both in terms of cargo tonnage as well as the associated toll revenue.

As previously stated, it was assumed for the purpose of these estimates that increases in toll rates amounting to 15, 25, 30, 40, 50, 75, 100 and 150 percent would be announced April 1, 1978, and put into effect on October 1, 1978. The effect of these assumed tool increases was measured against the traffic projections made for the fiscal years 1979, 1980, 1985 and 1990.

The actual estimates are contained in 8 summary tables, showing both tonnage and the associated revenues for the four specified years. Eight tables follow the discussion concerning the individual commodity categories.

Below is a brief discussion of the sensitivity estimates for the individual commodity categories.

WHEAT

In the aggregate, wheat traffic via the Panama Canal does not appear to be very sensitive to toll increases of 100 percent or less; but it felt that toll increases greater than 100 percent will result in a substantial loss in traffic volume. This loss in traffic will probably be due to consumers buying wheat from other sources, such as Canada, Australia, and the West Coast of the United States, as well as shifting of some wheat shipments to alternative routes.

Canadian exports which are sometimes cross-hauled via the Canal are likely to be affected by any substantial toll increases. As indicated earlier, this cross-hauling occurs by accident and is not predetermined. However, the raising of tolls will result in a greater degree of planning by the Canadian Wheat Board to avoid cross shipments.

Most of the U.S. East Coast exports to Asia via the Canal are not sensitive to smaller toll increases largely because individual wheat shipments are generally small in size. However, sharply higher toll increases will cer-

tainly cause importers to evaluate the economics of using larger ships (not only for by-pass opportunities, but also for ships from Pacific Basin port areas—Vancouver, Australia and West Coast United States).

It is also believed that the imposition of a substantial toll increase—50 percent or better—will lead, in a few years, to such a substantial by-pass movement of coarse grain from the Gulf Coast to the Far East that some wheat shipments might become part of it. (See discussion under Coarse Grain below.)

COARSE GRAIN

The imposition of higher Canal tolls will result in a substantial decline in coarse grain traffic via the Panama Canal. While a small part of the loss in traffic may be due to a shift to other markets, it is expected that the toll increase will provide an incentive to buyers and sellers to reroute a substantial volume of grain via the Cape of Good Hope.

As indicated previously, the principal route of coarse grain shipments via the Canal consists of grain from the East Coast U.S. (Gulf and Atlantic ports) to Asia (Japan and South Korea), and it is expected that this movement will continue to grow at a substantial rate. This increased volume of export will begin to tax the capacity of existing delivery systems causing added congestion at both loading and discharge port areas.

One obvious method for dealing with port congestion caused by the growing volume of shipments is to increase the size of individual shipments. It is apparent that in spite of the many current objections to the use of 70,000 to 100,000 DWT ton vessels in movements around the Cape, the growing volume of feed grain shipments will exert strong pressure toward increasing the size of the average shipment. As a result, there is a strong probability that in the near future some trial shipments of feed grain will be made in large bulk carriers around the Cape.

As was the case with coal shipments, the charter rate for these early shipments will undoubtedly be much less than the rates then current for shipments via the Panama Canal. Given the volatility of charter rates even during quiet times, it is difficult to project specific rates with any degree of probability. At present, for instance, charter rates for grain from the Gulf to Japan range from $10 to $12.50 per ton. Rates for larger vessels going around the Cape would, at first, have to be about $1.50–$2.50 per ton less to attract interest. These early shipments would serve to pave the way for the handling of larger ships. In time, there will undoubtedly be a substantial volume of by-pass traffic between the United States and the Far East; and given the growing number of large bulk carriers in use, other commodities shipped in lesser volume will be attracted to it.

A substantial toll increase would serve to encourage or speed up the shift toward a by-pass route. Once such larger shipments have become established at a few ports, competitive forces will tend to narrow the difference in charter rates between the two types of ships. At that time, a toll increase of 50 percent or more will have a significant effect on deciding whether individual shipments are routed via the Canal or via the Cape.

It is expected that substantial toll increases will also result in a shift of a small amount of coarse grain to be exported via the West Coast ports instead of the Gulf ports. Because of the nature of transport economics, grain which is exported generally comes from the areas closest to the Mississippi River, its tributaries and to some extent the Atlantic Coast ports. However, increased foreign demand is requiring now that grain from areas less accessible to the inland waterways be routed into export channels.

In summary, it is estimated that a toll increase of 50 percent would reduce feed grain shipments by about 10 percent in 1985. Beyond that traffic losses would mount sharply, reaching 30 percent in response to 100 percent increase and more than 40 percent in response to a 150 percent increase.

Most of the losses will occur as a result of by-pass shipments via the Cape of Good Hope. Diversions to the West Coast would amount to no more than 2-3 percent of the total.

SOYBEANS

Soybean traffic via the Panama Canal appears to be sensitive to toll increases at levels beyond 75 percent. Sensitivity of soybean shipments will increase during the Eighties particularly if a large volume of by-pass grain traffic develops between the U.S. Gulf and the Far East.

As discussed in a previous section on Coarse Grain, the increased volume of grain shipments to the Far East will result in attempts by traders to initiate such by-pass shipments regardless of a toll increase. Once this traffic exists, some soybean shipments may be directed to it.

Soybean traffic is less sensitive to toll increases than coarse grain because they are exported in smaller shipment sizes and there are also substantial grade differences. But some shipments could be large enough to justify rerouting via the Cape in 70,000-100,000 DWT ton bulk carriers.

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

The PRESIDING OFFICER (Mr. CLARK). Are there amendments to article II?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. If not—are there amendments to article II?

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

SECURITY ACTIVITY AT GALETA ISLAND

Mr. HELMS. Mr. President, as Senators may be aware, the Chief of Naval Operations, Adm. James L. Holloway III, in his prepared statement before the Senate Armed Services Committee, spoke of the U.S. Naval Communications support stations in the Canal Zone as follows:

The U.S. Naval Communications station at Balboa on the Pacific side which provides communications support to U.S. Navy Units in the South Atlantic and South Pacific as well as for U.S. Navy activities stations in Panama. The communications station also functions at the International Secretariat for the Inter-American Naval Telecommunications Net which provides a multinational communications link with most Latin American navies. The U.S. Navy also has a security group activity at Galeta Island located on the Atlantic side.

Mr. President, the Chief of Naval Operations thus called attention to an activity which has not received much attention in the thousands of pages of hearings and statements concerning the Panama Canal treaties. This is not surprising in view of the fact that the security group activity is highly classified. For this reason, the Armed Services Committee went into executive session for the questioning of Admiral Holloway on this delicate subject. Naturally, the published transcript of that session had to be heavily sanitized so that the important defense secrets would not be revealed.

Mr. President, in addition to my questioning of Admiral Holloway in executive session, I submitted a number of prepared questions, which the admiral then responded to in a full and candid fashion. These responses, obviously, are also classified. I will be pleased to show them to any Senator who so desires. I wish that the American people could also read them. The American people have a right to know how important Galeta Island is to our defense effort, why as part of a worldwide system it has important bearing on the defense of the Panama Canal, and why its geographical location is unique.

In short, Mr. President, I think that any fair reader of this classified document would conclude that the Galeta Island facility is irreplaceable.

Now I do not intend to enter a rhetorical sweepstakes and attempt to split hairs over whether Galeta is "vital," "essential," "indispensable," and so forth. There is scarcely any element of our national defense that can be placed in those categories when taken in isolation. Even our strategic system is based upon a triad of strategic weapons, developed according to the theory that each one has its peculiar vulnerabilities and weaknesses—that all three together are greater in the whole than in the sum total of their parts.

All that I intend to show is that Galeta is irreplaceable in its mission, that the loss of Galeta, should it occur, will result in a degradation of that capability, and that therefore Galeta requires special protection of a sort not afforded by the present treaties.

Indeed, the Galeta Island situation presents us with a very difficult problem inherent in the contradictory aspects of these treaties. According to the Panama Canal Treaty, we are supposed to have "primary responsibility" for the defense of the canal until the year 2000. But at the same time, we are supposed to maintain the regime of neutrality throughout the period and continue maintaining the regime of neutrality even after the year 2000 after we withdraw U.S. militarv forces.

Now the fact is that we cannot perform the mission of Galeta Island from any other location. Yet the mission of Galeta Island is a very important ingredient in our capabilitv to maintain the regime of neutrality. We are being asked to undertake a certain responsibility after the year 2000, but at the same time we are not allowed to maintain military forces, defense sites, and military installations in Panama after that time.

Is this not a strange contradiction, Mr. President? We undertake a heavy responsibility, but we are denied the means to fulfill that responsibility. Galeta, as we shall see, is not a large installation; but it is a military installation, and military installations are forbidden to the U.S. in Panama after the year 2000. We cannot even make an agreement with Panama, short of a new treaty, which would allow us to maintain that facility or any similar facility.

Mr. President, Galeta is technically a military facility, but it is not an offensive facility or a fortified facility. It merely collects information.

However, the fact that it is not forti-

fied brings up a very important problem. If you look at the treaty maps, you will see that Galeta Island is a small area, really a peninsula, on the shores of the Atlantic outside the Limon Bay breakwater. The area is not contiguous with any of the defense sites or any of the canal operating or housing areas. It is in fact isolated on a point of land surrounded by mangrove swamps.

Now, Mr. President, if we are going to defend that installation, our troops will have to cross Panamanian territory. If it had been possible to take up the treaties in the logical order—that is, the order in which the President sent them to the Senate—I would be able to demonstrate that the right of U.S. troops to move in Panamanian territory is not definitively spelled out in that treaty. That right may be implied, but it is not stated. However, we cannot properly address that question at this time, since the Senate has decided in its wisdom to take up the wrong treaty first.

The fact remains that, even if there is a doubt—even if there is a doubt, Mr. President—over whether or not we will be able to defend Galeta properly, we should take steps to make Galeta a viable installation, rather than one isolated in Panamanian territory. The effect of these two treaties is to make Galeta indefensible before the year 2000, and to eliminate Galeta after the year 2000.

Now let us take up the question of what Galeta really is. As I already pointed out, the mission of Galeta is highly classified. It was originally the intention of the Senator from North Carolina to ask for a closed session of the Senate to discuss these matters thoroughly. And of course, that would be the only way to go into all the matters pertaining to Galeta. Yet the more the Senator from North Carolina studied the matter, he realized that its importance was not so much in the classified aspects, as it was in demonstrating to the American people that the Senate of the United States was ready to give serious consideration to improving these treaties.

The classified data is available to every one of the Members of this body. No Senator can say that he is not aware of the importance of the installation. Only the American people will be kept in the dark. In fact, if we go into closed session, the American people will have no idea whatsoever what we are debating. The closed session could be used as an excuse to cover up the importance of the data involved. Based upon our experience with the last closed session, there undoubtedly would be some participants afterward who would say, "Oh, that was just a waste of time. Nothing new was presented. The proponents of the Helms amendment are just trying to cloak trivialities with an aura of importance through secrecy."

If that were to happen, then the American people would be cheated. There is a declared effort to stonewall all amendments to these treaties. The cloak of secrecy would be used not to protect U.S. security, but to protect Senators from the wrath of their constituents.

Let the record show that the Senator from North Carolina was opposed to holding the last closed session. He said so at the time and he says so again. I personally saw little or nothing in those sessions that would compromise American security. However, I did see much of great importance. I also saw much that would be politically embarrassing to the supporters of the treaties. So the Senator from North Carolina was opposed to the closed session, and he thinks that a closed session is equally unnecessary today.

There is sufficient information in the unclassified record so that the American people, as well as the U.S. Senate—can make up their own minds. Let us take, for example, a newspaper column by Evans and Novak that recently discussed Galeta Island. There may be some errors of fact in the column, as might be expected when working from unclassified data. Nevertheless the general thrust of the column is interesting—and quite correct when compared with better unclassified sources, which I shall do in a moment.

Nor do I agree with the unfounded and erroneous characterization of the Galeta issue as a "last card" to play to kill the treaties. There are issues yet to be presented which, in the judgment of the Senator from North Carolina, are of far more importance to the central issue of the canal. The Galeta issue is not going to kill the treaties. The Senator from North Carolina is opposed to the treaties; but certainly a legitimate function of the advise and consent process is the improvement of the treaties. I would hope that many Senators who favor the treaties will want to vote for my amendment.

(Mr. METZENBAUM assumed the chair.)

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. HELMS. I am delighted to yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the pending amendment which would provide for U.S. retention of the Galeta Peninsula and some surrounding territory for access and defense purposes.

The importance of this station is not in dispute. It is our southernmost communications station in the Atlantic network and plays a key role in aiding our Navy both in the southern Atlantic and Pacific.

The defense of Panama, for which the United States is charged under the treaties, would be greatly enhanced by U.S. retention of the Galeta communications and security facilities.

This station provides a valuable, high frequency, direction-finding facility. It also provides tactical information, serves as a relay facility and offers aid not only to our own Navy, but also to other Defense Department deployments in that part of the world. It also aids some of the navies of South American nations. In testimony before the Senate Armed Services Committee, Adm. James Holloway stated that there were no relocation plans for this facility and that if it passes over to Panama, the U.S. Navy would have to accept a degradation in its capabilities in that area.

Mr. President, this amendment offers a happy solution to several problems connected with the treaties. First, it would provide a small, accessible geographical area which could serve as a landing place for the introduction of defense forces, if needed in the future. It has docking facilities and an airfield. It would be ideal if we had to introduce a small contingent of military forces after the year 2000 to defend the Panama Canal.

Second, it would permit us to maintain this valuable security and communications facility on the Galeta Peninsula which would also contribute to our capability to defend Panama. This is a vital station and located in such a position that could not be easily duplicated as to effectiveness.

Mr. President, this amendment offers a very sensible solution to two problems with these treaties: The need for a military base, if needed in the future, and the need for the continuation for this valuable station in Panama. I urge all the Senators to consider it carefully and in so doing, I feel they would be compelled to support it to protect our national security interests.

Mr. President, I am highly pleased that the able and distinguished Senator from North Carolina has made the point that if an amendment is offered here which will improve the treaties, it should be adopted. Another point he made was that it would not necessarily kill the treaties; but if the amendment should be adopted and it kills the treaties, it should be adopted anyway.

Is it not a matter of fact that the head of the government in Panama, Mr. Torrijos, is a dictator; that he took over by force and violence? He put out the man elected by the people, and he took charge. He is a dictator, and he would not have to submit any plebiscite to the people unless he wanted to, would he?

Mr. HELMS. That is correct.

Mr. THURMOND. Is it not a matter of record that in countries that have dictators, the dictators issue decrees and orders of their own liking; that if they do submit anything to the people, they do it because they know they can get the people to go along or they can even rig the elections, if they want to? Is it not done as a matter of form rather than a matter of necessity?

Mr. HELMS. The able Senator is absolutely correct, of course.

I would say further to the Senator that it is interesting that the Dictator Torrijos signed these treaties with the President of the United States. The Panamanian constitution does not authorize him to sign the treaties; under the Panamanian Constitution the President of Panama is specified as the official to sign treaties. The President of Panama is Mr. Lakas, not Mr. Torrijos.

So even the signing of the treaties by Mr. Torrijos was unconstitutional. It shows the extent of the dictatorship in Panama, a complete disregard for constitutional law.

Mr. THURMOND. Is it not true that under his dictatorship two highly signif-

icant things have happened: One is that he has run the country further into debt. When General Torrijos went in I believe the debt was around $167 million. That debt has now increased to between $1.5 billion and $2 billion; is that not correct?

Mr. HELMS. That is correct.

Mr. THURMOND. Is it not further a fact that he has destroyed the rights of the people, the freedom of the people? They do not now have freedom of the press; they do not have freedom of speech; they do not have freedom of assembly; they do not have trial by jury; they do not have a right to petition the government; they do not have many of the rights which we have in this country or which civilized nations that have democratic forms of government allow their people.

Mr. HELMS. The Senator is absolutely correct.

In that connection, this past Sunday evening I spoke at the Capitol Hill Metropolitan Baptist Church, and following the services, a charming lady came up to me, a lady from Panama, and she said precisely what the able Senator from South Carolina has just said. Her concluding remark was, "Senator, don't give the canal to Torrijos."

So the Senator is certainly speaking the sentiments of that lady, and many other residents of Panama, as well.

Mr. THURMOND. Is it not true that on the trip the distinguished Senator and the Senator from South Carolina took together, back in August of 1977 to Panama, that we talked to Panamanians there who worked with the canal. They were, I thought, the strongest of all, the most vehement of all, in opposition to the canal coming under the control of Torrijos because they knew they would lose their rights, not have security, and that they would probably be in trouble eventually from the Communists?

Mr. HELMS. The able Senator is indeed correct.

The Senator will also remember that we met in closed session with those Panamanians because they did not dare to speak their minds with the controlled Panamanian press present for fear of retaliation by the Torrijos dictatorship. The Senator remembers that.

Mr. THURMOND. That is correct. They are as afraid of Torrijos as they would be of a snake.

As I related on the Senate floor last week, a lady from Panama, who was married to a man from one of the States, and I will not call the State because of security reasons, came down to see me. They came to Washington, and must have spent several hundred dollars to do so, begging and pleading with us to do everything we could to prevent the ratification of these treaties. Her father had told her that right now in Panama the people are suffering tyranny, and she further said if we lose control of this canal it would probably not be too many years until that country would go Communist. They said if the Senate approves these treaties it will mean General Torrijos will remain as dictator and oppress the people for many years to come.

Mr. HELMS. The Senator is correct, of course.

Yesterday on this floor, a distinguished colleague paid a glowing tribute to Dictator Torrijos. I listened to the Senator with great interest. As I told the Senator, Mr. President, I felt sure he was indeed beguiled by Mr. Torrijos when he and other protreaty Senators made a very highly publicized visit to Panama late last year. No doubt, Mr. Torrijos was a charming host to his friends from the United States.

But that, Mr. President, is irrelevant. It is irrelevant that Mr. Torrijos on that occasion was a charming and personable host. The fact remains that he is a dictator, he is an oppressive dictator, and his regime, as assessed by the human rights organization, rates seven on a scale of seven.

Mr. THURMOND. In other words, they rate at the bottom.

Mr. HELMS. Exactly.

Mr. THURMOND. Rate at the bottom as to the freedom his people enjoy.

Mr. HELMS. Exactly.

Mr. THURMOND. As a matter of fact, does he not rate right along with Communist Cuba and the Communist Soviet Union?

Mr. HELMS. Exactly. The point is this: We are not proposing to give this canal to the Panamanian people. The proposal before the Senate is to give it to a dictatorship and to go into partnership with a dictatorship, and at enormous expense to the taxpayers of the United States.

I might say the Senator from South Carolina and I have just been greatly heartened by a rally a little while ago outside the Capitol, conducted by the Veterans of Foreign Wars. I was greatly heartened by display of the patriotism of that group.

Mr. THURMOND. The Veterans of Foreign Wars have done a fine job of trying to bring this matter to the attention of the American people, along with the reasons for not ratifying these treaties.

I might say, too, the American Legion, the Amvets, and the Disabled American Veterans, the Retired Officers Association, the Non-Commissioned Officers Association, the Veterans of World War I, in fact, all of the veterans' organizations in this country are against turning this canal over to Torrijos.

Mr. HELMS. Indeed, they are.

Mr. THURMOND. It is noteworthy that every veterans' organization in the United States takes a position strongly against turning over this canal to Torrijos. That ought to mean something. Who are the veterans? They are the ones who fought and saved this country. Who are the veterans? They are the ones who have preserved our freedom, and are now cautioning and warning the Senate, and the President of the United States, as well as the American people of the dangers of giving away the Panama Canal.

Every veterans' organization in this country is against turning the canal over to Torrijos. Of course, there are other groups, too. We brought out yesterday information on a poll taken by the Reserve Officers Association, and I thought it was significant.

They polled all their general officer members, 775, to find out if they were willing for their names to be used as to whether they were for or against the pending treaties. A number of them were evidently not willing for their names to be used.

But of the ones who did answer, 357, 7 said they were for the treaties, 8 said they were muzzled and were reluctant to speak or had been directed by higher authority not to speak. Who is the higher authority? That is the word going from the White House down the line.

Mr. HELMS. They know who the Commander in Chief is.

Mr. THURMOND. It is significant that 342 said they were against ratifying the treaties, while only 7 said they favored approving it.

Mr. HELMS. The Senator is correct.

Mr. THURMOND. The American people are opposed to those treaties. From the mail coming to my office, it is still running about 90 percent in opposition. I understood there was another reliable poll taken several days ago by some other organization and it showed 73 percent of the people were against the treaties. That is almost three-fourths of the people.

If anyone would just get out on the street today and ask people how they stand, I believe three out of four would say they were against turning this canal over to Panama. Why do they feel that way? Because of the risk of war down there? Do we not know that the ambitions of the Soviet Union to take over the world, to spread communism throughout the globe, to dominate the whole world, have not changed? If the Soviet Union orders Castro to move in, he would do so. He may move in on his own initiative. If he does move in, we would have a confrontation when we go back to defend it, and that could result in war.

Some people will say, "You are going to have riots." Certainly, we would have riots if Torrijos wants riots. We have had riots in the past and will undoubtedly have them in the future, but have been able to control the riots. Better a few riots than a war. We want to protect the people of this country without a war. That is the main objective. But if we move out from down there and create a vacuum, and the Communists move in, then we are in trouble, and that is what the veterans are so concerned about.

Mr. HELMS. And justifiably so.

Mr. THURMOND. That is the point the American people are deeply concerned about. Why should we take the chance? We are down there, we have the title to the Panama Canal and the zone, we can stay there and do so in perpetuity. That means as long as we desire. So why do we want to move out and run a risk by creating a vacuum, and then maybe have to fight a war?

Mr. HELMS. The Senator is absolutely correct. I do not know where all the polls are taken by the news media showing that various majorities favor the treaties.

I have in my hand an Opinion Re-

search Corp. poll which was taken just last week. This is a very distinguished and reliable polling organization, with headquarters in Princeton, N.J.

The results of that poll show that 72 percent of the Americans want the United States to keep the canal; 68 percent of the American people want the clearcut guarantee of U.S. protective rights over the canal, not just the weak guarantee of the so-called leadership amendments. Three-fourths of the American public believe that the United States should continue to own the military facility on Galeta Island. Even 62 percent of the people who are willing to give the canal away—now, get this—62 percent of the people who say they favor the treaties—want the United States to keep Galeta Island. Sixty-five percent of the people who favor the treaties want U.S. concessions to Panama removed from the treaties.

In other words, the American people are fed up with the proposition that the United States be forced to give up a vital facility, and then pay a dictatorship to take it. Seventy percent of the American people, according to the Opinion Research Group, feel that the House of Representatives should also vote on these treaties, as the U.S. Constitution requires, and so forth.

Mr. THURMOND. What was that percentage, that feel that the House should vote?

Mr. HELMS. The House of Representatives has a constitutional responsibility——

Mr. THURMOND. I know, but what percentage did the Senator give?

Mr. HELMS. Seventy percent.

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

Mr. HELMS. I certainly will yield to my friend from Utah.

Mr. HATCH. I thank the Senator from North Carolina.

I think the point is pretty important that 75 percent of the people want the United States to keep Galeta Island. As the Senator from North Carolina has pointed out, the latest national public opinion survey dealing with many of the complex issues surrounding the Panama Canal treaties questioned the public concerning the matter of Galeta Island.

The survey was conducted by the well-known national polling organization, Opinion Research Corp. of Princeton, N.J., for the Institute of American Relations, a leading Washington-based public policy research organization.

When informed about the pros and cons of the Galeta Island issue, the public was asked how the future of that military facility should be handled.

Three-fourths of the public, that is, 75 percent of the survey, stated that they believe that the military facility on Galeta Island should continue under U.S. ownership and control, even if the Panama Canal Zone is turned over to the Republic of Panama.

At this point, Mr. President, for the edification of my colleagues, let me quote directly from the results of the Opinion Research Corp. survey:

Three-fourths of the public believe that the military facility on Galeta Island should continue under U.S. ownership, even if the rest of the Canal Zone is turned over to Panama.

Only about one person in eight thinks the U.S. should rely on the defense rights as currently provided in the treaty to protect our intelligence monitoring base located on Galeta Island. Large majorities throughout all segments of the public believe that the U.S. should require this facility to continue under our ownership even if Panama is given ownership of the Canal Zone surrounding it.

Among those who favor Panamanian ownership and control of the Canal, over six in ten support our continued ownership of the Galeta Island base.

As the Senator from North Carolina makes clear, even of those who favor Panamanian ownership of the canal, about 62 percent support our continued ownership of the Galeta Island base.

What it really comes down to, as my friend and colleague points out, is that 62 percent of those Americans who favor turning over ownership of the canal to the Republic of Panama feel that we have to keep Galeta under our control, not to mention those of us in the Senate who share this view. Therefore, we are not dealing with an issue that divides the proponents from the opponents of this canal in this country; rather, a significant number of both the proponents and the opponents agree on the issue of Galeta Island.

I might add, as the distinguished Senator from North Carolina (Mr. HELMS) has just said, the people have spoken on this issue in unequivocal terms. There is no uncertainty about this.

Many of us in this body will be facing the people in November of this year, Mr. President. Many others will face the people in November, 2 years from now.

Who among us can afford the luxury of ignoring so clearly stated an expression of the will of the people? This is especially so here, where both treaty proponents and opponents are in agreement.

The people, it seems to me, are watching us, Mr. President, not only to see how we represent them—as they rightfully demand; but also to see how well we lead them.

The leadership we must provide on this matter is clearcut. Who among us can help but do as the people demand regarding Galeta Island?

It seems to me the answer is clear. We must retain Galeta Island under the ownership and control of the United States.

Mr. President, for the benefit of my colleagues and the public, I ask unanimous consent that the supporting data supplied by Opinion Research Corp., regarding the results of this survey question—including an explanation of sampling methods, reliability of survey percentages, sample tolerances, and sample distribution—be printed in the RECORD at the conclusion of my remarks.

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

SUPPORTING DATA

SAMPLING

Opinion Research Corporation's master sample is based on a new probability sample design, prepared in consultation with J. Stevens Stock of Marketmath, Inc., and modified and updated by ORC.

The essential characteristic of probability sampling is that, for each person in the population under study, the probability that he will be included in the sample can be specified. This means that the degree of reliability of any finding from a study based on a probability sample can be estimated mathematically.

This new sample design is a major improvement over standard areal probability designs now in common use. These areal methods depend upon the use of maps showing geographic segments for which rough population estimates can be made. These maps are often out-of-date and otherwise inaccurate; and population estimates are frequently unreliable for small geographic areas, particularly as time passes from one census to another. The new sampling method eliminates these important problems of traditional probability sampling by using current address directories as the basis for a system of defining interviewing starting points—a system which, of course, includes in the sample households not in the directory as well. The new method is both statistically and administratively as efficient as possible, providing the most reliable data for any given expenditure.

The ORC master sample consists of 360 counties in the contiguous United States. This master sample of 360 counties comprises, in fact, six subsamples of 60 counties each. Each of these subsamples is itself a national probability sample. Depending on the needs of any particular study, the master sample can be used as a whole, or any combination of the six subsamples can be used.

To construct the sample, the counties within each state were arranged in order of descending population size; and all the states were grouped in geographical order from Maine to California. Sixty counties were then chosen by statistical procedures that ensure representative geographical distribution. This process was repeated to obtain the six subsamples that make up the master sample of 360 counties.

The next step in the sampling design was to select an area from each of the 360 counties in the master sample. Again, a probability sampling method was used to select, within each county, a minor civil division as defined by the Bureau of the Census. A minor civil division may be a town, township, city, or part of a city. The probability that any particular minor civil division was selected in a county was proportional to the population of that minor civil division. Thus, the larger a minor civil division, the greater the likelihood that it be selected.

In sampling for the WATS line usage, we employ the basic ORC sampling plan to determine the telephone books that cover the minor civil divisions. These telephone books constitute the primary sampling units.

From each primary sampling unit, we draw an equal number of telephone numbers that appear to be residential. In order to obtain both listed and unlisted numbers, we add a fixed quantity (from one to ten) to each telephone number for purposes of providing a list of numbers for actual dialing. For example, if the number that comes up is 672-2424, adding one, we would dial 672-2425. The result is an equal probability random selection of all residential telephone households in the United States.

Within sample households, probability procedures are used to predesignate the specific person to be interviewed. All members of the household, 18 years of age or over, are first listed in a prescribed manner on a form provided for this purpose. Random numbers, in a mathematical sense, are used to designate one specific person in the sample household to be interviewed. The interviewer is not permitted to make any substitutions.

To attain control of nonresponse, inter-

viewers make one callback at each household where the designated respondent was not at home at the interviewer's first call.

At the data processing stage, household weighting procedures are employed and then the sample is balanced against census data to ensure that it properly represents the population from which it was drawn. This sampling procedure is rigorous in concept and practice and allows for the exact determination of the statistical precision of any finding.

RELIABILITY OF SURVEY PERCENTAGES (SAMPLING TOLERANCES)

Results of any sample are subject to sampling variation. The magnitude of the variation is measurable and is affected by the number of interviews and the level of the percentages expressing the results.

The table below shows the possible sample variation that applies to percentage results reported in this study. The chances are 95 in 100 (the 95% confidence level) that a study result does not vary, plus or minus, by more than the indicated number of percentage points from the result that would be obtained if interviews had been conducted with all members of the universe represented by the sample.

Size of sample on which survey result is based	Approximate sampling tolerances applicable to percentages at or near these levels				
	10 or 90	20 or 80	30 or 70	40 or 60	50
1,015	2	3	4	4	4
600	3	4	5	5	5
500	3	4	5	5	5
400	4	5	6	6	6
350	4	5	6	6	7
300	4	6	6	7	7
250	5	6	7	8	8
200	5	7	8	8	9
100	7	10	11	12	12
50	10	14	16	17	17

SAMPLING TOLERANCES WHEN COMPARING TWO SURVEY RESULTS

Tolerances (or sampling variation) are also involved in the comparison of results from different parts of any sample (subgroup analysis). A difference, in other words, between two subgroups must be of at least a certain size to be considered statistically significant. The table below is a guide to the sampling tolerances applicable to such comparisons in this survey. These figures, too, represent the 95 percent confidence level.

Size of samples compared	Differences required for significance at or near these percentage levels				
	10 or 90	20 or 80	30 or 70	40 or 60	50
1,000 and—					
1,000	3	4	5	5	5
750	4	5	5	6	6
500	4	5	6	7	7
250	5	7	8	8	9
100	8	10	12	13	13
750 and—					
750	4	5	6	6	6
500	4	6	6	7	7
250	5	7	8	9	9
100	8	10	12	13	13
500 and—					
500	5	6	7	8	8
250	5	8	8	9	9
100	8	11	13	13	13
250 and—					
250	7	9	10	11	11
100	9	12	13	14	14
100 and 100	10	11	16	17	17

Distribution of the sample

Following are shown the number of respondents in key subgroups of the sample:

	Number of respondents *
East	256
Midwest	298
South	309
West	152
Male	500
Female	515
18–29 years of age	307
18–20 years	63
21–24 years	102
25–29 years	142
30–49 years	400
50 years and over	304
8th grade or less	73
High school incomplete	105
High school graduate	379
Some college or graduate	451
Democrat	541
Republican	291
Independent	153
Liberal	341
Conservative	495
In Between	125
White	905
Black	82
Total public	1,015

* Where subgroups do not add to the total of 1,015 it is because of no response.

In accordance with the Code of Ethics of the American Association for Public Opinion Research, we are bound to maintain the anonymity of respondents and cannot release any information that would tend to identify the views of anyone taking part in this research. Furthermore, our authorization is required for any publication of the research findings or their implications in order to ensure the accuracy of the release.

Three-fourths of the public believe that the military facility on Galeta Island should continue under U.S. ownership, even if the rest of the Canal Zone is turned over to Panama.

Only about one person in eight thinks the U.S. should rely on the defense rights as currently provided in the treaty to protect our intelligence monitoring base located on Galeta Island. Large majorities throughout all segments of the public believe that the U.S. should require this facility to continue under our ownership even if Panama is given ownership of the Canal Zone surrounding it.

Among those who favor Panamanian ownership and control of the Canal, over six in ten support our continued ownership of the Galeta Island base.

U.S. Continued Ownership of Galeta Island Military Facility

The United States has a top secret military facility in the Panama Canal Zone. This facility is reported to be used to track Russian and Cuban aircraft, surface ships and submarines, among other things. The military has said that this facility would be extremely difficult to replace.

Some Senators who support the treaty say that it provides a sufficient guarantee of the rights of the United States to defend this military facility.

Critics say that this military facility cannot be protected under the existing provisions of the treaty and that the United States should continue to own the facility even if the Panama Canal Zone surrounding it is turned over to Panama.

Do you think the United States should rely on the defense rights as now provided in the treaty to protect this installation, or should the United States require that this facility continue under U.S. ownership even if the rest of the Canal Zone is turned over to Panama?

	Total public	Those who favor Panamanian ownership of canal
Rely on current treaty defense rights (percent)	13	29
Require continued U.S. ownership of Galeta base (percent)	75	62
No opinion (percent)	12	9
Number of interviews	1,015	230

QUESTION 20.—DO YOU THINK THE UNITED STATES SHOULD RELY ON THE DEFENSE RIGHTS AS NOW PROVIDED IN THE TREATY TO PROTECT THIS INSTALLATION, OR SHOULD THE UNITED STATES REQUIRE THAT THIS FACILITY CONTINUE UNDER U.S. OWNERSHIP EVEN IF THE REST OF THE CANAL ZONE IS TURNED OVER TO PANAMA

	Percentage base		Rely on treaty	Require U.S. continued ownership	No opinion
	UNWTD	WTD			
Total	1,015	1,887	13	75	12
East	256	413	9	81	10
Midwest	298	505	17	73	10
South	309	607	10	76	14
West	152	362	17	67	16
Male	500	901	13	79	8
Female	515	986	13	71	16
18 to 29 yr of age	307	578	14	77	9
18 to 20 yr	63	131	16	78	6
21 to 24 yr	102	193	16	73	11
25 to 29 yr	142	254	11	79	10
30 to 49 yr	400	573	14	75	11
50 yr and over	304	727	12	72	16
8th grade or less education	73	273	10	66	24
High school incomplete	105	383	13	76	11
High school graduate	379	707	11	77	12
Some college or graduate	451	513	18	75	7
Democrat	541	1,067	15	73	12
Republican	291	475	10	82	8
Independent	153	275	11	75	14
Liberal	341	619	17	73	10
Conservative	495	898	12	78	10
In between	125	237	11	70	19
White	905	1,655	13	76	11
Black	82	179	18	57	25
Aware of SALT talks	420	703	14	76	10
Not aware	595	1,184	12	74	14
U.S. ownership of canal	698	1,350	9	82	9
Turn over to Panama	230	358	29	62	9
Aware of canal treaties	752	1,296	12	80	8
Not aware	263	591	14	63	23

Mr. HATCH. I thank the distinguished Senator from North Carolina for pointing out to the American people the results of this very important poll.

Mr. HELMS. I thank the Senator from Utah for his gracious comments.

He mentioned the majority as shown by this poll. I would be willing, if I were a betting man, which I am not, to wager the Senator from Utah that not one syllable of this poll will be reported by the major news media of this country.

who favor these treaties. I certainly hope that the major news media of this country will let the people have the results of this poll.

I yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, as I understand, the Senator's amendment merely preserves this Galeta peninsula facility for the purposes he has set out here in his address today?

Mr. HELMS. That is right.

Mr. THURMOND. It provides that even if the treaties should be ratified, we could maintain control of this area, which is so important to the security of this country?

Mr. HELMS. Unquestionably, the Senator is correct.

Mr. THURMOND. Mr. President, I commend the able Senator from North Carolina for offering this amendment. I am certainly pleased to support it, and I hope the Senate will see fit to adopt it.

Mr. HELMS. I thank the Senator.

Mr. THURMOND. I thank the Senator for the fight he has made against ratifying these treaties. There is no one in the Senate who has worked harder or done more against giving away this canal than the able Senator from North Carolina (Mr. HELMS).

Mr. HELMS. I thank the Senator.

Mr. THURMOND. I also thank the able Senator from Utah (Mr. HATCH) for the work he has done in this matter—he has done a magnificent job; and the able Senator from Alabama, who has offered amendment after amendment, and fought day after day against ratifying these treaties; and the able Senator from Nevada (Mr. LAXALT), who initiated the move to let the American people hear of the dangers of these treaties, and who has been active here on the floor opposing them; and the able Senator from Virginia (Mr. BYRD), who has been a stalwart in opposing the treaties. Many other Senators have made significant contributions to the fight in opposition to these treaties. These include Senator GRIFFIN of Michigan, Senator STEVENS of Alaska, Senator DOLE of Kansas, Senator STENNIS of Mississippi, to mention just a few of many.

These Senators, Mr. President, are some of those who have gone over and above the call of duty. The American people owe them a great debt of gratitude, and I want to express my appreciation.

Mr. HELMS. The Senator from South Carolina has been in the forefront of this fight and I have been honored to be on the same team with him, and with the distinguished Senators from Alabama, Utah, New Mexico, both Senators from Virginia, and others.

If I count correctly, I have been in something like 41 or 42 States since the idea of these treaties was first broached. Everywhere I have gone, I have found unanimous opposition to these treaties—and this goes from cab drivers to Governors, the people are almost unanimously opposed to them.

Sometime back, I was in a tobacco warehouse in North Carolina. A farmer came up to me and said:

Jesse, why are the politicians so obsessed with giving away our Panama Canal?

And I said:

I don't know. I can't explain it.

And he said:

Well, I have a solution for you.

Then he indicated how he feels about Washington, D.C. He said:

When you get back up to Washington, put in a bill to change the name of "Washington, D.C.", to the "Panama Canal", and change the name of the "Panama Canal" to "Washington, D.C.," and then give them the cotton-picking Panama Canal.

[Laughter.]

Mr. HELMS. He was jesting, but he was also sincere. He is fed up to here with Washington, D.C.

Mr. HATCH. Will the Senator yield?

Mr. HELMS. I will be delighted to yield.

Mr. HATCH. I appreciate, really, the remarks the distinguished Senator from North Carolina has made. I, likewise, have been all over this country this past year and everywhere I go I have asked everybody, regardless of his occupation, and regardless of his political ideology, "What do you feel about Panama" because I have wanted to get the feelings of the people in this country. The responses against these treaties have been overwhelming.

I might also add that the mail in Congress, as is freely admitted by both sides, is running about 95 percent against these treaties.

With regard to the Senator's important comments about news reports that have been made, I share his concern, I do not want to find fault with our media, because I believe the media is basically decent and basically tries to cover the news; but there are a few deficiencies in reporting that have really likewise bothered me.

We have very little understanding about Galeta Island. Perhaps, part of the reason is that its activities are classified. On the other hand, if you look at the consttiutional issues involving these treaties—and they are some of the greatest and most important issues in the history of this country—there was nothing said in most of the major media markets in this country about them.

And I can tell you, Mr. President, when article IV, section 3, clause 2 of the Constitution says, in effect, that both Houses of Congress must agree to the cession of American property under a treaty, by implication the President is overreaching in his authority, in violation of the Separation of Powers Doctrine of the Constitution—by seeking to transfer this property by treaty alone. Prof. Raoul Berger, the eminent constitutional authority, who was lauded when his works were useful in connection with the Presidency of Richard Nixon, is now ignored by the media when he comes out against this latest usurpation of power by the Chief Executive.

There is no question he is a brilliant man, a man who has performed a valuable public service to America, but when he comes out against the transfer of the zone without the consent of the House, and we have about 229 Members of the House of Representatives who have demanded that they be given the right to vote on this issue, hardly a word was said.

Mr. CULVER. Will the Senator yield?

Mr. HATCH. May I finish?

In spite of the fact that Dr. Berger without question, would personally favor the treaties, were it not for this constitutional violation by the President.

Now, back to Galeta Island.

Mr. CULVER. Will the Senator yield?

I wish to make a parliamentary request, Mr. President.

Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is article II of the Neutrality Treaty.

Mr. CULVER. Is there an amendment pending?

The PRESIDING OFFICER. No; there is not.

Mr. HELMS. I will say to the distinguished Senator that there will be an amendment pending after we have concluded our discussion, but I did not want to run the risk of the amendment's being tabled prior to a full discussion of it.

Mr. HATCH. I agree with the distinguished Senator from North Carolina. He has every right to proceed as he desires.

I want to thank the distinguished Senator from North Carolina for yielding to me and having the courtesy to listen to some of the comments that I have made.

I likewise would like to thank my friend and colleague from South Carolina. He has been one of the great leaders in America for years and years, who has never let America down.

He is a very dear friend. I am very pleased to be on the same floor with both of these men from the Carolinas.

Mr. HELMS. I thank the Senator. I certainly share his comments about our distinguished colleague (Mr. THURMOND).

Mr. THURMOND. I thank the Senator for those kind remarks.

Mr. HELMS. Mr. President, earlier I referred to a column written by the distinguished columnists Evans and Novak, and I wish to read at this time.

On February 24, Evans and Novak published the following column:

After all the thousands of words about the Panama Canal treaties, there remains one largely unmentioned issue of potential importance both substantively and politically: a top-secret U.S. communications intelligence facility in the Canal Zone.

This is Galeta Island, a station at the Atlantic end of the canal manned by 50 Navy personnel and officially called a "naval group security facility." It is actually a high-frequency direction-finding station that is part of the "secret code word" SOSUS network for tracking Soviet submarines.

There can be no argument that it is a high-priority, essentially irreplaceable U.S. security operation requiring renegotiation when the canal reverts to Panamanian ownership in the year 2000 under the treaties. What is not clear is the immediate fate of Galeta Island: will there be sufficient security for the station's continued operation when Panama takes over the Canal Zone once the treaties are ratified?

Because of its sensitivity, this question has not been addressed in public debate.

But senior military officers who have endorsed the treaties are privately worried about the fate of the installation.

Consequently, Galeta Island may well be the last card played by enemies of the treaties now that the Senate's secret session on the largely irrelevant drug issue has fizzled. They may try to amend the treaties to keep Galeta Island under effective U.S. sovereignty. Since Gen. Omar Torrijos would never accept that, the amendment beomes a final attempt to kill the treaties. For that reason, facts about the importance and post-treaty vulnerability of Galeta Island take on political significance.

Actually, only two or three senators today know about the station. Even White House aides handling the treaties are unaware of it. Galeta Island is definitely not on the Canal Zone tour given visiting senators. But Adm. James Holloway, chief of naval operations, revealed the existence of the station in his prepared testimony for the Senate Armed Services Committee. Holloway was pressed for details by Sen. Jesse Helms (R-N.C.), a foe of the treaties, in closed session. The admiral's replies have been kept secret.

However, senior Pentagon officials privately reveal Galeta Island is the southernmost station in an Atlantic radio direction-finding network. Besides its hush-hush mission of tracking submarines, it takes positional bearings on surface ships and planes. It also has collected communications intelligence (most recently in the Peruvian-Ecuadorean border incident a year ago) and may expand such future activity.

Its mission is of the highest priority, with the station participating in about two-thirds of all Atlantic Ocean fixes. Its unique position also makes the station important for Pacific operations, particularly in case Soviet submarines are operating in U.S. West Coast waters.

Sanitized hearing transcripts reflect this reply by Holloway to a censored question from Helms: "My impression is we don't have any relocation plans; we would simply take a degradation in capability." When Helms asked whether relocation would be "enormously expensive," the admiral replied: "It certainly would, and it could be very politically expensive because . . . we have a political quid pro quo to pay in moving one of these stations [to] foreign soil."

Assuming they mean Galeta Island, this fits information supplied by senior Pentagon officials. While it would cost only $10 million to relocate the station, where would it go? Placing it in another Latin American country is doubtful politically and might not provide the correct angles for a geometric fix. Nor do warships or reconnaissance planes provide an adequate technological alternative.

Direction-finding stations have recently been kicked out of Karamursel, Turkey, and Udorn, Thailand, thinning out the network. U.S. intelligence recently talked Canada out of closing its station on Bermuda. Consequently, closure of the Galeta station might reflect decreased U.S. interest, which could trigger a Bermuda shutdown—a severe double blow to the network

Nobody knows whether Galeta Island will still be needed 22 years from now when a new arrangement with Panama would have to be negotiated. The more pertinent question is whether it can safely function in post-treaty Panama, with the Canal Zone under Panamanian control (and Soviet "agricultural" technicians reported at Old France Field 10 miles away). Top Pentagon officials say the station must have additional guards and be fenced off at the very least. Will this be enough? They do not say.

At this late hour, it seems improbable that ratification will be blocked by this exotic issue. Yet, Galeta Island does have far more relevance to the treaties than the peripheral drug question or human rights. It is also the last conceivable card available against the treaties. And for that reason it surely will be played.

Mr. President, in a moment I shall call up my amendment which is at the desk. The Senator from North Carolina has no illusions about the possibility of it being approved. The proponents of the treaties have made it clear that they will accept no amendment, regardless of its merits. I heard the distinguished Senator from New York say that very thing the other day.

It may be an exercise in futility to call up an amendment which has to do with the very security of this Nation, but the Senator from North Carolina feels obliged to do it. He feels obliged to get a rollcall vote on it, which he will, because the American people are entitled to know where their Senators stand.

UP AMENDMENT NO. 4

Mr. HELMS. Mr. President, I call up the amendment and ask that it be stated.

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 No. 4 executive.

At the end of article II, add the following:

"Notwithstanding the provisions of article I of the Panama Canal Treaty and article V of this Treaty, the United States of America may maintain, under the provisions of the Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington on November 18, 1903, and of the Treaty of Friendship and Cooperation, signed at Washington on March 2, 1936, and of the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama on January 25, 1955, between the United States of America and the Republic of Panama, the Galeta Island Base, the exact boundaries of which shall be determined by the Joint Committee established in Article III of the Agreement in Implementation of Article IV of the Panama Canal Treaty, excluding the area known as Old France Field as incorporated into the Colon Free Zone, but which shall include such waters as are necessary for naval access and the area bounded on the south by the former Colon Corridor; on the east, by the former Canal Zone boundary; on the north, by the littoral and waters of the Atlantic Ocean; and on the west, by the littoral and waters of Margarita Bay and Manzanillo Bay, and by the Folk River.".

Mr. HELMS. Mr. President, if I may return to the Evans-Novak column, I do not agree with every statement made in the column. I do not have proof as to whether Galeta is presently or has been in the past an SOSUS station. I will only say that Evans and Novak have a reputation——

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

Mr. HELMS. I will yield for a question.

Mr. CULVER. I appreciate the Senator's yielding. I might tell the Senator I have had an opportunity to receive a briefing from the Navy with regard to the exact nature of this facility. We have been assured that this particular operation in no way is connected to our SOSUS program. I thought I would clarify that. It is purely for surface ship and directional finding and not tied in with SOSUS.

Mr. HELMS. I thank the Senator.

As I say, Mr. President, Evans and Novak have a reputation for good sources. They have been proven right time and time again in exposing information which many administrations, representing both political parties, for political reasons have attempted to keep from the American people. So I am not going to comment on that part of the Evans-Novak column.

This Senator can, however, comment upon the high-frequency direction finding aspect of the Galeta installation, because that has been unclassified by the Navy. I have with me an unclassified briefing paper on Galeta that is of considerable interest.

Mr. President, I ask unanimous consent that the Navy briefing paper on Galeta Island, with the covering letter from Capt. J. E. Kneale, under date of Febraury 27, 1978, be printed at this point in the RECORD.

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

DEPARTMENT OF THE NAVY,
Washington, D.C., February 27, 1978.

Hon. JESSE HELMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HELMS: In response to your request for an unclassified fact sheet regarding Galeta Island, Panama Canal Zone, the attached material is forwarded.

Sincerely,

J. E. KNEALE,
Captain, U.S. Navy, Director, Congressional Committee Liaison Division.

US NAVSECGRUACT GALETA ISLAND CANAL ZONE

1. Status and Command Relationships: The US NAVSECGRUACT (NSGA) Galeta Island is a shore activity in an active operating status under a Commanding Officer and under the command of COMNAVSECGRU (Commander, Naval Security Group Command). Operational control of tactical cryptologic functions, as a specific element of command, has been delegated to Commander in Chief U.S. Atlantic Fleet. NSGA Galeta Island is subject to the area coordination authority of the Commanding Officer, U.S. Naval Station, Panama Canal Zone.

2. Major Function: The mission of the Naval Security Group Activity Galeta Island is to operate a high frequency direction finding facility and to provide communications and related support, including communications relay, communications security, and communications manpower assistance to Navy and other DOD elements within the area. As such, NAVSECGRUACT Galeta Island provides valuable support to search and rescuo operations.

3. Personnel Manning: Officer—2; Enlisted—45; Civilian—4.

4. Locale Description: NSGA Galeta Island, Canal Zone is located near the Atlantic entrance of the Panama Canal, approximately 55 miles northwest of the City of Panama, Republic of Panama and Balboa, Canal Zone. The area surrounding this activity consists of dense mangrove swamp and heavy tropical lowland jungle unsuitable for farming or commercial purposes.

5. Base Support: The following activities provide support as indicated to NSGA Galeta Island:

a. U.S. Army 193rd Infantry Brigade, housing, messing, berthing and recreational facilities.

b. U.S. Naval Station Panama Canal Zone; Administrative, general Public Works support.

c. Panama Canal Zone Company; road maintennace and repairs, water and power services.

d. Security is and will continue to be provided by the U.S. Marine Barracks Canal Zonc.

6. Under the terms of the proposed Panama Canal Treaty, the U.S. Navy would not be required to relinquish Galeta until the year 2000. The installation will be classified as a U.S. Defense Site for the duration of the new Panama Canal Treaty. As a Defense Site, the facility will be under complete U.S. control throughout the life of the Treaty.

Mr. HELMS. According to this paper, we see that Galeta Island is a shore activity in an active operating status under a commanding officer and under the command of the commander, naval security group command. Operations control of tactical cryptologic functions, as a specific element of command, has been delegated to Commander in Chief, U.S. Atlantic Fleet. Galeta Island is subject to the area coordination authority of the commanding officer, U.S. Naval Station, Panama Canal Zone.

I have quoted from this paper because I want to point out the reference to the delegation of tactical cryptologic functions to the Commander in Chief, U.S. Atlantic Fleet. This indicates that the station has functions which go beyond the high-frequency direction finding mission which I will discuss in a moment.

We turn to its "major function" as described in the briefing paper to which I have just alluded.

The mission of the Naval Security Group Activity Galeta Island is to operate a high frequency direction finding facility and to provide communications and related support, including communications relay, communications security, and communications manpower assistance to Navy and other DOD elements within the area. As such . . . Galeta Island provides valuable support to search and rescue operations.

The "high-frequency" in high-frequency direction finding (or HFDF, as it is sometimes called) is of course a reference to the short-wave band commonly used for radio transmissions by most maritime vessels in the world. The interception of such transmission provides what Evans and Novak refer to as "positional bearings on surface ships and planes." Presumably, this is why, according to the Navy briefing paper, "Galeta Island provides valuable support to search and rescue operations."

Mr. President, we cannot go much further in discussing this matter in open session because of the secret classification on the information that the Senator from North Carolina has sealed in this envelope which he holds in his hand.

We already know that Galeta provides HFDF. We know that it provides tactical cryptological functions to the Atlantic fleet. We know that it provides communications relay and communications security. But whether it is associated, or has been associated with SOSUS or other submarine traffic facilities, we do not know.

Furthermore, a close reading of the Evans and Novak column——

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

Mr. HELMS. If the Senator will allow me, I shall not be very long, then he can get the floor in his own right.

Mr. CULVER. Will the Senator yield for just a few moments while I try to clarify the records? He says we do not know whether it is or has been associated with SOSUS.

Mr. HELMS. The Senator from Iowa may know; I do not know.

Mr. CULVER. When the Senator says "We," I do not think that would be an accurate reflection on this institution at the present time.

I attended a briefing with other members of the minority, including Senators from the Senator's own side. I just said that the official naval testimony is that it is not a part of SOSUS. So when the Senator says we do not know, really, the inference there is that my word on that point, based on that briefing, in which there was bipartisan attendance, is somehow not valid or accurate.

Mr. HELMS. I say to the Senator from Iowa that the Senator from North Caroline has run into contradiction after contradiction; Navy officers telling me one thing in private and saying another thing in public. So the Senator may well have information to contradict the statement. If he knows, he knows. But the Senator from North Carolina does not know and I do not think many other Senators know.

I do not want to yield further, Mr. President, because I want to finish this statement, if the Senator from Iowa will forbear.

The PRESIDING OFFICER. Will the Senator from North Carolina yield for a moment to receive a message from the House?

Mr. HELMS. Yes, I yield.

The PRESIDING OFFICER. Without objection, as in legislative session, the Senate will receive a message from the House.

(The Senate received a message from the House of Representatives which is included in routine morning business today.)

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, I ask unanimous consent that the interruption not show at this point in the RECORD and that it be placed at another place in the RECORD.

The PRESIDING OFFICER. Without objection——

Mr. CULVER. I object.

Mr. President, that was not an interruption. The intervention was made at that point so this RECORD, for a change, would accurately reflect what actually happens in the debate.

Mr. HELMS. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. CULVER. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa will state it.

Mr. CULVER. My parliamentary inquiry is, What is the ruling of the Chair with regard to the position of the intervention just made on the SOSUS issue?

The PRESIDING OFFICER. Objection having been made—it is the understanding of the Chair that the Senator from North Carolina did not want the interruption with reference to the message from the House to show in the RECORD at this point. Was that the interruption referred to?

Mr. HELMS. Mr. President, the Senator from North Carolina was referring to the message from the House. I have no objection, if it means that much to the distinguished Senator from Iowa.

Mr. CULVER. No, no, Mr. President. A parliamentary inquiry.

If that is the nature of the request of the Senator from North Carolina, the Senator from Iowa has no objection. If, however, that request goes to the colloquy that he and I just engaged in, I do object.

The PRESIDING OFFICER. The Chair understands that the objection had to do with the interruption relative to the matter of the message from the House.

Mr. CULVER. I withdraw my objection.

The PRESIDING OFFICER. Without objection, the interruption relative to the message from the House will show at a point after the statement of the Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Furthermore, Mr. President, the inference in the Novak column is that the mission is of the highest priority, that it participates in about two-thirds of all Atlantic Ocean fixes, that it is the southernmost station in an Atlantic network of such stations, giving it a unique geographical geometry that cannot be duplicated elsewhere. The Senator from North Carolina is not at liberty to verify any of these statements, and he does not wish to signify either approval or disapproval of their accuracy. However, any Senator is at liberty to read the classified material and form his own judgment before voting on my amendment.

(Senator MOYNIHAN assumed the chair.)

Mr. HELMS. However, Mr. President, if any Senator should conclude that there is even a probability that these statements are true, then such a Senator should vote for my amendment in order to preserve our options.

For the fact is that we have no other opportunity to have such a station in any other country, if it should become necessary to close Galeta. In the sanitized transcript of the executive session of the Armed Services Committee, one may read the following:

Admiral HOLLOWAY. My impression is we don't have any relocation plans: we would simply take a degradation in capability.

Senator HELMS. It would be enormously expensive to relocate?

Admiral HOLLOWAY. It certainly would, and it could be very politically expensive because there is a good chance that in each of these we have a political quid pro quo to pay in moving one of these stations in on foreign soil.

Finally, there is the question of improvements in technology. Such improvements could be either in the technology of ship transmissions, or in the technology of detection. It may very well be that within 22 years new technology would make HFDF outmoded. Some military vessels already use other kinds of communications not susceptible to

HFDF. But it would be remarkable indeed if the broad spectrum of maritime traffic moved to more sophisticated and more expensive technologies.

We must not assume that the most likely threat to the canal—or even to the neutrality of the canal—is going to come from a frontal challenge by Soviet naval vessels. The Soviets have been very successful at getting other nations to front for them in their war of attrition against the Western World. The Galeta station occupies a strategic position at the Atlantic entrance to the canal; and while it presumably functions as part of a network, it is indispensable and irreplaceable in relation to the canal.

Therefore, the amendment which I have offered sets up a special situation to preserve our options at Galeta. If the Senators will look at the map, they will see that Galeta is not a viable installation by itself. Even as a designated defense site under the proposed treaties, it would be very difficult to protect in its isolated circumstances, since it has no special defenses.

My amendment therefore enlarges the Galeta area so that it becomes a viable entity. It would occupy roughly the whole peninsula above the Boyd-Roosevelt highway that traverses the present Colon Corridor. The Canal Zone boundary on the east makes a convenient demarcation and would be retained. On the west, the waters of Manzanillo Bay and Margarita Bay—that is, really part of Limon Bay inside the breakwater—make another convenient demarcation. It also includes the Coco Solo Naval Station, which, with its piers, allows access by sea within the breakwater. Of course, we already have military housing at Coco Solo, along with appropriate schools, recreation areas, and Coco Solo hospital. There are existing storage tanks for gasoline and for residual petroleum, with pipelines to the piers at Coco Solo. Moreover, the area encompasses the so-called New France Field, a deactivated airport now used only for recreational planes. This is not to be confused with the so-called Old France Field across the road, which is presently under lease to Panama as part of the Colon Free Zone. Old France Field would be excluded from my amendment. Most of the rest of the area is mangrove swamp.

As long as relations remained friendly with Panama, there would be no need to upgrade or change the usage of any of these facilities. But should a hostile or uncooperative situation develop, the area would have the capability to be upgraded to provide a small base, both for the operation of the Galeta facility, and to provide a foothold, after the year 2000, for landing our troops in order to protect the neutrality of the canal. The only other location suitable for such a landing operation would be on the other side of Limon Bay, which of course would require an assault from the water.

The jurisdiction provided over the base would be the same as we have at the present time. For this one small area, there would be no change from the present Canal Zone. We would have full authority to take whatever actions were necessary without reference to the combined defense arrangements of the treaty. Thus, even for the next 22 years we could take whatever defense steps were necessary without affronting Panamanian sensibilities.

Needless to say, if the Galeta facility proved to be outmoded by the year 2000, we could easily withdraw if we so desired along with our withdrawal from the rest of the isthmus.

But the amendment which is now pending would specifically exempt our presence in Galeta from the regime of neutrality. We could stay if we thought it necessary. Nobody knows what the situation will be in the year 2000, so it behooves us to keep our options open, particularly since we are assuming responsibility for the canal's neutrality in perpetuity. Were it not for the fact that we are assuming that responsibility under the treaty, this amendment might be unnecessary. But the very fact that we are assuming a perpetual responsibility under the treaty makes it absolutely essential; in the judgment of this Senator.

Mr. President, I yield the floor.

Mr. CURTIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

U.S. MILITARY LEADERS FIND PROBLEMS WITH NEW TREATIES

Mr. CURTIS. Mr. President, I rise in support of the pending amendment. It is an integral part of the defense of our country and, in that connection, I think it is important that we consider the fact that our U.S. military leaders find problems with the new treaties.

Mr. President, as everyone knows, the Panama Canal treaties were considered in hearings by the Foreign Relations Committee. Although the Armed Services Committee recently held hearings on matters related to the treaties, it was the Foreign Relations Committee which voted to report out the treaties and to recommend that only the so-called "leadership amendments" be incorporated into the treaties. Now, the gentlemen on that committee are all loyal, patriotic Americans who are acting in what they see as the best interests of this Nation, but it is a fact that they tend to view things such as this treaty more in terms of how they affect our image overseas, and they do not tend to place as much weight upon military views concerning issues they are reviewing.

Mr. President, I think it is essential that the view of our military personnel concerning the security requirements for the canal be more carefully weighed during our deliberations here in the Senate. In this regard, it needs to be pointed out that many, many of our distinguished former military leaders have expressed doubts about these treaties. On June 8, 1977, four former Chiefs of Naval Operations wrote to the President expressing their grave concerns about any new arrangements which would not adequately protect our security interests in the Panama Canal. They wrote in part:

> The Canal . . . offers inestimable strategic advantages to the U.S., giving us maximum strength at minimum cost . . . Under the control of a potential adversary, the Canal would become an immediate crucial problem and prove a serious weakness in the overall U.S. defense capability, with enormous potential consequences for evil.

Mr. President, this has a bearing on the pending amendment which deals with a very strategic establishment of the United States in the Canal Zone.

The concerns of these men, these four chiefs of naval operation, should be carefully considered, especially when it is recalled that it is the U.S. Navy which is most dependent upon the availability of the canal.

Mr. President, with respect to the strategic importance of the canal, I wish every Senator would take the time to review a recent study prepared by Mr. Ed Gannon of the Library of Congress staff. This excellent work demonstrates with facts and figures exactly why the availability of the canal would be of such great importance in an emergency situation. It literally could mean the difference between war and peace, or between a short war and a long war, with many more casualties.

I would also hope, Mr. President, that Members of the Senate will take the time to carefully review the testimony of two outstanding military men, both of whom have an intimate knowledge of the canal situation. I refer to retired Maj. Gen. George L. Mabry and Lt. Gen. Gordon Sumner, Jr.

General Mabry, who incidentally has been awarded the Congressional Medal of Honor, was stationed in the Canal Zone on three separate occasions. During his last tour of duty, General Mabry was Commander of all Army forces in the zone and responsible for its defense from any internal threat. General Mabry is strongly opposed to the treaties in their present form based upon his assessment of the military situation that would result from their implementation. In particular, General Mabry stated that:

> I do not understand, and therefore, am puzzled as to why Panama insists that after the year 2000 no U.S. military forces can be stationed anywhere on Panamanian soil, even under a status of forces agreement.

General Mabry then asked a question which, Mr. President, goes to the heart of the question of U.S. bases in Panama:

> Why are the Panamanians, who claim they will be everlasting friends of the U.S., reluctant to accept the stationing of any U.S. forces on Panamanian soil . . .?

Mabry added that the United States has bases today in nations with which we were once at war, so why should Panama, for whom we have done so much, refuse to allow the presence of U.S. forces to provide protection for the canal?

Lieutenant General Sumner provided an additional insight into the military aspects of the treaties. In his testimony, Sumner stated that it is not true that Latin American governments are enthusiastically behind the treaties as they stand. In fact, he stated that high-level officials, both civilian and military, "all express grave concern about the treaties. They see the possibility here for conflict."

From a strategic angle, Sumner noted that:

> The members of the Inter-American Defense Board are terribly concerned about this

situation . . . they all have expressed reservations about the fact that the U.S. will no longer be in Panama. And if you look at a map, Panama sits right in the middle of this continent, and North-South communications are just lousy. Once we do not have the bases there, then the entire area becomes destabilized.

Mr. President, these remarks and concerns of two experts in this matter should be given considerable weight by Senators in evaluating the merits of these treaties.

They should have special weight in reference to the pending amendment that deals with a specific installation that we have there.

Further, I want to point out the overwhelming sentiment of retired military officers' groups, and veterans' groups in general, is against the treaties. In a recent Reserve Officers Association poll, 98 percent of over 300 former flag rank officers expressed their opposition to the present treaties.

Mr. SARBANES. Will the Senator yield?

Mr. CURTIS. No. I did the other day, and I decline to yield until I finish my speech.

The American Legion, the Veterans of Foreign Wars, and other similar groups have all expressed the opposition of their memberships to the approval of these treaties. Retired military writers agree. For example, former General V. H. Krulak, writing in the summer 1975 issue of Strategic Review, has stated that:

In truth the Panama Canal is an essential link between the naval forces of the United States deployed in the Atlantic and the Pacific. It is only because of the waterway that we are able to risk having what amounts to a bare-bones one ocean navy.

One of our Nation's most distinguished military writers, retired Col. Robert D. Heinl, Jr., of the Detroit News, has written extensively on problems with the new canal treaties that cannot be easily resolved. He has elaborated upon the extraordinary value of the canal from a military point of view, noting that:

During the 1962 Cuban missile crisis, 115 naval vessels and one Marine division were moved rapidly via the Canal from the Pacific to the West Indies.

He questions whether such a movement would be possible without continued U.S. control over the canal. We must ask ourselves: With Panamanians controlling the locks, would they be willing to let U.S. vessels through the canal if another crisis develops involving Cuba? Any alleged right on paper to move through the canal, either expeditiously or with priority, would become meaningless if we do not have control over the facilities that the ships must pass through.

Finally, Mr. President, I think it is very interesting to note that even the members of the Joint Chiefs of Staff, who are on record in favor of the treaties, have all acknowledged that, from a military point of view, it would be much easier and less costly to protect the canal if the United States retained bases in Panama than otherwise. The Chairman of the Joint Chiefs of Staff, Gen. George Brown, stated during the Foreign Relations Committee hearings that:

In purely military terms, it would be far simpler and less costly to . . . retain a base of operations in Panama; and, without such bases, protection of the Canal would be more costly and difficult.

Admiral Holloway made it clear that, with regard to naval operations, and sea lane surveillance, "a base in Panama would improve our efficiency markedly." He also added that:

Without bases, the introduction of U.S. forces would take longer and be more costly.

Gen. Louis Wilson stated that:

It would be easier and less costly to meet threats after 1999 if the U.S. were to maintain forces in Panama beyond that time.

The Joint Chiefs also made it clear that their support of the treaties was influenced by the assessment of political factors made by the State Department. From a purely military standpoint, they conceded that it would be better to preserve a U.S. presence than to give it up. While I respect the judgment of the Joint Chiefs about military matters, I do not think that the Senate should necessarily agree to their judgment, based upon State Department persuasion, concerning the political aspects of the canal situation. Here, I think, that each Senator is perfectly capable of arriving at his own conclusions.

Mr. President, I also would like to call the attention of the Senate to the testimony of two canal experts, who were involved in previous negotiations for a new treaty. Former Deputy Secretary of Defense William Clements stated at the Armed Services Committee hearings that Panama was willing several years ago to accept treaty language that provided a stronger basis for the U.S. rights to protect the canal.

Mr. SARBANES. Mr. President, will the Senator yield on that point, on the Clements assertion?

Mr. CURTIS. I would prefer to yield a little later, if the Senator does not mind.

Also, ex-Army Col. John Sheffey, who was also involved in earlier negotiations, said that in earlier bargaining, Panama had agreed to military arrangements giving the United States better protection for the canal. Finally, I think that the opinion of ex-General Mabry is worth repeating here. General Mabry's conclusions, as stated in his testimony at the Armed Services Committee hearings, was that Panama would definitely be willing to accept stronger provisions than those in the present treaty if the choice was between those provisions and no treaty at all.

I can only conclude, therefore, Mr. President, that our negotiators did not obtain the maximum protection of U.S. interests in the canal that it was possible to get from Panama. I ask unanimous consent that the article by Robert Heinl of the Detroit News, from which I have quoted, be included at this point in the RECORD, and I urge all Members to carefully study the testimony of the military personnel, active and retired, who testified at the various hearings. I also ask unanimous consent to have printed in the RECORD a letter from former Chiefs of Naval Operations.

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

[From the Detroit News, Aug. 21, 1977]

PANAMA CANAL TREATY SEEN AS VITAL ISSUE FOR U.S.

(By Col. R. D. Heinl, Jr.)

In 1898, before the Panama Canal existed, it took 71 days for the battleship USS Oregon to get to Cuba from San Francisco, and from that moment on, Americans knew we would have to build the Canal.

What the Oregon's dramatic dash around Cape Horn underscored was the fact that, while the United States had important strategic interests in two oceans, it had only one Navy.

Today, seven decades late, with strategic interests in every ocean, but still only one Navy, it already seems clear that the major, if not preeminent issues in the forthcoming Canal debate will center on military and strategic factors:

Is the Canal as important as ever for the security of the United States?

If it still is, how can the United States be assured of defending our strategic equity in a Panamanian Canal after 2000?

One main argument advanced by those who favor transferring both the Canal Zone and Canal to Panama is that the military value of the canal has declined sharply and will be almost nil by the 21st century.

A companion argument is that we now have, or supposedly have, "a two-ocean Navy" which obviates any requirement to transfer forces-via the Canal from one ocean to the other.

However, naval officers point out that the U.S. Navy, with only 461 ships, is less than half its size of a decade ago, and the fleet today is down to what it was in 1938.

Both the Atlantic and Pacific fleets are seriously reduced in size and the resources of each would be immediately required to support the other, even in a one-ocean crisis.

For example, present contingency plans call for the Pacific fleet to send some 60 ships to the Atlantic as a first increment of reinforcements for a NATO crisis. On the other hand, without major reinforcement from the Atlantic, the Pacific fleet as now constituted could only sustain about eight weeks of intensive operations.

It is true that the Navy's largest aircraft carriers (and some of the world's supertankers) are too wide to transit the Canal, but the rest of the Navy can.

Every antisubmarine-warfare ship in the Navy, every missile-firing ship and every logistic ship in the fleet train can easily go through the Canal. The amphibious assault shipping for our Marine divisions can transit the Canal. Even our four large battleships, mothballed for the time being, are built for the Canal.

In other words, more than 95 percent of the U.S. Navy is and will remain able to use the Canal. When tensions build, the largest aircraft carriers, mostly nuclear-powered, can be expeditiously redeployed and repositioned well before emergency transits of the rest of the fleet commence.

In any case, the era of the mammoth aircraft carrier is apparently waning. Congress has cut off funds for further supercarriers, and design studies are progressing on medium-sized aircraft carriers, which will, of course, be canal-capable, even without modernization of the "Big Ditch," which would eliminate the problem for the carriers.

All three of the new Russian aircraft carriers, incidentally, are built so as to fit the Panama and Suez Canals.

The Panama Canal's military record since 1940 has been an impressive one.

In World War II, it facilitated prompt deployment of what was still largely a one-ocean Navy so as to reinforce the Atlantic fleet after the fall of France when it was feared that Germany's feisty surface fleet

would break loose. Then, after Pearl Harbor—and during the tense weeks beforehand—the Canal conveyed ships and Marine units from the Atlantic back to Pacific.

Rapid naval buildup and support for the Korean and Vietnam wars would not have been possible without the Canal.

During the 1962 Cuban missile crisis, 115 naval vessels and one Marine division were moved rapidly via the Canal from the Pacific to the West Indies.

It is a striking strategic contrast that the Panama Canal, as an American canal, which we would be free to use and deny to enemies in wartime, gives the United States what Russia can never have.

Because of geography, Russia must divide its mighty navy into four separate fleets incapable of mutual support or reinforcement. Only between the Indian Ocean and the Mediterranean—via the Suez Canal—can the Soviet shift warships, as they frequently do.

By contrast, the United States has relied centrally on the Panama Canal in every serious military crisis of the century, as a means of concentrating our fleet in the areas of greatest danger.

Given the strategic importance to the United States of the Canal, one main concern being expressed by opponents of the treaty is how we can safeguard our national-security interests in the Canal after American withdrawal from Panama.

One proposal widely circulated on Capitol Hill comes from Rep. Samuel S. Stratton, D-N.Y., a senior member of the House Armed Services Committee. Stratton says:

"The real key to the treaty debate is whether it gives the United States any realistic right to defend the Canal after the year 2000 . . . The blunt fact is that, once all American forces are removed from Panama, our ability to defend the Canal will be highly problematical."

Thus Stratton says Congress must insist that any new Panama treaty provide for at least one continuing defensible U.S. military base on the isthmus as a symbol of our determination and a practical means to facilitate rights of intervention that the new treaties are expected to spell out.

Such a proviso would obviously suit the Pentagon, and especially the Joint Chiefs of Staff, whose private views on the Canal issue diverge appreciably from the neutral stance publicly expressed by Air Force Gen. George S. Brown.

A sharply differing and outspoken view on the strategic importance of the Canal recently reached President Carter from an august foursome of senior officers who, because they are retired, can no longer be muzzled.

The four most senior chiefs of naval operations—Adms. Robert B. Carney, Arleigh A. Burke, George W. Anderson and Thomas Moorer (also former Joint Chiefs chairman)—last month collectively warned the President against yielding the Canal.

"Loss of control over the Panama Canal," they wrote "would be a serious setback in war, would lead to the encirclement of the United States by hostile naval forces and would threaten our survival."

LETTER FROM FORMER CHIEFS OF NAVAL OPERATIONS

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

DEAR MR. PRESIDENT: As former Chiefs of Naval Operations, fleet commanders and Naval Advisers to previous Presidents, we believe we have an obligation to you and the nation to offer our combined judgment on the strategic value of the Panama Canal to the United States.

Contrary to what we read about the declining strategic and economic value of the Canal, the truth is that this inter-oceanic waterway is as important, if not more so, to the United States than ever. The Panama Canal enables the United States to transfer its naval forces and commercial units from ocean to ocean as the need arises. This capability is increasingly important now in view of the reduced size of the U.S. Atlantic and Pacific fleets.

We recognize that the Navy's largest aircraft carriers and some of the world's supertankers are too wide to transit the Canal as it exists today. The super-tankers represent but a small percentage of the world's commercial fleets. From a strategic viewpoint, the Navy's largest carriers can be wisely positioned as pressures and tensions build in any kind of a short-range, limited situation. Meanwhile, the hundreds of combatants, from submarines to cruisers, can be funneled through the transit as can the vital fleet train needed to sustain the combatants. In the years ahead, as carriers become smaller or as the Canal is modernized, this problem will no longer exist.

Our experience has been that as each crisis developed during our active service—World War II, Korea, Vietnam and the Cuban missile crisis—the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistics support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict.

As long as most of the world's combatant and commercial tonnage can transit through the Canal, it offers inestimable strategic advantages to the United States, giving us maximum strength at minimum cost. Moreover, sovereignty and jurisdiction over the Canal Zone and Canal offer the opportunity to use the waterway or to deny its use to others in wartime. This authority was especially helpful during World War II and also Vietnam. Under the control of a potential adversary, the Panama Canal would become an immediate crucial problem and prove a serious weakness in the over-all U.S. defense capability, with enormous potential consequences for evil.

Mr. President, you have become our leader at a time when the adequacy of our naval capabilities is being seriously challenged. The existing maritime threat to us is compounded by the possibility that the Canal under Panamanian sovereignty could be neutralized or lost, depending on that government's relationship with other nations. We note that the present Panamanian government has close ties with the present Cuban government which in turn is closely tied to the Soviet Union. Loss of the Panama Canal, which would be a serious set-back in war, would contribute to the encirclement of the U.S. by hostile naval forces, and threaten our ability to survive.

For meeting the current situation, you have the well-known precedent of former distinguished Secretary of State (later Chief Justice) Charles Evans Hughes, who, when faced with a comparable situation in 1923, declared to the Panamanian government that it was an "absolute futility" for it "to expect an American administration, no matter what it was, any President or any Secretary of State, ever to surrender any part of (the) rights which the United States had acquired under the Treaty of 1903," (Ho, Doc. No. 474, 89th Congress, p. 154).

We recognize that a certain amount of social unrest is generated by the contrast in living standards between Zonians and Panamanians living nearby. Bilateral programs are recommended to upgrade Panamanian boundary areas. Canal modernization, once U.S. sovereignty is guaranteed, might benefit the entire Panamanian economy, and especially those areas near the U.S. Zone.

The Panama Canal represents a vital portion of our U.S. naval and maritime assets, all of which are absolutely essential for free world security. It is our considered individual and combined judgement that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty.

Very respectfully,

ARLEIGH A. BURKE,
THOMAS H. MOORER,
ROBERT B. CARNEY,
GEORGE ANDERSON,
Former Chiefs of Naval Operations.

Mr. CURTIS. Mr. President, I am now happy to yield to the distinguished Senator from Maryland.

Mr. SARBANES. Mr. President, I will forbear requesting the Senator to yield. I know that the Senator from Iowa wishes to speak, and perhaps he will yield me some time when he gains recognition.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CULVER. Has the Senator from Nebraska yielded the floor? Do I have the floor now?

Mr. CURTIS. Yes, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CULVER. I yield to the Senator from Maryland.

Mr. SARBANES. I appreciate the Senator from Iowa yielding.

Mr. President, I want to note that it is difficult, the way the debate has been conducted today, to respond to points at the time they are made, when it is strongly felt that the assertion is contrary to fact or is not altogether consistent with the facts. I think it is important to be able to do that, but I understand, as appears to be the case, that Senators who are reading a prepared text do not want to have their reading of that text interrupted by either questions or yielding for the purpose of challenging some factual assertion.

In some respects, I think that is regrettable in terms of how the debate is conducted, because an assertion is made and then the speaker passes on from that point, and the assertion recedes into the background and may, in fact, be forgotten. However, Senators who have been recognized by the Chair and have the floor are in the position to refuse to yield to anyone and simply to read through their statement, if that is the choice they seek to make.

Given that has been taking place, I do want to make an observation and I appreciate the Senator yielding, because I think it is important to challenge those assertions as soon as possible, even though it was not permitted at the time the assertions were made.

One has to deal with the constant assertion that the Reserve Officers Association of the United States conducted a poll of a portion of their membership in arriving at those who would be in opposition to the treaties. In fact, it was asserted earlier, in the course of the delivery of some of these prepared texts, that a poll was conducted to see who was for or against the treaties.

Mr. President, I submit that what was done by the Reserve Officers Association was a direct solicitation of its members for those who are against the treaties. There was no poll conducted to see who was for or against. There was a solicitation made to enlist as part of the effort to defeat the treaties those who were against it.

In this regard, let me simply quote from the letter that was sent by the executive director of the Reserve Officers Association, retired Maj. Gen. Milnor Roberts to, I take it, senior members of that organization, and I am now quoting from the letter:

As you may recall, the National Convention of ROA has adopted strongly worded resolutions on two recent occasions which call for no substantive change in the present administration of the Canal Zone and the Panama Canal. Obviously the Treaty just signed which now awaits action by the U.S. Senate is in virtually total opposition to the ROA mandates.

ROA is proud to include you and several hundred other senior and long-experienced military leaders in its membership. I believe the time has come for those of us who share the official ROA opinion to personally endorse this position and to make our views known publicly. Senators Thurmond, Hatch, Helms, Scott, and many others, would be delighted to know of your action, and several of them have asked me to seek your assistance.

We propose to issue a national press release outlining our opposition and mentioning the names of all ROA leaders who support us on this matter. We would also send a similar news release to the media in your community where your influence is a major factor.

I hope you will join us in this concerted effort to block a proposal which probably is bad for Panama in the long-run, much less the United States and other countries in the Americas.

I am enclosing a return envelope for your convenience and a copy of Senator Thurmond's remarks from the CONGRESSIONAL RECORD. I hope we will hear from you by return mail since the Senators feel that prompt action is required.

Now, that is the letter that was sent. By the wildest stretch of one's imagination that does not constitute a poll of the membership for or against the treaties. It is a solicitation to join in the effort against and, in fact, the card appended to that letter to be returned, as said in the closing paragraph of the letter:

I am enclosing a return envelope for your convenience and a copy of Senator Thurmond's remarks from the Congressional Record. I hope we will hear from you by return mail since the Senators feel that prompt action is required.

The first sentence of the card to be returned back to the Reserve Officers Association is:

I concur with your opposition to the Treaty concerning the Canal Zone, to be brought before the U.S. Senate for ratification at an early date.

I take this time just to make this very clear in the RECORD.

Mr. President, so there can be no argument about it, I ask unanimous consent that the entire letter from which I quoted, and the card attached thereto to be responded to by those who were prepared to enlist in this opposition effort, be included in the RECORD at this point.

Mr. CURTIS. Reserving the right to object, and I shall not object, but I am a little bit puzzled by the distinguished Senator from Maryland. A few days ago we were chastised because our view was challenged as a misrepresentation, when it was in reality an honest interpretation of what the treaty called for in the way of financial obligations on the part of the United States.

Then at a later time we were accused of political tirades because we rose in protest to the interference by another branch of Government with the legislative branch.

Today we are chastised because we would prefer to yield after we finished a line of thought.

This may be all right but I would just point out that again it is time for the proponents of these treaties to tell why the treaties are good for the United States. How will it improve the commerce of the world? How will it improve the defense of our country? How will it make this country safer? Those are questions that should be answered instead of these harassing tactics and interruption of the arguments, based upon the issues, go on.

I shall not object. I freely admit the Reserve Officers Association leaders felt so emphatic about this issue that, of course, in their asking people to respond they expressed their own views, but they were not writing to children.

They were not writing to people who have had no opportunity to become aware of the military problems of this country and the defense of this country. They were writing to some of the ablest men in our country. To suggest that there is something wrong with the replies just does not stand up. I have no objection.

Mr. SARBANES. Mr. President, I renew my unanimous-consent request.

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

RESERVE OFFICERS ASSOCIATION
OF THE UNITED STATES,
Washington, D.C., September 23, 1977.

As you may recall, the National Convention of ROA has adopted strongly worded resolutions on two recent occasions which call for no substantive change in the present administration of the Canal Zone and the Panama Canal. Obviously the Treaty just signed which now awaits action by the U.S. Senate is in virtually total opposition to the ROA mandates.

Under these circumstances, I have submitted an appropriate statement to the Senate Judiciary Committee and expect to testify before other House and Senate Committees in the near future. (The House is involved because the Treaty proposes to give away United States property valued in excess of seven billion dollars. Disposal of government property should not be done without the concurrence of both the House and the Senate.)

You are certainly aware that the Administration has mounted one of the most massive public relations campaigns ever directed from the White House in an effort to convince the American people that the Treaty will be good for them. A significant part of the Pro-Treaty Propaganda is designed to show that the military security of the United States would not be damaged. The present active duty Joint Chiefs have been persuaded to give their blessing to the Treaty, and their Chairman, General George Brown, has attempted to line up some flag rank retirees on his side. However, Admiral Moorer, Admiral Burke, and other distinguished senior officers who are no longer subject to disciplinary action because they oppose Administration policy, are on record in opposition to the Treaty for very cogent reasons.

It is my personal belief that the overwhelming majority of American military leaders are opposed to the "Pay-away" of the American Canal in Panama. Those of us who are not "muzzled" should speak up so that our fellow citizens are not misled into the conviction that military leaders think the Treaty is the greatest thing since we landed on the Moon.

ROA is proud to include you and several hundred other senior and long-experienced military leaders in its membership. I believe the time has come for those of us who share the official ROA opinion to personally endorse this position and to make our views known publicly. Senators Thurmond, Hatch, Helms, Scott, and many others, would be delighted to know of your action, and several of them have asked me to seek your assistance.

We propose to issue a national press release outlining our opposition and mentioning the names of all ROA leaders who support us on this matter. We would also send a similar news release to the media in your community where your influence is a major factor.

I hope you will join us in this concerted effort to block a proposal which probably is bad for Panama in the long-run, much less the United States and other countries in the Americas.

I am enclosing a return envelope for your convenience and a copy of Senator Thurmond's remarks from the Congressional Record. I hope we will hear from you by return mail since the Senators feel that prompt action is required.

Cordially yours,

J. MILNOR ROBERTS,
Major General, USAR, Executive Director.

RESERVE OFFICERS ASSOCIATION OF THE U.S.
Washington, D.C.

GENTLEMEN: I concur with your opposition to the Treaty concerning the Canal Zone, to be brought before the U.S. Senate for ratification at an early date. I am willing to join Admirals Moorer, Burke, and a great many other senior members of ROA, in publicly expressing my disapproval of the Treaty in the belief it is not in the best interest of the people of the United States.

(Signature)
(Typed or printed signature)
(Date)

Mr. SARBANES. Mr. President, I simply make the observation that the inclusion of this material in the RECORD and my comments prior thereto were directed to the assertion which has been made a number of times on the floor of the Senate that this organization conducted a poll of certain of its members as to whether they were for or against.

The fact of the matter is that they conducted a solicitation to enlist opponents, and I have placed this material in the RECORD simply to make that point clear.

Now, the Senator from Nebraska may regard efforts to clarify the record and at least have some agreement on what the facts are as chastisement. I regret that should be the case. All of us know better than to attempt to chastise the distinguished and able Senator from Nebraska, who has served so well and so long in this body, but I do think there is a need to reach some understanding of what the underlying facts are. Then we can argue about our interpretations.

Mr. CHURCH. Mr. President, will the Senator yield at that point?

Mr. SARBANES. I do yield to the Senator from Idaho.

Mr. CHURCH. First of all, I think the actual letter and the card enclosed speak for themselves. The Senator from Maryland has correctly labeled this a solicitation by mail for opposition to the treaties. It was not a poll at all.

But the interesting thing to me, Mr. President, is that this solicitation was sent out to 800 generals and admirals, flag officers who could be assumed to have an intense interest in the matter of the canal treaties. They were urged simply to sign their names in opposition and drop the return envelope in the mail. Of the 800 solicited fewer than a majority, only 347, responded at all. Of those 347, 340 signed their names, while 7 found some way of asserting their support for the treaties, perhaps by enclosing a handwritten letter in the envelope.

But 453 failed to respond—a clear majority. I suggest that if one were interpreting the results of such a solicitation, knowing the keen interest that retired admirals and generals would have in such a subject, the fact that a majority refused to put their names on that card, refused to endorse the position of the Reserve Officers Association in opposition to the treaties, is very significant. In fact, it could be argued with considerable force that most of our retired generals and admirals, by refusing to sign on opposing the treaties, indicated that they were in disagreement with the Reserve Officers Association. I take heart from that, because the most prominent and celebrated of our generals and admirals, our former Chiefs of Staffs, our commanding generals in Korea and Vietnam, have all endorsed the treaties.

I commend the Senator from Maryland for trying to set the record straight about this much touted poll, which neither was a poll nor resulted in a clear indication that anywhere approaching a majority of our retired admirals and generals actually opposed these treaties.

Mr. SARBANES. I thank the Senator from Idaho.

Mr. President, I do think that at least now, for the record, by actually placing the text in, it is very clear what the nature of the request that was sent out was. There has not been, I do not think, any disagreement on the numbers involved, the number to whom it was sent and the number who expressed assent with the position, which was less than a majority of those solicited. I regret that we were unable to get this on the record at the time the assertions were made, but I can understand how certain Members, once they are on the floor and in the middle of a prepared text, do not choose to yield; of course, that is their right under the procedures of the Senate.

I thank the Senator from Iowa for yielding this time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. CULVER. I thank the Chair.

Mr. President, I rise in opposition to the Helms amendment.

At the outset, I would direct the attention of the Senate, and I hope also the proponents of the amendment, to what I observe to be a rather fundamental and fatal defect in the drafting of the amendment itself, which perhaps makes mere opposition to this amendment in fact unnecessary.

Mr. President, the amendment reads that—

> Notwithstanding the provisions of article I of the Panama Canal Treaty and article V of this Treaty, the United States of America may maintain, under the provisions of the Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington on November 18, 1903, and of the Treaty of Friendship and Cooperation, signed at Washington on March 2, 1936, and of the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama on January 25, 1955, between the United States of America and the Republic of Panama—

And then goes on to mention the Galeta Island Base, gives some geographic description, and then declares that it should be exempted from the treaties' effect and thus permitted to remain as an American base during the life of these treaties.

Mr. President, the fact of the matter is that the reference back to these earlier agreements and conventions between the United States on the one hand and Panama on the other predates the establishment of the Galeta Island facility itself, so that, for any references to Galeta Island, you will look in vain in the documents of 1903, 1936, and 1955, because the Galeta Island facility was not even put in position in its present configuration until 1958.

Frankly, under the way this amendment is drafted, even if it were to pass, the Panamanians could come forward and say, "There is no reference to the Galeta Island facility in any of these earlier understandings, agreements, treaties, and conventions, and in view of that fact, there of course is no protection, and you should get that facility out of Panama."

Mr. President, where we provide for the continuation and the protection of this defense site is in annex A to implement article IV of this treaty. Under annex A, we speak of defense sites, military areas of coordination and other installations, and it is within the context of the currently pending treaties that, for the first time, the United States specifically takes the necessary steps to protect and provide for the security of the Galeta Island facility. It says specifically, under annex A(2):

> The defense sites are described generally as follows: 2(e) Galeta Island.

And so on. Mr. President, I would submit that this amendment as currently drafted, rather than carrying out the intention of the authors to protect and provide for continued U.S. base presence and utilization of Galeta Island under the terms of the pending treaty, on its very face is defective and would not bring about the objective desired by the authors of the amendment.

Mr. President, we have been discussing these treaties for many weeks, and in the course of this experience we have all been subject to a considerable number of red herrings. But, Mr. President, I think it is rather suggestive of the consequences of protracted debate that we, in the current desperation on the part of the opponents of this treaty, are seizing now upon this spooky suggestion that there is some magic, miraculous military capability so critically essential to our national security interests that the terms and provisions under this treaty which have been established for the proper protection of those interests are, rather, deemed to be inadequate.

Mr. President, the real issue before us in this instance, as in so many with regard to altering the basic contours of the present treaty before us, is whether we want continued, secure use for the plannable future, with admitted uncertainties—with admitted uncertainties about the long-term need, as well as availability, or whether we are going to see immediate uncertainty—immediate uncertainty with regard to the continued viability, availability, and use of this facility and its potential vulnerability, if these treaties are rejected.

These treaties, Mr. President, clearly protect us.

GALETA ISLAND

I think it should be emphasized that Galeta Island will remain under complete U.S. control, as it presently is, under the terms of this treaty, until when? The year 2000.

Mr. President, in addition to Galeta, the fact is that under this treaty the Panamanians agree and we insist that the United States of America's Marine barracks and every other available military capability we have in the area can continue there under our total control and supervision secure until the year 2000.

In addition, Mr. President, I think an indication of the degree to which the people in Panama and their Government have acknowledged and respected the importance of this particular capability, is evident in the fact that Panama has also agreed in this treaty to restrict all other operating antennas and electrical emissions, so as not to interfere with the operations at Galeta Island. That is what the Panamanians and their Government have voluntarily agreed to.

So we have here a facility—a facility whose mission is to operate a high-frequency direction-finding equipment and to provide communications and related support, communications relay, communications security, and communications assistance to the Navy and other Department of Defense elements within the area.

Now, the Galeta facility is classified as a U.S. Armed Forces defense site for the duration of this treaty, and Panama has agreed, in addition to leaving it under our total control until the year 2000, to restrict any activity within a 6,000-foot radius of the operating antenna, which, in the determination of U.S. Forces, might interfere technically with the communications at Galeta, and to restrict construction of installations with high voltage electrical emissions within a radius of 2 miles without the expressed agreement of the U.S. Government.

Mr. President, it is hard to imagine a more totally cooperative agreement and understanding, that, in a responsible, mutually supportive way, provides for the continuation of that facility in its present configuration until the year 2000, and with the full cooperation and support of the Panamanian Government.

Now, Mr. President, as we approach the year 2000, 22 years from now, this facility will have been operating, protected under this mutual agreement. It will be totally under U.S. control and, in addition, the Panamanians will be respecting their pledge not to interfere. As we approach the year 2000, we can reconsider whether technology will make Galeta obsolete or replaceable by a facility elsewhere. If we want in fact to maintain it—if we deem it to be useful after the year 2000—good relations and equitable treaty arrangements will make that much easier to renegotiate.

We might, therefore, desire or try to negotiate an agreement to stay, if, in the year 2000, in fact, that alternative would be deemed to be desirable, as far as U.S. interests are concerned.

But the important point, Mr. President—I shall yield in a minute—is that it is not necessary to decide that question now, since we do not know the true value of that facility in the 21st century. We do not even know.

Now, a reference has been made here earlier about this envelope, this packet of secret information. I have had full briefings on this as a member of the Senate Armed Services Committee, and I want to say that in the absence of a secret session, which I am sure would confirm that this facility is important and useful, but hardly vital and essential, I would like to put this matter in a more proper perspective, just speaking on the basis of the unclassified information that we have and without raising a lot of false fears, expectations, and concern.

Mr. President, in the short-run, rejection of the treaties by the United States or by the Panamanians, or the addition of a crippling or arrogant amendment, would, in my judgment, clearly create an atmosphere of distrust and potential violence which could jeopardize the current use of this facility.

The issue, again, is what is the best arrangement to provide for continued secure use of this facility.

Remember, Mr. President, that our facility in Asmara, Ethiopia, was rendered unusable when civil conflict broke out in that country.

Galeta, too, is only located 3 kilometers from the Panamanian border at the present time. That is about 1.8 miles.

If we were to reject what I think is an eminently sensible, reasonable, fair accommodation by the Panamanian Government to recognize, support, and observe total U.S. control of this facility until the year 2000, as well as noninterference in adjacent areas which would in any way compromise its military capabilities, if we were to reject that sensible arrangement and say in the alternative that we wanted to throw out the baby with the bath water, if we wanted to insist right now that we may continue there indefinitely, and let this be a source of friction, of discontent, and a trigger for the unrest and violence that this kind of exception is likely to give rise to, then I think that nothing could be more shortsighted, in terms of the advancement of the true national security interest, properly defined and understood, of this country.

It would create an atmosphere which I think we have to keep in mind, when we are talking about a facility that is 3 kilometers from a potential area of terrorist activity. What is the range of a 4.2-inch mortar, one round? For one round of a mortar 4.2 inches the range is about 3.3 miles. That is all you need: One mortar round from one terrorist camp to blow this facility right off the face of the map. And if you think it is a little hard to get one 4.2-inch mortar in there, how about an 81-millimeter mortar? That weapon is man portable, a mortar team can carry it into the jungle and fire it at that facility—a piece of cake—and knock it out.

The range of that weapon is something like 2.8 miles. And this facility, again, is only 1.8 miles from the Panamanian border.

Mr. CHURCH. Will the Senator yield?

Mr. CULVER. The Senator from Colorado has been asking me to yield.

Mr. CHURCH. I will withhold.

Mr. CULVER. I yield to the Senator from Colorado.

Mr. HART. I thank the Senator. Like the Senator from Iowa, I have been a member of the Armed Services Committee for the last 3 years, and I have also served on the Intelligence Committee, which the distinguished Senator from Idaho chaired. I have served on the Senate Intelligence Oversight Committee since its inception. So I think I have a little bit of access of both military and intelligence data, particularly as it pertains to matters of this sort.

The Senator from Iowa may find it interesting to know that in that dual capacity of serving on both of those committees where a facility of this sort would have some merit, this Senator has yet to be contacted by any member of the intelligence community or any member of the armed services in this country regarding their concern about this facility.

It seems to me that if the military and intelligence officials of our Government are concerned about perpetuating this facility they would contact those in the Senate who have responsibility for matters of this kind.

I do not know about the distinguished sponsors of this amendment, but I have yet to have any member of the Defense Department or the Central Intelligence Agency, or any other intelligence agency of this Government, contact me expressing their concerns about perpetuating this facility. I find that odd, if, in fact, this is of concern to them.

Second, as the Senator from Iowa has very adequately stated, we are talking about a situation 22 years in the future. I happen to know, in the position of serving on the Intelligence Committee, what some of our long-range intelligence acquisition plans are, perhaps not 22 years from now but certainly several years from now. It is very clear to me that with the capabilities of our intelligence community, with the substantial amounts of money we are spending in the area of collection, very sophisticated electronic signal collection, the likelihood of our needing to retain our position in this geographical area and maintain this facility more than two decades in the future are extremely small.

Third, as the Senator from Iowa has indicated, we are talking about a situation where this amendment could well backfire if it blocks these treaties. Our access and use of this facility, which is considered important by the sponsors of this amendment, could well be denied, if this amendment is adopted and the treaties, therefore, rejected.

So I think it is incumbent on all Senators, if they genuinely care about intelligence collection, if they genuinely care about protecting our intelligence capabilities in this part of the world, if they genuinely care about this facility, to not offer this amendment. If this amendment is adopted it would be my understanding that the treaties would probably fail and, in all likelihood, this would be one of the most vulnerable facilities we would have in this whole area. The net upshot or effect of adopting this amendment would be, in fact, bring about events which the sponsors of this amendment want to avoid.

I just wanted the RECORD to reflect that I, as one of four Members of this body who serve on both the Armed Services Committee and Senate Intelligence Oversight Committee, have absolutely no reason to believe that it is necessary to adopt this amendment to protect our interests in that area. In fact, I think adoption of this amendment might accomplish the very result the sponsors claim they want to prevent. I thank the Senator for yielding.

Mr. CULVER. I thank the distinguished Senator from Colorado for his extremely valuable observations. It is certainly to be emphasized that we cannot confidently predict for a moment the future course of technology 22 years from now.

Putting aside the terrorist threat, remember that 22 years ago, for example, no nation in the world had even launched an Earth satellite. Twenty-two years ago, for example, no nation on Earth had a deployed nuclear submarine program, which is really one of the most challenging aspects of our present security situation in the world today. And 22 years ago no nation had developed high-speed computers, which now have been, of course, so well adapted to intelligence analysis efforts.

Who knows what advances may occur in the next 22 years in electronics, in satellites, in lasers, and in naval warfare. Yet any major breakthrough, given the acceleration and the revolution of technology, can make Galeta obsolete, make it unnecessary, as a facility. Like a frontier fort in Indian territory or the B–47 bomber bases we once had all over Europe and the Middle East, or World

War II coastal watchtowers—all are monuments to the accelerated advance of modern technology.

Mr. President, I would like to share with the Senate a letter which was provided me, sent by Vice Adm. R. Y. Kaufman, of the U.S. Navy. Admiral Kaufman is the Director of Command, Control and Communications Programs for the U.S. Navy.

Mr. President, this letter is dated March 1, 1978. It is addressed to the distinguished chairman of the Senate Foreign Relations Committee (Mr. SPARKMAN).

Paragraph 2 of that letter reads as follows:

> The Galeta Island installation, currently consisting only of radio direction finding functions, contributes to tactical and general intelligence capabilities of the United States.

In another part of that same paragraph it states:

> The Director, National Security Agency, has advised Admiral Holloway that the station has been and remains a candidate for closure if fiscal constraints become a governing concern.

Mr. President, that is quite an incredible revelation. We have all been tantalized here by the spooky suggestion that we are talking about something that rivals in secrecy and importance the development of the hydrogen bomb. Here we have this admiral, who is directly responsible for U.S. Navy command control and communications, writing a letter to the Senate Foreign Relations Committee chairman and saying in that correspondence that, "The Director of the National Security Agency"——

We ought to tear open that envelope and stick this information in with that secret stuff. We ought to quickly get this into that secret envelope.

The director of the National Security Agency has advised Admiral Holloway, the Chief of Naval Operations and a member of the Joint Chiefs of Staff, that the station has been and remains a candidate for closure, right now a candidate for closure, if fiscal constraints become a governing concern.

Mr. President, he goes on to say in the third paragraph:

> Testimony to the Congress has indicated the contribution made by the Galeta function in providing locational data, however, the Navy does not consider the Galeta installation vital to the overall defensive effort of the United States.

The Navy, the U.S. Navy, does not consider the Galeta installation vital to the overall defensive effort of the United States.

And he goes on to say:

> It is the Navy's view that it is highly probable that technology would be developed which would lessen our dependence on sites such as Galeta. This could occur before the year 2000. In final summary, one might say that Galeta's efforts are important to us at this time in ocean surveillance but the Navy does not consider those efforts to be essential.

What I think we really have here, Mr. President, is a desperate effort by the opponents to this Panama Canal Treaty to raise irresponsible and false fears in suggesting that there is a specialized defense facility in this area which is so crucially vital to our national security interests that, somehow, the arrangements that are worked out and embodied in the treaty itself are insufficient, inadequate to protect and properly defend America's national security interests.

Mr. President, what we really have here is, essentially, no different than the general pattern of arrangements that have been worked out and are incorporated in this treaty to provide for those defense interests. What are they? In brief, Mr. President, they are that, for the next 22 years, the Government of Panama and the people of Panama have agreed that the United States can protect and defend and maintain the necessary military presence, and to do it at every one of those defense installations expressly cited and noted in this treaty, including Galeta—whose particular defense is a mission responsibility of, among others, the Marine barracks in Panama City. So, for the next 22 years, if we were to enter into this treaty arrangement, the people of Panama and their government say, "We understand and we will cooperate in a mutual effort to observe these treaties and their implementation."

Now, it is clear that we have all the force and authority necessary to protect this facility. What is this facility? It is a high-frequency, direction-finding naval communication tower. That is what it is, with a handful of people who send out signals and find out where ships are in the water and report back to the United States which ships are coming, whose they are. We want to know that. It has been suggested that this somehow is tied into our antisubmarine SOSUS program. It is not. It is not that important. It is not even that sensitive in terms of its role. But it is important, and it is useful, and we have these kinds of facilities all over.

We were kicked out of Ethiopia because of unrest and revolution. We had to leave there. But we have a number of facilities all over the world. And, frankly, I think it can be said, as a matter of priority, this particular facility is way down in the pecking order in terms of its value and importance. Nevertheless, it is useful, it is nice to have, and that is why we provided in this treaty that we can maintain it and operate it for the next 22 years.

But I just said that Admiral Kaufman, who is in charge of this program, has been advised by the National Security Agency that this is not essential and if it were a period of budget constraint, it would be a candidate for closure.

Think of it. It would be a candidate for closure. If you listen to the proponents of this amendment you would think that World War III was teetering on the brink over Galeta Island. Hogwash. Ridiculous.

So now we have this arrangement for 22 years, and we have the Marines there to defend it. At the end of 22 years—it is mind-boggling, in this era of research and development, what can happen in the area of military capabilities. I mentioned earlier that we did not even have nuclear subs, we had no Earth satellites 22 years ago, we did not have laser beams, we did not have high speed computers. So we have the Marines standing there, doing their duty, to the year 2000, with the Panamanians and their government saying, "Right on, that is OK with us; that is the deal, and we are agreed to it."

The proponents of this amendment now come in and say, "That ain't good enough for us." They say, "That is not good enough; that does not adequately provide for the security of America, and we have a better idea." Like Ford Motor Co., "We have a better idea."

What is that nifty idea? They say, "We will tell you. Our idea is to throw out the window the agreement which you have patiently negotiated for 14 years, with the military including the joint chiefs all signed on to the wisdom of that approach in our national security; to repudiate four Presidents; to repudiate four former Secretaries of Defense; to repudiate four former Secretaries of State; we have a better idea."

OK, what is it?

"Well, our idea is that we should, right now, write into this treaty that we exempt Galeta from our having to give it up in the year 2000; that we should wave that flag, that red flag, in their face and challenge them arrogantly, rub their nose in it, and say, 'We are going to keep this supersensitive place, with our troops there, not just for the next 22 years, but ad infinitum.' "

Mr. President, do you know what the results of that will be? Unrest, distrust, mistrust, terrorist activities. It will jeopardize the operation of that facility. It will not enhance its security, it will threaten it.

It will suddenly become a ripe target, even if it does not result in the complete repudiation of the treaties by the Panamanians, because this is an arrogant amendment that they find unacceptable and too fundamental an alteration of the whole treaty itself. It is going to be a target of opportunity, and all you need to do is have a couple of terrorists with an 81-millimeter mortar and you can knock it out the first day. And we would not have that facility available to us for 22 years.

(Mr. GRAVEL assumed the chair.)

Mr. CULVER. I think it is far wiser, Mr. President, that we should take this arrangement now, it more than adequately provides for the protection of this facility and its capability. In 22 years, the odds are that it will already be obsolete and unnecessary. In the short term, we have already had official testimony that it is not essential or vital. In the short term, we have had testimony that it may well be on the list of endangered species already, if it were a time of budgetary constraint.

For all those reasons, how foolish it would be, in our national security interest, to go on a "macho kick" by singling out this facility for this special sort of treatment, with all those risks and potential short-term consequences and vulnerabilities.

So, Mr. President, I think this amend-

ment would be most unwise, most reckless and irresponsible in its potential consequence and implication to the security of this country, properly understood and respected.

I am glad to yield to the Senator from New York.

Mr. MOYNIHAN. I thank the Senator.

Mr. President, I rise to make a point that is parallel to and intended to confirm the remarks of the Senator from Colorado who asked the Senator's patience a little earlier.

I say that the Senator from New York is also a member of the Intelligence Committee. We have maintained the closest contact with the Department of Defense and particularly with the head of Signal Intelligence for the U.S. Navy, an admiral of the most accomplished professional capacity.

At no time has anybody ever suggested to any member of the Intelligence Committee of which I am aware that there is any reason not to go forward with the arrangements that this treaty contemplates for Galeta Island.

I would like to make a point because somehow or other a certain amount of theatricals have entered into our deliberations. I regret those who can only listen to this debate, and only read about it, that they could not have seen the envelope of secrets, the suggestion that there is something that the Senate does not know or that there is something that the people certainly will not know.

The junior Senator from New York, it happens, was a communications officer in the U.S. Navy and served in the Caribbean and was in this particular region 32 years ago. I would like to speak to what naval communications was 32 years ago.

We primarily communicated by virtue of signal flags. We ran them up. We ran them down. The exact same flags, and substantially the same one that John Paul Jones or Nelson would have used.

The vocabulary was limited. But many years at sea, and we picked it up.

A recent development, really, was the semaphore. We had semaphores, two flags. We could learn A, B, C, D, like that. I think one could get very fast and very good at it. It was amazing, some of the fellows moving so fast we could not see the flags, but they could receive it.

At night we had signal lamps. We flashed Morse code. Very clever men could flash off a cloud and we could get another 15 miles that way.

We had key-operated radio, and, truly, we did have the beginnings of early computers.

We had a coding machine which, if the Japanese showed up, I was to jump overboard with these codes.

Mr. CULVER. Will the Senator yield?

Mr. MOYNIHAN. Yes.

Mr. CULVER. Did the Senator have an opportunity to utilize smoke?

Mr. MOYNIHAN. Well, we could do that.

Mr. CULVER. I do not know the years of his service, but——

Mr. MOYNIHAN. Well, this was a standby operation, if a ship was on fire, we could take the blanket off and it would go in Morse code.

That is only 32 years ago. Imagine what 22 years will bring to Galeta Island.

The Senator knows, he is on Armed Services. In 22 years our biggest problem will be Soviet technology, satellites in outer space, and the opportunity to get to our underwater platforms below the polar icecaps, and the days of a transmission tower will look like the days of signal flags.

I just hope those who might be reading the CONGRESSIONAL RECORD, or in the press, and those who might be listening, would know that the U.S. Senate has available to it every secret the U.S. Government has, and they are somewhat more than those that could be stuffed in a small brown envelope.

I would say our secrets probably would take up a bushel basket. We would probably need a bushel basket to put all our secrets in.

But among those secrets that there is nothing to do with Galeta Island and its indispensable role in the protection of the democracy against its enemies.

The simple fact is that the Senate has been told what it needs to know here. There is no Senator on this floor at any time who cannot learn everything the Navy knows about this subject. Those of us who have done so by virtue of our committee assignments know that the Senator from Iowa is absolutely right. He is to be congratulated.

Yet, at the same time, one does ask how long this will go on. Little by little, the secrets. The Senator knows, there are no secrets.

It is not yet quite antiquated, and we are going to have it for 22 years, and we shall have scrapped it well before the year 2000 to change for something else. If need be, fine, because we have the place to do so.

Mr. BIDEN assumed the Chair.

Mr. CULVER. Will the distinguished Senator yield?

Mr. MOYNIHAN. I thank the Senator from Iowa.

Mr. CULVER. We also, of course, would have a climate that at least would be congenial and cooperative for renegotiation.

After all, we have facilities like this in other parts of the world and all of them exist under mutual agreement. If we found it desirable after the year 2000, to have this facility or a modernized version, or something in its place, certainly the prospects and possibilities for that being worked out are going to be enhanced if we continue under the present arrangement, which is agreeable to Panamanians, to have our military presence there.

Then in the year 2000, we can take another look at it and, as the Senator says so properly, if it is then viewed to be obsolete—and it is well on the way already, it has got a running start in that direction—then we do not have to cross that bridge if technology has outstripped its utilization and its value. We have that route to go.

But this way, we keep our options open, rationally, sensibly, soberly. Rather than take some precipitate action which, in the short term, would imply to some, perhaps, that this is somehow going to protect better our national security interests, I think clearly the course outlined in the pending treaty is the approach that is most likely to bring about that desired result. Frankly, if we were to adopt the amendment that is offered, I think, in the short term, it inevitably would usher in instability that would greatly threaten the short term value of this facility which, again, even in that context, is not vital, essential, but nice to have.

Let us work out something that is most likely to bring about that continued use under those circumstances.

I thank the Senator.

Mr. CHURCH. Will the Senator yield?

Mr. CULVER. I yield to the distinguished Senator from Idaho.

Mr. CHURCH. Mr. President, I congratulate the two Senators. They have said all that needs to be said on this subject.

When I first heard about the Galeta facility, the descriptions of it were so lurid that I thought we must have installed on this island the most secret and advanced of all possible devices, on which the very life of the Republic might hinge.

Now, thanks to the distinguished Senator from Iowa, we learn what this is all about. We have it straight from the admiral in charge, Admiral Kaufman, portions of whose letter the Senator from Iowa has read.

Mr. President, with the permission of the Senator, I think the entire text of the letter should be printed in the RECORD, and I ask unanimous consent that it so appear at this point.

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

MARCH 1, 1978.

Hon. JOHN SPARKMAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPARKMAN: This letter is in response to your request for an assessment of the essentiality of Galeta Island, particularly in light of technological advances. I think that while one might conjecture in light of the exploding technology we see in our electronics and communications fields, nevertheless it would be inaccurate to predict with any finality just what might occur in the next two decades. I think that the Navy's expression of the essential nature or nonessential nature of Galeta Island are reflected in the following paragraphs.

The Galeta Island installation, currently consisting only of radio direction finding functions, contributes to tactical and general intelligence capabilities of the United States. If we were to close Galeta it would have some impact on the effectiveness of the overall system and therefore we would prefer not to close the station in the near term. The Director, National Security Agency, has advised Admiral Holloway that the station has been and remains a candidate for closure if fiscal constraints become a governing concern.

Testimony to the Congress has indicated the contribution made by the Galeta function in providing locational data, however, the Navy does not consider the Galeta installation vital to the overall defensive effort of the United States. While there are difficulties in using a warship, for example, to compensate for the loss of Galeta over some protracted period the Navy certainly could bring to bear such capabilities in time of crisis or open hostility. It is the Navy's view

that it is highly probable that technology would be developed which would lessen our dependence on sites such as Galeta. This could occur before the year 2000. In final summary, one might say that Galeta's efforts are important to us at this time in ocean surveillance but the Navy does not consider those efforts to be essential.

Sincerely,

R. Y. KAUFMAN,
Vice Admiral, U.S. Navy, Director, Navy Command Control and Communications Program.

Mr. CHURCH. The Senator from Iowa was quite right in underscoring in his remarks the telling points made by the admiral, who wrote:

The Galeta Island installation, currently consisting only of radio direction finding functions, contributes to tactical and general intelligence capabilities of the United States . . .

Now, the officer in charge of this intelligence gathering capability, the Director of the National Security Agency, has advised the Chief of Naval Operations, Admiral Holloway, that this station has been and remains a candidate for closure if fiscal constraints become a governing concern.

That statement, in itself, puts this matter in its proper context. The facility in question is way, way down on the ladder, insofar as its importance is concerned.

As the admiral writes:

. . . the Navy does not consider the Galeta installation vital to the overall defensive effort of the United States . . . It is the Navy's view that it is highly probable that technology would be developed which would lessen our dependence on sites such as Galeta. This could occur before the year 2000. In final summary, one might say that Galeta's efforts are important to us at this time in ocean surveillance but the Navy does not consider those efforts to be essential.

In my time in the Senate, I cannot recall a naval officer making it any plainer that an existing facility did not matter very much.

Respecting the pending amendment, I say the elephant has labored and brought forth a mouse, and the Senate should give it a decent burial by supporting a motion—which I intend to make within a few minutes, as soon as other Senators who wish to speak have an opportunity to do so—to lay this amendment on the table

Mr. HELMS. Mr. President, if this amendment has accomplished nothing else, it has succeeded in bringing more Senators to the floor for the debate than I have seen on many of the previous amendments.

I do not think I have heard quite as many misconceptions as I have heard in the past hour and 15 minutes. I shall undertake to refute some of them. We would be here until midnight if I attempted to refute all of them.

Let us get a few things straight. The distinguished Senator from Iowa has asserted that the drafting of my amendment is defective because Galeta is not mentioned in the present treaties. Galeta Island Base was established pursuant to the general grant of jurisdiction in the 1903 treaties and its successor treaties.

All this amendment does is to propose that we maintain the same grant of jurisdiction over Galeta. That is all.

The Senator from North Carolina is puzzled by the vehemence of the opposition to the amendment. The fact that Galeta is not mentioned in the three present treaties is no more a defect in my amendment than it is a defect that we built Galeta without a specific agreement with Panama in the first place.

In other words, Mr. President, it is no defect at all, with all due respect to my distinguished colleagues and my friends. We did not need a specific agreement to establish Galeta in 1958. Senators surely know that. We have a general grant of jurisdiction, and that jurisdiction would continue under the proposed amendment.

We have heard a very lengthy discourse on the subject of a letter received from Admiral Holloway——

Mr. CULVER. Mr. President, will the Senator yield at that point?

Mr. HELMS. If the Senator will forbear, I did not interrupt him once.

Mr. CULVER. The letter was from Admiral Kaufman.

Mr. HELMS. I am sorry. I have a similar one from Admiral Holloway, that apparently uses the same phraseology.

Mr. CULVER. I understand the Senator say the one I referred to.

Mr. HELMS. I thank the Senator.

Mr. President, as I said earlier in my remarks, I have experienced intriguing contradictions between what has been told me privately and certain formal positions. I must reiterate that these gentlemen know who the Commander in Chief is, and I reiterate that we are talking about a political decision on the one hand and about our defense capability of this country on the other.

I received an unclassified letter from Admiral Holloway, discussing the Galeta Island facility, which I feel constrained to share with the Senate now. I would prefer to read to the Senate and to the people of the United States who may be listening by radio the classified response which Admiral Holloway sent to me as a result of several questions I propounded to him during the hearings before the Armed Services Committee. If I were permitted to do so, I think it would be obvious that many of the things which the admiral says on a classified basis appear to contradict the unclassified version—or at least the unclassified statement attempts to make inferences, in this case, which are not supported by the classified version. The distinctions run beyond mere semantics. That is the difficulty of it, Mr. President. Those of us who have been accused of presenting "killer" amendments are not able to use the classified material. But let us examine Admiral Holloway's letter; let us go through it, sentence by sentence. The admiral wrote:

The Galeta Island operation, which currently consists only of High Frequency Direction Finding functions.

I draw the attention of the Senate to these qualifiers: "Currently" and "only." Is the admiral suggesting that Galeta has performed some other functions in the past, or that it has standby capabilities for the future?

It would be interesting to know why he says "currently." As a matter of fact, the unclassified briefing paper, which I quoted under date of only one day previous to the admiral's letter, openly specifies other missions, such as cryptological functions for the Atlantic Fleet. Nevertheless, the admiral does tell us that it "contributes to the tactical and general intelligence capabilities of the United States." That is a positive comment.

The admiral then continues:

Closure of the Galeta operation would have some impact on the effectiveness of the overall system and therefore we would prefer not to close the station in the near term.

Thus, he notes that closure would have "some impact." He does not say how much. The word "some" is a word that can range from a little bit to a whole lot. If any Senator wants to know how much "some" is in this context, he can read the classified response.

It is important to note, however, that the admiral is pointing out that Galeta is a part of a system, and I did my best to make that clear in my opening remarks.

Somehow the significance of that floated over my distinguished colleagues who now seek to rebut what I said and, I hope, very clearly.

It is important to note, however, that the admiral is pointing out, as I said, that Galeta is a part of a system. Now, it may be possible to close this component or that component of a system, as has already happened in other parts of the world. But at what point, Mr. President, is the whole system rendered ineffective by the gradual closing down of station after station? What about the capabilities that relate specifically to the canal area? Perhaps that is why the admiral adds, and I quote:

We would prefer not to close this station in the near term.

But let us continue:

The Director, National Security Agency, has advised me that the station has been and remains a candidate for closure if substantial reductions in the overall intelligence programs are dictated by fiscal concerns.

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

Mr. HELMS. I would prefer not to, Senator. I know my friend will understand. But if I could ask you to be very brief, I would like to finish my statement.

Mr. BAYH. As the Senator knows, I have more than a passing interest in the whole intelligence area, and that is the part of our system which the Senator is addressing himself to which has been the subject of concern of our committee, and I just wondered if the Senator would tell us what he supposes the admiral was talking about when he said "near term." We are talking about a treaty the effect of which will not be felt until the year 2000.

Mr. HELMS. I would suggest the Senator consult the admiral himself.

Mr. BAYH. Well, the Senator has consulted that admiral, and Admiral Kauf-

man, and I must say what they told me was entirely different from what the Senator is telling the Senate.

Mr. HELMS. Yes, and the admiral knows the Senator's position as a proponent of the treaty.

Mr. BAYH. Is the Senator suggesting——

Mr. HELMS. To ratify the treaties, come what may.

Mr. SARBANES. Mr. President, will the Senator yield on that point?

Mr. HELMS. No, I do not yield. I know the Senator will understand. I did not interupt him.

Mr. SARBANES. I am tired of this denigration of our leading military officials for the purpose of making arguments on the floor of the Senate. They are men of quality and integrity.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. I thank the Chair.

I am denigrating nobody. I am stating facts, I will say to the Senator.

Mr. President, much has been made over the phrase "that the station has been and remains a candidate for closure," then the voice lowers among the proponents of the treaty when they read the rest of the sentence, "if substantial reductions in the overall intelligence programs are dictated by fiscal concerns."

Mr. President, that sentence tells us absolutely nothing.

Any program in the whole executive branch is a candidate for closure if we do not have the money to pay for it. As a matter of fact, there are many in North Carolina who would be willing to see the Department of Health, Education, and Welfare closed in the wake of what is perceived as harassment of our university by HEW.

It may be that even the office of the Director of the National Security Agency would be a candidate for closure if the need for substantial reductions is great enough, and if there were no funds to pay for its operation.

Mr. BAYH. Mr. President, will the Senator yield? Is he absolutely serious in making that kind of ridiculous assessment or is he just trying to——

Mr. HELMS. Mr. President, who has the floor? I doubt the Senator's wish to use the word "ridiculous."

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. I thank the Chair.

Mr. BAYH. I apologize to my colleague.

Mr. HELMS. In the next paragraph, the admiral refers to his testimony before the Armed Services Committee:

> As I have testified, Galeta's mission contributes to the provision of locational data, but I do not consider the Galeta installation vital to the overall defense effort of the United States.

Mr. President, I tried to make clear in my opening statement that I am not hung up on the word "vital," especially when it is put in the context of "the overall defense effort of the United States."

However, I will give a definition of "vital" that was given by a JCS representative at the House Panama Canal Subcommittee hearings of July 25, 1977. Brig. Gen. Erwin P. Graham, Deputy Director of Political-Military Affairs for the JCS, testified:

> I use the word "vital" as necessary to the survival of this country. . . ." When I describe a defense-related asset as being "vital," its loss would mean the loss of this country. No military base is "vital." The President is not "vital." Pittsburgh is not "vital." Cleveland is not "vital." New York City and Los Angeles are not "vital." Indeed, whole states are not "vital."

I think it is quite clear that Galeta is not "vital." I said as much in my opening statement in terms of the definition of the word. What we are asking here is whether it is important or significant, and the context we are talking about is not "the overall defense effort of the United States." We are talking about the defense of the canal and our intelligence monitoring capabilities in the Caribbean. We are not talking about the North Sea or the Indian Ocean or the Western Pacific. We are talking about the Caribbean, Mr. President. We are talking about an area where the Soviet fleet has enormously increased its presence in recent years, as Admiral Holloway himself pointed out.

I asked the admiral to provide the Armed Services Committee with statistics on the increase of Soviet naval shipdays in the Caribbean, and that response is also classified, but it is available to any Senator who wants to know.

We also know that the Soviets have increased their military presence in the Caribbean in recent weeks. We know that the Soviets are now operating the air defense system of Cuba, and we know why—so that Cuban pilots can fly missions in Ethiopia.

But that also gives the Soviets an increased air capability in this very region of the world.

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

Mr. HELMS. Let me say to the Senator I did not interrupt him once, and I sat quietly while the Senator was extremely critical——

Mr. CULVER. The Senator never asked me if I would yield.

The PRESIDING OFFICER. Does the Senator from North Carolina yield?

Mr. HELMS. I do not yield, Mr. President.

Mr. CULVER. I just thought we wanted to debate here.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

Mr. President, it is only commonsense that the Panama Canal is the next pressure point for Soviet activities.

What will happen to the Cuban troops who are now battle hardened in jungle warfare by their African experience? Where will they next be introduced—into Panama, with Panama's tacit consent?

There is nothing in these treaties, Mr. President, that forbids Panama to allow or even to invite Cuban troops into Panama. Is it likely? The Senator from North Carolina is no prophet, and he does not pretend to be. But I will say that our experts were not very good about predicting that Cuban troops would go to Africa or that Soviet pilots would be flying missions in Cuba. So nothing can be excluded.

That makes the next sentence of Admiral Holloway's letter even more interesting. The admiral says:

> With present technology there is nothing immediately available which could fully substitute for Galeta in providing this contribution.

Now, ponder those words from Admiral Holloway, Mr. President. He said, "There is nothing" — nothing — "which could fully substitute for Galeta." Nothing which can fully substitute. That is why, Mr. President, I have said that Galeta is irreplaceable.

Now, we have been seeing the U.S. presence around the world shrink and shrink and shrink. We have seen our ability to influence the decisions of world leaders grow smaller and smaller and smaller. I am not talking merely about what small countries think or what the so-called Third World thinks about us. I am talking about our inability to contribute to practical settlements in the Middle East, in South Africa, in Rhodesia, and China. These nations, and rightfully so, completely ignore U.S. policy.

The Latin American nations, Brazil, Chile, and Guatemala, have told us they are, in effect no longer interested in our view of world affairs. We have to go to Japan and beg and plead for minor trade concessions.

We cannot even get a meaningful SALT agreement that protects our interests. Instead our negotiators make concession after concession that undermines our national security and our future survival.

Why is this happening, Mr. President? Why? It is happening because they see that we do not have the ability to stand up for the true interests of our own Nation and for the true interests of our allies. Instead, we redefine our national interest as withdrawal from world affairs, as giving up any interest abroad.

You know what that means, Mr. President. It means that our sphere of influence grows smaller and smaller. Our area of decisionmaking becomes less and less. We have more and more constraints upon our ability to defend ourselves, and to gather intelligence about potential hostile attacks. Of course, we can attempt to substitute one thing for another. We can "make do," and hope that we would not ever need full capability, hope that things will work out somehow, even though the Soviets are flying missions in our hemisphere, and their ships are coming right up to our ports. We can pretend that that we can get by, somehow.

And I am afraid that Admiral Holloway is attempting to do just that in this letter. Let me say that I respect the admiral and I admire his capabilities. I want to thank him for being completely candid in his classified—I repeat, classified—responses. But unfortunately, we must also recognize that the exercise of military judgment in secret is one thing, but the exercise of miltary judgment in public, in the middle of a national debate could have a profound effect on the decisions of this body is another. And

so there is pressure upon all of our active duty military men to shade their public responses, to make implications unjustified by their military expertise, and to adopt political solutions that conflict with professional judgment.

I will give you just one example of this. When Admiral Holloway testified before the open session of the Armed Services Committee he gave as his rationale for supporting the treaties his judgment that the cooperation of the Panamanians and the Latin Americans was the overriding consideration. I asked the admiral the following question:

Senator HELMS. I would be interested in your evidence that the treaties will indeed result in a more cooperative attitude on the part of Panama, given Panama's political volatility?

Admiral HOLLOWAY. Senator, I would say that my evidence is built on about 3 years of discussions among the Chiefs, briefings by the joint staff, briefings by the Navy staff and discussions with General Dolvin who was our representative to the negotiations, and discussions with the negotiators themselves.

Thus we see, Mr. President, that Admiral Holloway himself quite candidly pointed up the impact which negotiating considerations had upon his final support of the treaty. Let me quote further:

Senator HELMS. Another point that you made—and of course the proponents of the treaties are repeatedly making this point, or trying to make it, I don't think they make it successfully—but they contend that in order to maintain and encourage a friendly and cooperative attitude among South Americans toward the United States, we must give away the Panama Canal. I believe you alluded to that this morning?

Admiral HOLLOWAY. Yes, sir.

Senator HELMS. I am not trying to press you sir; I merely want to ascertain your frame of reference. I myself have talked to a number of heads of state in South America, and I would be interested in learning which of these Latin American leaders, in your judgment, would be more favorably inclined toward the United States as a result of ratification of the treaties.

Let's go down the list one by one: Would you say that President Geisel of Brazil would be more favorably inclined?

Admiral HOLLOWAY. I don't know, Senator.

Senator HELMS. I see. How about President Videla of Argentina?

Admiral HOLLOWAY. No sir, I don't know, and I think that is going to be my answer to every name you ask me . . . I don't know for a certainty. My impression is that they would all be strongly supportive of the Panama Canal Treaty and the Neutrality Treaty, but I cannot say—

And this is Admiral Holloway talking, I will say to the distinguished occupant of the chair (Mr. BIDEN)—

That I have discussed it with them or their staffs. I have talked only to members of my staffs and people at the State Department who have given me this advice.

That was the admiral's reply, Mr. President. He had not discussed it with the leaders of Latin America themselves, or their staffs. He was relying upon the State Department. In other words, his support was based not upon the military expertise which he demonstrates so capably, but upon a political judgment which is taken from the State Department—and that is hardly an impartial and balanced source.

Of course, not all active flag officers depend upon the judgments of the State Department to override their military expertise. The Armed Services Committee heard testimony from Maj. Gen. Gordon Sumner, Jr., Chairman of the Inter-American Defense Board. General Sumner, whose expertise is both in military and in foreign affairs, testified to just the opposite of the Chief of Naval Operations. General Sumner travels frequently throughout Latin America, and confers frequently with heads of state and military leaders. He reported—Mr. President, I say this with all the emphasis at my command—that not one of them approved turning the canal over to Panama.

I might just say that my own experience was identical. The most important Latin American nations are definitely opposed; yet we are supposed to be currying their favor by doing the opposite of what they want. Yet Admiral Holloway based his support of the treaties upon erroneous State Department advice that he allowed to override his military expertise.

Now, of course, I have disgressed somewhat from my reading of the present letter from Admiral Holloway with reference to Galeta Island. But we must put the admiral's remarks in perspective. The present letter, by its very nature of being intended to be read in open session—and I was made aware of that by a representative of Admiral Holloway who called upon me at my office. He said very candidly that they would have to supply a letter—a letter which the proponents of the treaty would use, and of course that has happened here today.

It is a fair assumption, therefore, that the letter is a political letter. And so we can fairly ask the questions: Are the admiral's hedgings and qualifications based upon his military expertise, or are they based upon more erroneous information from the State Department?

Let us continue. That last sentence I read was this:

With present technology there is nothing immediately available which could fully substitute for Galeta in providing this contribution.

The admiral then goes on to say:

However, other sensors could provide a partial substitution and, although I have pointed to the problems attendant to using a warship to compensate for the loss of Galeta over a protracted period, we certainly could bring such a capability to bear in anticipation of crisis or open hostility.

Note that the admiral admits that other sensors could only partially substitute for Galeta. In other words, it is an attempt to use a makeshift. When we take capability from some other sensors to substitute for Galeta, we are degrading the whole system. We could not have the accuracy, because it is only a partial substitute. We can see the problems in the admiral's own admissions:

I have pointed to the problems attendant to using a warship to compensate for the loss of Galeta over a protracted period.

Why could we not use a warship to compensate for the loss of Galeta for a protracted period? There is no secret in that, Mr. President; the fact is that our Navy is so reduced in size, and plans for new construction are so scaled down, that we could not possibly take one of our scarce warships and dedicate it to a single mission, no matter how important.

The day of the U.S.S. *Pueblo* and the U.S.S. *Liberty* is over. Both of them were intelligence vessels. Of course, for a brief period, for a particular crisis, we can bring efforts to bear in a particular area. But in order to do that, some other area will have to suffer. As the admiral says, "We certainly could bring such a capability to bear in anticipation of crisis or open hostility." We certainly could—but not for long.

The admiral continues:

For the future, I believe that it is highly probable that technology will be developed which would lessen our dependence on sites such as Galeta.

The Senator from North Carolina agrees with Admiral Holloway; we may very well develop such technology; and then again we may not. And even if we do develop it, will it eliminate the need for sites such as Galeta? Not even the Admiral contends that. He says "lessen." In other words, maybe yes and maybe no. The amendment of the Senator from North Carolina does not commit us to keep Galeta forever. This amendment merely preserves the status of Galeta in its present code, so that we can make the decision to withdraw at the appropriate time when and if the future technology develops.

We do not know when that technology will develop. There are many wise men on this Senate floor but none wise enough or clairvoyant enough to forecast that.

In any case the next sentence of the admiral says:

This could occur before the year 2000.

Well, that could very well be the case. The Senator from North Carolina hopes that will be the case, but I repeat, no Senator on this floor, and not even Admiral Holloway can assure us that it is the case; 22 years remain before the year 2000, and we are supposed under these treaties to bear "primary responsibility" for the defense of the canal. Yet Galeta remains an isolated outpost under the treaties, not contiguous with any other of our defense sites. With the emphasis on "not contiguous" there is much that could happen even before the year 2000.

Then, the concluding sentence in the admiral's letter is as follows:

In summary, Galeta's efforts are important in their own right to our ocean surveillance program but I do not consider them to be essential.

Well, of course Galeta is important in its own right and I think that our discussion today has established that. But what does the admiral mean when he says that they are "essential." "Essential" is one of those words like "vital." Such words are a semantic roadblock thrown up to stop rational discussion. We have many elements of our defense that are significant, but not "essential." What does "essential" mean anyhow? A careful reading of the admiral's letter, does not seem to lead to that anomalous conclusion. Now, no one has claimed and least of all the Senator from North Car-

olina, no one has claimed that our national defense would collapse without Galeta. No one even claims that the defense of the canal would collapse without Galeta. The point is that Galeta performs a specific function that cannot be replaced by any other facility. It is certainly significant; it is certainly important. So why give it up? Why cut ourselves off from something that is valuable to us? Why endanger it by giving it the isolated status which these treaties give it?

If this body should be unwise enough to give up the Panama Canal, then some may say that we might as well give up Galeta Island as well. But even if we do give up the canal, the Neutrality Treaty gives us important responsibilities in perpetuity. We need to have the option to maintain the facilities to help us fulfill those responsibilities.

And I acknowledge, Mr. President, that Galeta Island is a symbol. It is a symbol of our readiness to commit ourselves to defend our own interests and responsibilities. It signifies whether we have the will to assert ourselves in a particular matter of importance to this country. Is there anything that the Senate is not ready to give up? Is there any amendment at all which the Senate is willing to accept? Is the Senate so beholden to the dictatorship in Panama that we cannot assert ourselves even on a single practical point? Now this amendment makes no sweeping general exceptions that could become precedents or points of confrontation; it merely relates to a single small area for a single purpose. And it is difficult to believe that even Panama could object to that.

So I ask my colleagues to think about this issue, to stand up on this issue—an issue small enough that it could not possibly jeopardize these treaties, but it is important enough for the Senate to give assent to this change.

Mr. President, I ask unanimous consent that the entire letter from Adm. J. L. Holloway, III, be printed in the RECORD at the conclusion of my remarks, and I yield the floor.

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

CHIEF OF NAVAL OPERATIONS,
February 28, 1978.

Hon. JESSE A. HELMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HELMS: This letter is in response to your verbal request during the information briefing provided by Vice Admiral Kaufman yesterday during which you requested that I comment upon the importance of the Galeta Island installation.

The Galeta Island operation, which currently consists only of high Frequency Direction Finding functions, contributes to the tactical and general intelligence capabilities of the United States. Closure of the Galeta operation would have some impact on the effectiveness of the overall system and we would prefer not to close this station in the near term. The Director, National Security Agency, has advised me that the station has been and remains a candidate for closure if substantial reductions in the overall intelligence programs are dictated by fiscal concerns.

As I have testified, Galeta's mission contributes to the provision of locational data, but I do not consider the Galeta installation vital to the overall defense effort of the United States. With present technology there is nothing immediately available which could fully substitute for Galeta in providing this contribution. However, other sensors could provide a partial substitution and, although I have pointed to the problems attendant to using a warship to compensate for the loss of Galeta over a protracted period, we certainly could bring such a capability to bear in anticipation of crisis or open hostility.

For the future, I believe that it is highly probable that technology will be developed which would lessen our dependence on sites such as Galeta. This could occur before the year 2000. In summary, Galeta's efforts are important in their own right to our ocean surveillance program but I do not consider them to be essential.

Sincerely,

J. L. HOLLOWAY III,
Admiral, U.S. Navy.

Mr. CHAFEE. Mr. President.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to address myself to a theme that seems to have run through the remarks of the opponents of the treaty rather consistently here, and that theme seems to be that those generals who are members of the Joint Chiefs somehow have been bought and that the testimony that they have given before the Armed Services Committee and other places, in fact, is not their true views; that somehow they are just kowtowed and stepping into line, following along because of pressure from the administration or some other activity such as that.

And now it seems to me this line that has been followed by the opponents of the treaty is really a rather extraordinary one and a terrific indictment, if accepted, of the character of these men who are heads of our Armed Forces.

Now, Mr. President, as you know I had the privilege of being associated rather closely with the Navy Department for a little over 3 years, and to suggest that the Commandant of the Marine Corps or Chief of Naval Operations just mouth what the administration wants him to hear, I believe it is an insult to the character of these men.

Mr. President, I want to say that I resent that slur on their character. These are gentlemen of great honor, and if they did not approve of these treaties they would say so and they would stand up and have their voices heard, but such has not been true.

So the opponents of the treaty are suggesting on the sly they are against them.

They do not have quotes from these men that say they are against these treaties. Every quote we have from these men say they are for the treaties.

Now, I had the opportunity to talk with one of the members of the Joint Chiefs the other day and I pointed out to him this technique that is being used here on the floor and said, "What about that? They quote all these past members of the Chiefs, Admiral Moorer, Chairman of the Joint Chiefs."

The Senator from North Carolina was pointing out some other admiral of the past or some general, and I said, "These people are cited as being against the treaties and you are cited as being in favor of the treaties. How do you explain the difference?"

And first of all, this gentleman pointed out to me that "Are not all the admirals or generals from the past opposed to the treaties by a long shot," and, of course, Gen. Maxwell Taylor and Admiral Zumwalt and others are in favor of the treaties, but more important than that, what he said to me was, "Those men do not have the responsibility and we do, and that makes the difference."

So it is easy to quote somebody who served 5, 10, 15 years ago, stating what his views are, but here are men who now have responsibility.

The Chairman of our Joint Chiefs and the members of the Joint Chiefs now do have the responsibility. They have come out in favor of these treaties.

I do not think we ought to make slighting slurs around here, "They are not really for it; they are not really telling you the truth."

Mr. MATHIAS. Will the Senator yield?

Mr. SARBANES. Will the Senator yield?

Mr. CHAFEE. I want to make one final point. I had the experience of being associated with these men over many years, every one of them. I know when they come before a committee if they disagree, they say so, whether it is a type of aircraft or nuclear powered carriers, whatever it is. Let us end this hogwash around here. I do not like it.

I yield to the Senator from Maryland (Mr. SARBANES).

Mr. SARBANES. I commend the very able Senator, formerly the very able Secretary of the Navy, for the comments which he just made. I asked the Senator from North Carolina at the time he was speaking to yield on this very point and he refused to do so because he was reading his text and I take it he had to finish reading his text. Therefore his assertions were made without an opportunity to respond at the time they were made.

Look at the experience of the Senator from Iowa and the Senator from Indiana in trying to respond to other assertions made by the Senator.

I agree with the Senator from Rhode Island. I am tired of the denigration of the leading members of our military which is taking place on the part of opponents of this treaty simply to try to advance some argument. I do not question the integrity or the motives of military experts they are citing to support their position. I may disagree with their judgment. I may not think they are reflecting proper wisdom. But I do not question their motives or their integrity.

It has been suggested by the opponents of the treaties that these leading military men are simply, kowtowing to higher orders. When General Brown was before the Foreign Relations Committee, Senator CLARK asked him this specific question, and I just want to take a moment to read this exchange:

Senator CLARK. Gentlemen, some of the most bitter critics of the treaty say that those of you in the Joint Chiefs of Staff and the higher ranks of the military command are supporting this treaty in fear of maintaining or enhancing your position. They say you are being intimidated. What is your response to these accusations?

General BROWN. Senator, I just turned to Secretary Brown to ask if he would mind if I made an unsolicited statement at some point to get this on the record. I thank you for your question. The rules are quite clear and I think understood by all of us.

General Brown then went on to say that you do not simply speak out but that when you come before a congressional committee in response to interrogation you give your honest opinion, fully and factually. He then indicated instances in which the Joint Chiefs had taken positions in opposition to the stated position of the President. He referred to the B–1 bomber and he referred to the Korean troop drawdown.

He then went on to say the following:

So it is wrong—

And I am now quoting General Brown, Chairman of the Joint Chiefs of Staff—

to say that in the case of the Panama Canal we are doing this only because a decision has been made.

General Brown goes on:

I have personally worked very diligently for four years to achieve these treaties with Ambassador Bunker and subsequently with Ambassador Linowitz also, and, as we have testified, the key point that finally found its expression in a treaty of neutrality was conceived within the Defense Department. We have worked hard for this treaty because we feel it is right.

The testimony from the other members of the panel, the heads of other military services, was to the same effect.

At the conclusion of all of this, Defense Secretary Harold Brown, who was sitting next to General Brown, then said, and I will close with this quotation from Secretary Brown:

I would like to say something about this because I think perhaps my uniformed colleagues cannot say it. It is this: The kind of charge to which you are referring is an insult to our senior military officials. I believe it is not helpful to the debate any more than it would be helpful to the debate if the proponents of the treaty were to question the motives, the integrity, or the honesty of those who oppose it.

We have not questioned the integrity, the honesty, or the motives of those who oppose the treaty, and, in particular, the former high military officials of this country who have been cited by the opponents. I do not think the integrity, the motives, or the honesty of very distinguished men who are serving this Nation in very high ranking positions in the military ought to be denigrated on the floor of the Senate. They are men of quality and integrity and we ought to recognize that. I thank the Senator for yielding.

Mr. CHAFEE. I certainly thank the Senator for those comments and particularly for the quotes provided from the RECORD. Any of us who know Gen. George Brown know he is the last man in the world anybody would suggest is a "go along fellow." As a matter of fact, he is known for his outspoken tactics.

As everybody knows, General Brown cannot be reappointed Chairman of the Joint Chiefs. He is finished this year, no matter what happens. There are no further military positions for him to hold in this country. There is every reason in the world for him to speak out and say what he believes is right. I yield to the Senator from Maryland for a question.

Mr. MATHIAS. Mr. President, I just want to express my thanks to the distinguished Senator from Rhode Island for speaking as he has today in defense of the Joint Chiefs of Staff. However, one may feel about positions they have taken, I certainly believe their position as honorable men is unchallenged. Their judgment may be challenged and their views may be challenged, but not their reputations as honorable men.

It has disturbed me. In fact, about a month ago on a television news show this question was raised. I said then that I thought it was preposterous to be challenging the motives of the members of the Joint Chiefs of Staff.

I think the Senator's point of view is particularly valuable because, as he said, he has dealt with members of the Joint Chiefs on a personal basis. I have every confidence in the judgments they have given in open testimony and in private conversations with Senators, that they are their honest judgments, just as I have the same faith in Admiral Moorer, whose opinions I value, being his honest opinions. Had he had those same views while he was a member of the Joint Chiefs I am sure he would have expressed them as he has expressed them now. Or if that was uncomfortable for any reason, he would have resigned, because that is the kind of honorable man he is.

I think we should ascribe the same quality of honor to the Joint Chiefs. The Senator from Rhode Island has stated the case very well and I want to associate myself with his views on that subject.

Mr. CHAFEE. I thank the Senator very much.

I would like to say that certainly we respect the views of Admiral Moorer, past members of the Joint Chiefs, and the chairmen. They are entitled to their views and deserve respect. But that does not mean we should run down the views of the present members.

Mr. DANFORTH. Will the Senator yield?

Mr. CHAFEE. I yield.

Mr. DANFORTH. I think what has been questioned is whether or not the public comments, particularly before the Foreign Relations Committee and the Armed Services Committee, of the military leadership of our country have been expressions of their candid opinions or whether, when they have appeared before senatorial committees, they have just taken the administration line.

It is my understanding that the Senator from Rhode Island served for about 3 years as Secretary of the Navy, is that correct?

Mr. CHAFEE. That is correct.

Mr. DANFORTH. During that time, did the Senator get to know any of the present members of the Joint Chiefs of Staff on a personal, day-to-day basis?

Mr. CHAFEE. Of course, I knew Admiral Holloway extremely well. He was a rear admiral then. I have known him since 1969. Gen. George Brown I knew when originally he headed the forces in Vietnam. I think he was then a lieutenant general. The others I did not know. Those two I have known particularly.

(Mr. HATHAWAY assumed the chair.)

Mr. DANFORTH. In addition to the statements which have been made before committees of the Senate, has the Senator—without asking him to disclose with whom he spoke or exactly what was said to him—had occasion to discuss the Panama Canal treaties on a personal basis with any of the military leaders of our country?

Mr. CHAFEE. I might say the other member I knew well was Gen. Lou Wilson. But the ones I have talked to about it are Admiral Holloway and, to some degree, I think, General Wilson, but really, Admiral Holloway.

Mr. DANFORTH. On a personal, face-to-face basis——

Mr. CHAFEE. Yes, Admiral Holloway.

Mr. DANFORTH. Does the Senator have any doubt, on the basis of personal discussions with Admiral Holloway, that the position that he took before the relevant committees of the Senate was, in fact, his personal and professional view of these treaties?

Mr. CHAFEE. No question about it. These gentlemen do not go before committees and say one thing in open testimony when their honest views are sought, and then turn around and, on the sly, say something else. That is completely contrary not only to the character of these men, but also to the duty they are sworn to uphold.

Mr. DANFORTH. Did he personally assure the Senator, during his private conversation with him, of his position on the Panama Canal?

Mr. CHAFEE. No question about it. Just as he set forth in his testimony, certainly, he wishes we could keep the Panama Canal the way it is. But he recognizes, as he said in his statement, what the facts are. That is why he is in support of this treaty, as are the other members of the Joint Chiefs.

I have another point I would like to touch on briefly, if I may, Mr. President.

Mr. DOLE. Will the Senator from Rhode Island yield?

Mr. CHAFEE. Yes, if it is not too long, because there is another point I would like to get onto.

Mr. DOLE. I do not quarrel with what the Senator from Rhode Island said, but I would not like the record to indicate that there has never been any disagreement among the Joint Chiefs of Staff. I remember standing on this floor during the Vietnam war debates. I do not remember anybody standing up and saying, "We have to uphold the Joint Chiefs of Staff."

In the Presidential campaign, somebody said, with regard to General Brown, that he was not fit to be a sewer commissioner. I did not say that, but it was said during the campaign.

This is not this Senator's views. I did not raise that point. I do not question their motives. We have some amendments that we think have some merit, and we hope they will be considered on that basis.

I was arguing——

Mr. GRIFFIN. I wonder who that was?

It seems to me that was a candidate for Vice President, was it not?

Mr. DOLE. There were only two of us, and it was not I.

Mr. GRIFFIN. Oh, I see.

Mr. CHAFEE. Mr. President, there is another point I would like to touch on. That is, as I understood the remarks of the distinguished Senator from North Carolina, who was speaking before—and I regret he is not on the floor now—he made the point that we have to be careful about these Cubans, who are getting this fine military training and exercising their tactics all over Africa in a disgraceful manner—which I could not agree with more, whether it is Angola or the Horn of Africa—and that these battle-trained soldiers are going to come back and have an opportunity to go and set up in Panama.

I refer him to article V of the Neutrality Treaty, which is the very treaty we are debating here today. It very clearly says that after termination of the canal treaty—in other words, from the year 2000 on—only the Republic of Panama shall operate the canal and maintain military forces, defense sites, and military installations within its national territory. So the opportunity for the Panamanians to welcome in the Cubans under that is just against the treaty.

One can say, oh, well, it is against the treaty; so what? But there the facts are: it is against the treaty.

Of course, if it presents a threat to the neutrality of the canal, we are all familiar with what the rights are of the United States under this treaty. So I think it is important for the Senator to bear that in mind and for the Senate to bear it in mind, because, under the present situation as it now exists, there is nothing to keep Cuban troops from coming into Panama.

Under the 1903 treaties, Cuban troops could come in there—not in the zone, but they could come into Panama. So this treaty accomplishes just the things that the Senator from North Carolina is concerned about. It keeps the Cubans out.

I thank the Chair.

Mr. MELCHER. Mr. President, Nero was said to have played the violin while Rome burned. That may be fact or myth, but in the spring of 1978 the U.S. Senate debates the Panama Canal Treaties while the U.S. economy sags and falters because our energy policy is incomplete and we depend too much on imported oil, because our agricultural policies fail in reaching fair and decent prices for farm and ranch producers and because we are plagued with huge Federal deficits, high interest rates, a flood of imports of a variety of commodities and products—and that is only a partial list, nowhere near complete.

We are attempting to slip into a posture of using more coal to replace oil and gas; we have exported jobs which often come back to haunt us, such as dumped imports of steel or imported copper; and we have a surplus of Alaskan oil on the west coast and no pipeline to bring it inland to Northern tier and Midwest refineries that must have it. These are only a few of the problems that are of great urgency for the United States, in my judgment, demanding immediate attention. Yet our time here in the Senate is bogged down by debate on the Panama Canal treaties.

Last Thursday, I stressed to the Senate that a timetable for disposal of the treaties was absolutely necessary. Yesterday's agreement, consented to by all the Senate, to reach a vote on the Neutrality Treaty by 4 p.m. on March 16 is a welcome and hopeful sign that the Senate will soon return to legislative business to address the more important domestic problems which have caught up and, in some cases, engulfed basic industries of the United States.

The vote on March 16 on the Neutrality Treaty will be a showdown for President Carter's and General Torrijos' best efforts to produce mutually satisfactory treaties concerning the canal. Henry Kissinger, who, as the former Secretary of State, played a strong role in moving the treaty negotiations along, states the treaties are the results of efforts of three previous Presidents and President Carter. Kissinger chides the Senate to accept these treaties as not only satisfactory but also highly meritorious. President Johnson died too soon to have reviewed the terms of the final draft of the treaties. Former Presidents Nixon and Ford, I assume, have carefully reviewed the language and approve it. But it is President Carter who has signed the treaties, along with General Torrijos, and President Carter now asks the Senate to advise and consent with an endorsement of two-thirds or more of the Senate. I am sure that President Carter, while requesting that acceptance by the Senate, has not anticipated nor does he wish to see other more important legislative business go unattended in the Senate for too long a time.

After an investigative trip to Panama in January to consult with General Torrijos, other leaders in Panama, the Canal Company officials and our military, I expressed to the President, my deep concerns over several aspects of the treaties. I conferred with Ambassador Sol Linowitz, met at the White House with President Carter, and candidly stated by reluctance to vote for the treaties unless significant restructuring was agreed to incorporate what, in my judgment, would be substantial strengthening amendments to the bodies of the treaties. Ambassador Linowitz informed me this would require a new plebiscite in Panama and that the position of President Carter and the State Department is to resist any such amendments.

While I understand and respect their position, I do not agree. The Senate must advise and consent by a constitutional requirement of two-thirds or more and that means, regardless of another plebiscite in Panama, that 67 individual Senators must reach the conclusion that the treaties are in the best interests of the United States as well as other countries that use the canal in world commerce.

During the past 6 months following the ceremonial signing of the treaties by President Carter and General Torrijos at the Pan American Union Building, I have concluded that the treaties do provide good settlements for the people of Panama. If I were a citizen of that country, I would want to be able to use the land within the Canal Zone without its being an artificial barrier operated as a restricted area. If I were a citizen of Panama I would want more job opportunities in the operation of the canal and I would want more economic returns and benefits from the canal's operations. These, I believe, are legitimate complaints by the people of Panama which could well be addressed and corrected with or without a new treaty.

They are understandable complaints and complaints that are of long standing that could have been resolved decades ago but, because they went unresolved, these and other complaints have fed the passions and the aspirations of the Panamanians' developing a nationalistic fervor for a "grand understanding" of monumental proportions, and from thence came these two treaties which Henry Kissinger claims are the products of the best efforts of four Presidents of the United States. From the standpoint of the Panamanians they get what they want in stages spaced out over 22 years until the year 2000 and the ultimate happens—Americans completely out of the canal's operation.

Under the most reasonably projected set of circumstances, the treaties, signed by General Torrijos and endorsed by over 60 percent of Panama's people in last October's plebiscite, in reality bite off more than Panama can chew.

Like saddlesores, the constant pressure of their basic disagreement over the Canal Zone and past arbitrary actions within the Canal Zone as affects them as citizens within their own country have festered, become raw and spread because of the constant pressure of the saddle which is, in this case, American dominance and action within the Canal Zone which they found to be oppressive. So the nationalistic fervor that has propped up General Torrijos, his national guard, and his government for 10 years brought about negotiated new treaties that will eventually remove that saddle of American presence in the operation of the canal. For that same period of time American Presidents, the U.S. State Department, the U.S. military, and the CIA have backed General Torrijos, his national guard, and his government. The treaties are drafted to their satisfaction.

The treaties provide that the United States spend $700 million between now and the year 2000 for the transfer of the canal and its properties, for services within the Canal Zone, for termination, transfer, and retirement of American employees, for withdrawal of American military and for assured continued efficient operation of the canal for the next 22 years. I have not as yet been able to review the enabling legislation for all of this, but it is my understanding that it has finally been drafted under the auspices of the State Department and other agencies and is now available for review. But at a time when our national economy is staggering and many needs in the United States are not being met, it is obvious that the American peo-

ple will want the Senate to carefully ascertain whether these costs are in the public interest.

The treaties require that for during the next 22 years the American presence in operating the canal precipitously decline. In the year 2000 no U.S. military bases would be allowed in Panama. The treaties assume that Panama will be capable of all necessary defense measures. The treaties do not provide or permit any arrangement for a lease for an airfield, naval, marine, or army base such as we have in Guantanamo, Cuba; Rota Naval Complex, Torrejon Air Base and Zaragoza Air Base in Spain; Incirlik Air Base and Ankara Air Station in Turkey; Keflavik Naval Station in Iceland; Sidi Yahai Naval Communications Station and Kenitra Naval Air Station in Morocco, North Africa; and scores of others around the world.

This is one of the instances in the treaties where Panama has bitten off more than it can chew. The only military they have is the 10,000-member national guard, which is more like a combination police force and secret service for General Torrijos and his government than they are a national guard. They appear adequate to control riots, direct traffic, and other routine police work, and participate as ward heelers carrying out General Torrijos' government functions. But they are completely inadequate to defend the important and strategic Panama Canal for world commerce from significant hostile acts from any outside source.

I believe General Torrijos, the Panamanian people, as well as their Government, would anticipate that any major hostile action from outside Panama would immediately require our help and assistance, but the treaties prevent us from having any arrangement for a base of operations within Panama after the year 2000. It is apparent that this restriction imposes clumsy and awkward conditions for any necessary military assistance from the United States. In the case of overt hostile action by any outside enemy that gains military objectives within the country of Panama and either controls or threatens to control the Panama Canal that would require our military intervention the increased casualties that would result in our establishing a military base of operations within Panama is one of the tragic requirements within the proposed treaties. That proposal, generated by nationalistic fervor of the Panamanians to get us out—lock, stock, and barrel—defies all commonsense. If we can have arrangements to be in Cuba, Spain, Turkey, Iceland, North Africa, and other areas for mutual defense reasons, these treaties just are not good enough for the best interests of the United States, our neighbors in Central and South America and the entire Western Hemisphere.

When the canal is completely controlled by Panama in the year 2000, we will have to trust that Panama can keep up its efficient operation. The treaties assume that the economy and the Government of Panama will be stable and solid. That is not now the case nor has it ever been the case since the time the canal was built.

Panama in 70 years has had 49 different heads of government. Gen. Omar Torrijos, called the "Maximum Leader," is backed by the national guard and runs the government as a dictator. His brother, Moise, the Panamanian Ambassador to Spain, is under indictment for assisting in a shipment of 150 pounds of heroin into New York City. A warrant for his arrest awaits him anytime he enters the United States.

The economy of Panama is stagnant, not the least reason being that 28 percent of the Panamanian taxes go to pay the interest on a billion dollars in notes owed to banks in various world centers. The per capita income of the 1.8 million Panamanians is around $600. Separate from the bulk of the population, which has a very low income and supports Torrijos, there is a growing middle class which is dependent on U.S. business ties and, for the most part, opposes Torrijos and the national guard. Panama is a more stable country now than it has been in the past, but it is questionable whether its economy can afford the money and that their government will do all that is necessary to maintain and keep up the efficient operation of the canal. Again the treaty is not good enough.

Each Senator on March 16 must vote for or against the Neutrality Treaty. Many of the proponents stumble on classifying opposition votes as "right wing." That is a cliche that I believe is inaccurate in the case of my opposition and that of many others. In particular I believe it is a cliche that is inappropriate and unwarranted for the broad crosssection of Americans who believe with reasonable justification that the treaties fail to carry out the best interests of the United States and the best interests of world commerce. They sense, and I agree, that there is little assurance that the Panamanians could successfully operate the canal with the same degree of efficiency without our help and without some comanagement by us. That is neither insulting to the Panamanian people nor condescending to their national economy. It is simply a fact that it requires considerable amounts of money to maintain that efficiency and stability that we have maintained, in operating the canal. That goal is not just peculiar to or a narrow self-interest of the United States. That is a common goal most deeply appreciated by our country and others in Central America and South America that rely heavily on traffic through the canal, but it is also a common goal of all countries that use the canal.

Without apologies I say these treaties are not good enough. Without apologies I recommend a rejection of the Neutrality Treaty on March 16 and immediately following that rejection I recommend returning to legislative business now pending before the Senate which is most urgent to solve our own domestic problems here in the United States.

If the Neutrality Treaty is rejected there is no need then to consider the other treaty. However, discussions between our country and Panama need not remain in limbo, because many of the legitimate complaints of the Panamanian people regarding the Canal Zone and its economic benefits to the people of Panama can be immediately addressed and corrected.

If the vote on March 16 rejects the Neutrality Treaty future discussions with Panama can be carried out based on a common approach to the common goal of assuring the continued stable operation of the canal for the benefit of all of us in this hemisphere, including Panama, and for the continued benefit of world commerce.

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

Mr. MELCHER. I am delighted to yield to the Senator from Alabama.

Mr. ALLEN. I commend the distinguished Senator from Montana (Mr. MELCHER) for his devastating analysis of these treaties, for his conclusion that they are not good enough, for his statement that he plans to vote against the Neutrality Treaty on March 16, and for his desire that we return to legislative business.

I was intrigued, I say to the distinguished Senator from Montana, with his suggestion that even though the Neutrality Treaty is defeated—and I assume that if it is defeated, that, in effect, will carry with it the Panama Canal Treaty—that would not be the end of the road for Panama; that many of their complaints could be handled even without the treaty; further, that additional negotiations could take place between the two governments.

I gather that the distinguished Senator from Montana feels that that would be the proper course, to return to the negotiating table to see if an acceptable arrangement, whether by treaty or by negotiation or executive agreement—some change in the present setup—could be arranged. Is that correct?

Mr. MELCHER. The Senator is absolutely correct.

If I were a Panamanian and living in Panama City, I would resent the fact that the city is prevented from growing in its normal direction, which would be directly in the Canal Zone. I would resent the fact, if I were a Panamanian, that the Canal Zone is run like a military base and that I, as a citizen in my country, had restrictions on the use of that land which is not needed for the operation of the canal. If I were a Panamanian, I, too, would want more economic return from the operation of the canal, because it is one of the basic ingredients of that country.

I view those points, those sore spots in the Panamanian scene, felt by the Panamanian people, as an opportunity for this country to correct them immediately.

I see no need for new treaties, but I think that whatever is essential in that regard could be accomplished forthwith.

As for the long-range goal of a formal, new treaty, our country is open for the continuation of that discussion, and I believe could do so in a much better way and a much more enlightened way after this debate in the Senate and the expression of Senators who have some problems with the treaties as drafted.

Mr. ROBERT C. BYRD. Mr. President,

will the Senator yield for a unanimous-consent request, with the understanding that he will not lose his right to the floor?

Mr. MELCHER. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, this has been cleared all around, it is my understanding.

I ask unanimous consent that a vote occur on the pending Helms amendment, or a motion to table that amendment, no later than 6 p.m. today; that the Senate then proceed to the consideration of article III; that Mr. STEVENS then be recognized to call up his amendment No. 64 to article III; provided, further, that when the Senate returns to the consideration of the Neutrality Treaty on tomorrow, Mr. STENNIS be recognized; that upon the conclusion of the remarks by Mr. STENNIS, Mr. STEVENS be recognized; that upon the recognition of Mr. STEVENS, there then be a 3-hour limitation for debate on the Stevens amendment, with the 3 hours equally divided between and under the control of Mr. STEVENS and Mr. CHURCH or their designees.

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

Mr. ROBERT C. BYRD. I thank all Senators. I thank the Senator from Montana and the Senator from Alabama.

Mr. ALLEN. As I understand the position of the Senator from Montana, defeat of the treaties would not be the end of the road, necessarily. The two governments could negotiate a new agreement, whether it be by treaty or by executive agreement, which could take care of what the Senator has called sore spots that need correction. Is that the Senator's position?

Mr. MELCHER. The Senator from Alabama is absolutely correct.

I would welcome the opportunity for the Senate to get back to legislative business, to solve some of the very pertinent and very harsh economic problems we face in this country.

Mr. ALLEN. One final word: The best way I know of to assure getting back on legislative business is to defeat the Neutrality Treaty on March 16. I do not believe that the Panama Canal Treaty then would be brought up.

I thank the distinguished Senator for his suggestion and for his statesmanlike position with regard to the treaty.

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

Mr. MELCHER. I yield.

Mr. GRIFFIN. Mr. President, I join the Senator from Alabama in commending the Senator from Montana for a very excellent statement, indicating a great deal of study and a good deal of compassion for the problems and aspirations of the Panamanian people.

I do not ask the Senator to comment upon this suggestion, but I call attention again to that fact that when this Senator, as the only member of the Foreign Relations Committee to do so, filed his minority views, I stated—and I believe it very strongly—that it makes a difference how we say "No" in this situation.

I am developing a substitute for the resolution of ratification, which will be offered, and it will give the Senate an opportunity, rather than outright rejection of the Neutrality Treaty, to advise the President that he should send the negotiators back to the drawing boards and to continue the negotiations until a more acceptable treaty can be fashioned. There are various ways the Senate could handle this situation.

Of course, as the Senator from Alabama has pointed out, there have been other treaties which were not acceptable to two-thirds of the Senate and which never reached the floor of the Senate. They just stayed in the Committee on Foreign Relations.

This matter could go back to the Committee on Foreign Relations, I suppose. It would be another way of dealing with it. But I am going to give the Senate an opportunity to vote on a modification of the resolution of ratification, which I think will do, in effect, what the Senator from Montana has indicated would be the appropriate thing.

Again, I commend the Senator for his contribution to this discussion.

Mr. MELCHER. I thank the Senator.

I again stress that I think it is absolutely essential that the Senate return to legislative business, because we have many crushing economic problems in the United States that need to be resolved.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I would just take a minute or two to point out several things with reference to the distinguished Senator from North Carolina's amendment.

As I indicated to the Senator from North Carolina, it probably would make no difference if the amendment were gold-plated. If it were a perfect amendment satisfying everybody in the Senate we are not going to take it. That is the strategy. The Torrijos strategy is no amendment. That now seems to be the Senate strategy, no amendment. Regardless of merit there will be no amendment.

It is unfortunate, because some of us worked rather hard to produce good amendments. We think they had merit.

As I understand, the only amendment that will be offered and attempted will be the so-called Torrijos-Carter amendment which has been agreed on by some 70 Senators. After the disposal of the Torrijos-Carter amendment then we go back to the old strategy, adopt no amendment regardless of merit. There will be no amendment adopted.

So I do not know whether it does a great deal of good to argue the merits of meritorious amendments or not, because General Torrijos does not want any amendment, and he seems to be in charge, make no mistake about it—General Torrijos seems to be in charge here. He is calling the shots.

It is said that he has several votes in this Senate, ranging from 55 to 60, and they have been very effective; because we are so concerned about General Torrijos, we do not want another plebicite. We have been told that that would upset the general, he might even quit; if we adopted some amendment that might cause him some distress.

It seems to some of us, who would like to improve the treaties and vote for the treaties, we are going to be foreclosed from this option. We have not given up; we almost have given up.

Now the Senator from Kansas introduced the Carter-Torrijos amendment long before Carter-Torrijos thought of it, and now it is going to be adopted. It strengthens the treaties. But it is not enough. It would seem to this Senator we are really probably wasting a lot of time here because we know there is a stone wall on the other side.

I would hope as we look at the amendments, and there is indication that some Senators are studying the amendments carefully, that they are not rejected out of hand. It seems to me they ought to be rejected on the basis of whether or not they have merit, not on the general thesis that we cannot have any amendment because that might require another plebiscite.

There is this feeling out in the countryside, which is anywhere 50 miles from here, that the majority of the people have some reason to oppose the treaties in their present form. They find it difficult to understand how those of us who came to the Congress feel their judgments are good when they vote for us, but that their judgment is not so good when they have a different view on the treaties.

It is a very difficult and delicate question, as has been discussed earlier. It is fine to see my colleagues standing up and defending the Joint Chiefs of Staff. I certainly have every confidence in the Joint Chiefs of Staff. But it is not unprecedented to question their judgment. It has been done before.

The Senator from Kansas understands that, having been here during the Vietnam war debate, when the judgment of the Chiefs of Staff were questioned almost daily by some of the very Senators now who say, "You cannot look at the judgment of the Joint Chiefs of Staff. Their word is the gospel."

So I think we have a right to raise questions and discuss whether or not the amendments have merit.

I would hope that there will be some relaxation of this stonewalling of any amendment. I still am waiting to hear from General Torrijos, and I think if he would write back and OK some of my amendments I might get them adopted.

I talked to General Torrijos when I was in Panama in December. We talked about some of my amendments. I have since written to General Torrijos, thinking I might get some response from him before we end the debate, because I am convinced now that I will need his support before I can have any success.

The Senator from Kansas has not offered a flock of amendments. The Senator from Kansas offered very few amendments starting last September, and then again in October an amendment based on a lot of thought and a lot of consideration. It does not satisfy me or those who support the amendments to just have them rejected out of hand.

I would hope my colleagues would study very carefully the amendments. I was pleased to see the 40 votes the dis-

tinguished Senator from Alabama's amendment received yesterday because that is an indication that there is more attention being focused on the amendments themselves in trying to improve the treaties; not trying to kill the treaties.

I think if we go back and look at the record in the Versailles Treaty debate, we will find what happens when efforts are made to stonewall. So, we should look at the merits of the amendments and forget about the feelings of General Torrijos—he is the leader of Panama, and no one quarrels with that. He does have a responsibility, and no one quarrels with that. But the Senator from Kansas is not so certain he represents the views of all the Panamanian people.

The amendments are offered in a spirit of friendship for the Panamanian people, not in a spirit of hostility.

Certainly the Senator from Kansas has no notion to offer any amendment that somehow would upset the Panamanian people.

But make no mistake about it, General Torrijos is a factor in this debate. I recall President Carter did not even mention his name in the last fireside chat. It was always "the leader of Panama," "the Panamanian leader." As we learned earlier, there was evidence of some involvement of the Torrijos family in drug trafficking. Maybe that is not important, but in a poll just released by Public Opinion Research, 49 percent of the American people think it is. It is not quite half, but that is a rather significant number.

Seventy-two percent of the people do not think we ought to surrender ownership; that is as of February, not very long ago.

So, Mr. President, I would hope that as we become more active in discussing meritorious amendments we would consider each one on that basis, not on the basis of whether it might upset Torrijos, and not with some preoccupation that there might be another plebiscite.

The miners rejected the coal agreement. But I guess they are still trying to work that out. They have not given up. They are still trying to figure out some way out of that impasse, and I suggest the same thing would happen if we adopted some good amendment to these treaties. It would not be the end of the road, as the distinguished Senator from Montana has suggested. That is our responsibility. We have to advise and consent, and I suggest that General Torrijos might understand the problem we have.

If those who think we can amend the treaties without killing the treaties feel that way, maybe they have the same feeling about the coal strike and the rejection by the miners. But I understand every effort is being made by the administration to reach some agreement, even though Taft-Hartley will be invoked.

So I again plead with my colleagues who have the majority votes, no question about it, I plead with the leadership to let the sunshine in. Let us let a little air in on this debate—a lot of air—but let the Senate work its will on meritorious amendments instead of using the same old tired arguments that "this would mean another plebiscite," "this is a killer amendment." What is a killer amendment? If an amendment improves the treaty, is that a killer amendment? I would hope not.

I would conclude this phase of my remarks by reminding my colleagues that the leadership amendment at one time was called "obstructionist," it was "not needed," it was "not necessary." But suddenly there was a change of heart, and that amendment was adopted by the leadership.

So I suggest if those amendments have merit, maybe other amendments have merit. They do not necessarily have to be leadership amendments.

SENATE CLOSED SESSION WAS WORTHWHILE

Mr. President, last Friday the Senate released a "sanitized" transcript of the closed session conducted on February 21 and 22 of this year. The purpose of that session, initiated at the request of the Senator from Kansas and others, was to obtain answers to a number of sensitive questions regarding the Panamanian Government, and to allow for discussion of those matters. On the basis of the transcript released last week, I think it will be clear to the American people that the closed session was instructive, constructive, and altogether worthwhile.

When I called for a closed session last month, I stated that my purpose in doing so was to examine and discuss information that is in possession of the Senate Intelligence Committee, regarding allegations which were circulating about the Torrijos regime in Panama. The allegations that concern me most regard possible involvement in drug trafficking by high ranking officials of the Torrijos government. Others had expressed similar concern about wiretapping and other matters of a sensitive nature. For myself, I suggested that the drug allegations could relate to the Panama Canal Treaty issue in two ways.

First, I suggested that direct or indirect involvement in drug trafficking by Gen. Omar Torrijos or other top-level Panamanian officials could raise questions about their integrity and credibility with regard to treaty guarantees. Second, I suggested that we should learn as much as possible about the nature of the Torrijos regime, given the political and economic support which these treaties will provide to that government.

USEFUL INFORMATION

Mr. President, the Senate spent an unprecedented amount of time in closed session, examining and discussing relevant information on the drug and wiretapping allegations. Except for relatively few deletions of particularly sensitive information on sources and methods involved, the "sanitized" transcript reflects the substance of the discussion. It is clear that the Federal agencies cooperated, to a large extent, with the Senate Intelligence Committee during their investigation of these matters. It is clear that the Senate Intelligence Committee was very forthcoming with myself and those of my colleagues who had questions.

LOOKING FOR ANSWERS

Not all of the questions raised by the Senator from Kansas could be completely and definitely answered by the Senate Intelligence Committee, in some cases due to incomplete or conflicting information. However, information which was made available was sufficient, in my opinion, to raise some concern. There certainly was no attempt at a "whitewash" of the issues. As a matter of fact, it was impossible in some cases to determine without a doubt that illegal or unethical actions did not take place.

With respect to the drug issue, the transcript of the debate makes several points clear. Based on sources that the Senate Intelligence Committee considered reliable, it was suggested that General Torrijos knew about narcotics trafficking by government officials and did not take sufficient action to stop his brother's activities. Other allegations were mentioned asserting that "General Torrijos assisted his brother," although the committee stated that it had turned up no "conclusive evidence" that could be used in a court of law. This, of course, was part of the problem encountered by committee members when they investigated the matter. When you have access to allegations of questionable validity, and when allegations sometimes contradict each other, it is difficult to determine "beyond the shadow of a doubt" that an allegation is a fact. This Senator does not quarrel with that, but does believe that the preponderance of information in a certain direction may lend some credence to such allegations.

It was also revealed that "General Torrijos, acting on the information provided by the American official," contacted his brother Moises in late 1972 to warn him of an impending arrest in the Canal Zone. The warning permitted his brother to escape.

The brother who is mentioned in the foregoing accounts was, of course, Moises Torrijos. The closed session revealed that Moises Torrijos was in fact the subject of a sealed indictment in New York in 1972 stemming from drug charges. The distinguished chairman of the Senate Intelligence Committee responded to questions during the closed session that: "From what I know right now I would have to say to my colleague I think Moises Torrijos has been involved in drug traffic." That information may or may not have made much of an impact as far as the Members of the U.S. Senate are concerned. But it must have contained a message for Gen. Omar Torrijos. One week following the closed session, General Torrijos announced he was recalling his brother Moises from his post as Ambassador to Spain.

Unfortunately, General Torrijos has designated his other brother, Hugo, to replace Moises. Information brought forth during the closed session indicated that Hugo is in charge of gambling casinos in Panama. And, just this week, I received unclassified information from the Federal Bureau of Investigation indicating that Hugo Torrijos may well be involved in drug trafficking himself.

In response to my "freedom of information" request, the FBI sent me a sanitized document from its files, dated September 18, 1972, and based on a re-

port provided by a Panamanian whose name is withheld by the Bureau. The report carries the following observation:

He advised that there is no doubt that Panama has become the drug warehouse for Central and North America. Hugo Torrijos, brother of the provisional president, is in direct control of most if not all the drugs that come into the country . . . it is a well known fact that many of the leaders of Torrijos are drug addicts.

This is yet another of the many reports coming from many sources that the Torrijos family is involved in drug trafficking. And now Hugo is being appointed by his brother, Gen. Omar Torrijos, as Ambassador to Spain.

It was also interesting to this Senator, at least, to learn that "in the early 1970's, U.S. narcotics enforcement and intelligence activities may have affected the timing and the atmosphere of the canal negotiations * * * by occasionally impairing relations between Panama and the United States, and by generating Panamanian distrust of U.S. policy and objectives."

Certainly, it was reassuring to learn that "the select committee has found no evidence that U.S. narcotics intelligence activities affected the terms of the Panama Canal agreements or the negotiating process" currently under review.

LET EACH DECIDE FOR HIMSELF

Mr. President, any time the Senate investigates and discusses questions that concern a large number of the American people, it is no waste of time. It was clear that there was a great deal of interest among many of my colleagues as well. Some of my concerns were put to rest. There were other allegations which simply could not be either proved or disproved. There were also some loose ends left hanging, but the important thing is that this relevant issue was explored and discussed.

Now that the declassified transcript is available to the public, each individual can decide for himself whether the evidence of drug trafficking, and of toleration and protection of those operations, disqualifies the Panamanian Government as a guarantor of the Canal Treaty commitments. For myself, I continue to have reservations on this point.

Mr. President, I ask unanimous consent that a letter dated March 1, 1978, from the FBI be printed in the RECORD at this point.

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

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., March 1, 1978.

Hon. ROBERT J. DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE: This is in reference to Mr. Kelley's letter of January 19, 1978.

Enclosed are copies of the documents that were located in the files of the Drug Enforcement Administration in connection with that agency's processing of your Freedom of Information-Privacy Acts request. These documents were referred to the FBI for processing since they originated with this Bureau. Excisions were made from these documents and two documents were withheld in their entirety in order to protect materials which are exempted from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D.C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

Enclosure.

PANAMANIAN REVOLUTIONARY ACTIVITIES

He furnished the following information to representatives of the Federal Bureau of Investigation on September 15, 1972:

There is a large segment of the young and student population that is discontent with the present government. This same feeling is strong among those exiles such as himself. However, he does not feel that any one group is strong enough at this time to overthrow Torrijos. Until such time as there is a United Front, he sees no change in Panama.

* * * feels that the only real way that Torrijos can be overthrown is by a force supported by the United States Government. He cannot understand why Torrijos, a dedicated leftist, is allowed to remain in power. If he is allowed to remain, he will be another Fidel Castro, whom he has visited in Cuba already.

He is not currently in contact with any of his associates in an attempt to organize a force to go to Panama. However, he has had help offered him from a group of Cubans in Miami. He is not going to do anything until he is able to determine who he can trust and who is on which side. He has no plans at the present time to meet with any of his fellow Panamanians in Miami or Houston. He is encouraging his associates in Panama to do all they can to work against the Torrijos regime.

He advised that there is no doubt that Panama has become the Drug Warehouse for Central and North America. Hugo Torrijos, brother of the provisional president, is in direct control of most if not all the drugs that come into the country. The free zone at Colon is currently being used as the focal point for drug movement. There are plans currently being made by the government to make Tocumen Airport a free zone to further facilitate drug movement. It is a well known fact that many of the leaders of Torrijos are drug addicts.

* * * concluded that he would not be able to make any moves in helping his country until three elements were worked out, (1) a consolidation of true Nationalists and Patriots, (2) a plan of action, and (3) a substantial improvement in his financial situation.

He further advised that Torrijos had been invited to attend a meeting with Fidel Castro in the near future. He did not specify time or place of this meeting.

Established sources were contacted in the area on September 9 and September 15, 1972, with negative results.

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, in all likelihood we will have the so-called leadership amendments before the Senate, probably on Thursday. I wish Senators would take the time to read the leadership amendments, covering some three or four pages double spaced.

It is the intention of the Senator from Alabama, when the first amendment is called up, to raise the point of order that the amendment is in fact not an amendment, even though it states on the face of the amendment the word "amendment."

Why is that important? In Senate Procedure—and I mention this point at this time so that Senators will have an opportunity to study the question, and not have it brought to them for the first time when the point of order is raised—on page 826 of Senate Procedure, the middle of the page:

Reservations and understandings are treated as amendments to the resolution of ratification and are not in order until the resolution of ratification has been presented to the Senate.

This is a very important question, and if Senators will read the leadership amendments, they will find that the leadership amendments do not add one single phrase to the treaties, even though they say in the documents that what is inserted is an integral part of the treaties.

If you will read the leadership amendments, you will find, as they say in one of the amendments, it is a statement of understanding. They incorporate the statement of understanding in the treaty. It is—in fact both of them are—statements of understanding.

I do not know why the statements of understanding are offered under the guise of being amendments, because they are not. They merely say how we construe provisions that are already in the treaties. They add no new provisions to the treaties. They are in fact statements of understanding.

Furthermore, Mr. President, statements of understanding do not require the express approval of the other party to the treaty. It would seem to me that if we accept these so-called amendments or statements of understanding, we would give Mr. Torrijos the full license to say that no further action is required with respect to the treaties, because they are mere statements of understanding, adding not one single new word to the treaties, but merely saying what the interpretation of the treaties is.

So these documents are not amendments. I am going to raise that point, and I hope that Senators will study it. Just a simple reading of the amendments will show quite clearly that this is a fact. These are no amendments; they add no new language to the treaties, other than to have this statement of understanding sandwiched into articles IV and VI. That point is going to be raised. I mention it at this time as a courtesy

to the Parliamentarian and for the information of Senators, so that they can study the point. I raise that point and I leave ample opportunity here, if the proponents of the leadership amendments care to answer the point. The Senator from Alabama will raise this parliamentary point of order, and he would hope for a favorable ruling from the Chair, when the leadership amendments are offered.

Mr. CULVER. Mr. President, what is the pending business?

The PRESIDING OFICER. The pending question is on agreeing to an amendment by the Senator from North Carolina (Mr. HELMS).

Mr. CULVER. Mr. President, there has been an earlier reference here to "letting the sunshine in" and debating these amendments on their merits; and I think there has been a sincere good faith effort to do that this afternoon.

Now, in all candor, as the distinguished junior Senator from Maryland said earlier this afternoon, that prospect is somewhat inhibited when the exercise of debate, in the so-called greatest deliberative body in the world, is limited to running in, reading prepared speeches, and running out before we can even ask questions, and never yielding to anybody.

Frankly, Mr. President, I think that does constitute a perversion of the suggestion that what we are engaged in here is a debate. And I think the extent to which we have had a debate on the so-called Helms amendment has been very revealing. It has frankly, in my judgment, been revealing for what has not been said.

The matters under debate were evidently and I think clearly not so sensitive or secret that we had to go into a closed session. Since the counter-arguments were advanced, there has been no germane discussion, no germane discussion whatsoever. There was a letter that essentially supported and substantiated the position on the merits of the opponents of the amendment, and the only rebuttal that was offered in that context was to make some references with regard, essentially, to the integrity of the author of that correspondence. I think that that suggestion was very sufficiently and commendably repudiated by the appropriate observations and remarks of the distinguished junior Senator from Rhode Island.

Where I come from, if you say, "This fellow talks out of both sides of his mouth," and then turn around and say, "But I have the greatest respect for him," that really does not carry a lot of water. I think that the implication of that suggestion is very damaging indeed to the integrity, the quality, and the character of the people upon whom, in the greatest sense imaginable, our security properly rests.

If you do not have any more confidence in those aspects of their character, how on earth, in a time of crisis, can you confidently look to them for leadership and for courage, sacrifice, and integrity?

Finally, Mr. President, I think this amendment has provided an occasion for discussion of apparently a wide range of opposition, but genuine debate and genuine responses to the statements that have been offered by the opponents of this amendment have really gone totally unrebutted—totally unrebutted. I think there has been more than adequate sunshine, more than enough intense analysis on the merits of this amendment, and that people in good faith who have listened to these exchanges can make a more informed judgment today on the facts and on the merits than certainly was the case when all we had to go on was some sensational journalism.

I think this amendment is a red herring pickled in misinformation and seasoned with scare tactics, and that the Senate, in its wisdom, ought to reject it.

Mr. BAYH. Will the Senator yield to me for 1 minute?

Mr. CULVER. I will be glad to yield to the distinguished Senator from Indiana.

Mr. BAYH. I had hoped to be able to ask a question of the Senator from North Carolina, but he has every right to continue his speech I do not fault him for that. I will say, I have tried, as the chairman of the Intelligence Committee, to maintain a low profile so that my opinion—I am going to vote on the canal—will in no way go to the credibility of the information.

I would suggest to anybody who is concerned about the confidential information that has been held out, as the Senator from North Carolina tried to prove that there is something special about Galeta Island that is going to damage the national interests of this country, take advantage of the opportunity, go to the files. They are there. Anybody can read them. The fact of the matter is, the Navy has made an assessment that Galeta is not essential, it is not vital and they can operate without it. And I would like any of my colleagues who has any doubt about that assessment, regardless of what was said of the canal issue thereon, to go and look at these facts and not accept at face value some of the tactics that attempt to get our vision away from the important facts on which we ought to make our final judgment.

I want to make commendation to another member of the Intelligence Committee, the Senator from Rhode Island, for standing up and suggesting that perhaps our naval and military leaders have the kind of courage and character that does not need to be described by some Members of the Senate who happen to differ with their assessment on the Panama Canal Treaty.

The PRESIDING OFFICER. The Senator from Idaho.

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

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table Mr. HELM's amendment

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Arizona (Mr. DECONCINI), the Senator from Montana (Mr. HATFIELD), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I also announce that the Senator from North Dakota (Mr. BURDICK) is absent because of death in the family.

I further announce that, if present and voting, the Senator from Arizona (Mr. DECONCINI) would vote "nay."

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

The result was announced—yeas 58, nays 36, as follows:

[Rollcall Vote No. 43 Ex.]

YEAS—58

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

NAYS—36

Allen	Garn	Schmitt
Bartlett	Griffin	Schweiker
Bellmon	Hansen	Scott
Brooke	Hatch	Stennis
Byrd,	Helms	Stevens
Harry F., Jr.	Johnston	Stone
Cannon	Laxalt	Talmadge
Chiles	Long	Thurmond
Curtis	Lugar	Tower
Dole	McClure	Wallop
Domenici	Melcher	Zorinsky
Eastland	Nunn	
Ford	Roth	

NOT VOTING—6

Burdick	Hatfield,	Young
DeConcini	Paul G.	
Goldwater	Williams	

So the motion to lay on the table was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. GRAVEL). Under the previous order, the Senator from Alaska (Mr. STEVENS) is recognized.

Mr. ROBERT C. BYRD. Mr. President, have we gone to article III?

The PRESIDING OFFICER. If there are no further amendments to article II, the Senate will proceed to consider article III, which the clerk will state.

The legislative clerk proceeded to article III.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate so that the Senators may hear the reading of the article?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President,

I ask unanimous consent that further reading of the article be dispensed with.

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

The text of article III is as follows:

ARTICLE III

1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

(b) Ancillary services necessary for transit through the Canal shall be provided;

(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

(d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of vessel owned or operated by a State or for which it has acknowledged responsibility, a certification by that State that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility.

(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government noncommercial service.

2. For the purposes of this Treaty, the terms "Canal," "vessel of war," "auxiliary vessel," "internal operation," "armament" and "inspection" shall have the meanings assigned them in Annex A to this Treaty.

AMENDMENT NO. 64

Mr. STEVENS. Mr. President, I call up my amendment No. 64 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 64.

In line 2 of article III(e) of the Treaty Concerning the Permanent Neutrality And Operation of the Panama Canal insert after the word "times" and before the word "be", the words ", except during periods of belligerency between such nations and the Republic of Panama or the United States of America,".

Mr. ROBERT C. BYRD. Will the distinguished Senator from Alaska yield?

Mr. STEVENS. I am happy to yield.

Mr. ROBERT C. BYRD. Under the unanimous-consent agreement entered into today, Mr. President, there will be no further rollcall votes today. A vote will occur tomorrow following the previous orders.

Mr. STEVENS. Concerning the amendment I have offered, let me state to the Senate that it is an improved and, I think, substantially different document from the amendment offered by the distinguished Senator from Alabama (Mr. ALLEN).

The amendments are similar in that they both would prohibit the transit of the vessels of war of nations engaged in armed conflict with the United States. The Stevens amendment goes beyond that single objective.

The biggest difference between the Stevens and the Allen amendments is the reciprocity provisions of the Stevens document. Reciprocity is the cornerstone of international law. Under the Allen amendment, the vessels of war of nations at war with the United States would be prohibited from transiting the canal. Since the Allen amendment was silent about the vessels of war of nations at war with Panama, they would have to be allowed to transit the canal. The Stevens amendment treats Panama as a coequal and applies to the vessels of war of nations in a state of belligerence with either the United States or Panama.

The Allen amendment and the Stevens amendment also differ in that the Allen amendment applies only to vessels of war and the Stevens amendment applies to vessels of war and auxiliary vessels. The Stevens amendment prohibits the transit of auxiliary vessels needed to resupply warships.

Both of these amendments differ in that the Allen amendment would be in force only when a particular nation was in a state of war as far as the United States is concerned. Under my amendment, for it to be in force, there need only be a state of belligerency in existance between the nation which owns the warship or auxiliary vessel and Panama or the United States.

Let me state that I have given each Member of the Senate a statement today concerning this amendment. I hope that it will be studied. I shall discuss it at length tomorrow.

We have been in a state of belligerency, as far as this Nation is concerned, on many occasions. When the Chinese came south of the Yalu River, we were in a state of belligerency, although we were not at war, with China.

When President Kennedy announced the blockade of Cuba, we were in a state of belligerency with both Cuba and Russia, although we were not in a declared war. I think that, at that time, the record shows that the Navy of the United States did move through the Panama Canal in order to be in place had the Russians not acceded to the request of President Kennedy. Under this amendment, in similar kinds of crises it would not be possible for Russian ships either to follow our Navy through the canal or transit the canal in order to confront our naval forces.

I see no reason why Panama or the United States should be compelled to permit vessels of war or military supply ships of nations which are in a state of belligerency with either of us to use the canal, particularly when this waterway can play such a great tactical military role, not only for Panama but for this country. It is essential to our future global military tactics and security.

Again, Mr. President, I intend to make a statement tomorrow at length about this and the history of this operation. I hope that we shall have serious consideration of the amendment, as I think it is a very, very central issue in this debate. I yield the floor.

● Mr. McGOVERN. Mr. President, the courageous and inspiring address delivered last week by the senior Senator from New Hampshire, Mr. MCINTYRE, underscored an important point not only about the debate on the Panama Canal treaties but about the nature of the Senate. Far more often than people might like to think in this time of cynicism, statesmanship still does prevail over political opportunism.

I agree fully with Senator MCINTYRE that Senators on both sides of this issue are motivated by honest conviction. But we should always keep in mind that this is the sort of emotional issue which can create a strong temptation to go along with the pressure as opposed to voting on principled grounds. And the prospect for ratification of these treaties has always depended upon the willingness of Senators to resist that temptation—indeed, to accept the serious political risk of voting the way they genuinely believe is right for the country.

In this connection I was interested in Clayton Fritchey's column in last Saturday's Washington Post. Mr. Fritchey suggests that the situation with respect to the treaties could have been much different. He attributes the improved outlook to a shift in public opinion since the treaties were first announced last year.

He might also have noted that public opinion has shifted—and the opposition to the treaties has become increasingly isolated—in substantial part because there was some leadership exerted in the Senate on this issue by moderates of both parties.

In any event, I think this analysis will be of interest to my colleagues, and I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Post, Mar. 4, 1978]

OVERKILL ON THE TREATIES

(By Clayton Fritchey)

In the near future, when, in all probability, the Panama Canal treaties are ratified by the Senate, there will be understandable cheering in the White House, but there could well be even more jubilation among moderate Republicans at seeing the supposedly dominant right-wingers of their party finally get their comeuppance.

The growing consensus here is that the GOP conservative bloc, which has staked so much on derailing the treaties, is on the brink of a major setback that could not only shake its longtime minority control in Congress, but also thwart its goal of taking over the party and dictating the choice of its 1980 presidential candidate.

There wasn't anything accidental about

the hard-liners' picking a primitive issue like the canal as a means of challenging the Carter administration, while simultaneously putting the GOP moderates on the spot. They thought they had a sure thing; and it must be conceded that at the outset of the fight many, if not most, of the moderates appeared to be intimidated.

The treaty opponents calculated, not unreasonably, that the moderates in an election year like 1978 would shrink from offending the conservative wing of a generally conservative party for fear of defections in November or, worse, exposing themselves to a primary fight.

Those calculations would have proved sound if the treaties had been rushed to a vote last fall. Delaying the debate until now, though, allowed the moderates to lie low and hope that public opinion would swing their way, which it has.

Sensing that, the hard-liners have been driven to overkill. In recent weeks, their attacks have been so demagogic, and their tactics so personal and wounding, that they have alienated fence-sitting senators they might once have counted on.

It takes a two-thirds majority of 67 Senate votes to ratify a treaty, but only 34 votes to reject. Not long ago the anti-treaty forces were boasting that they would produce 50 or more votes when the showdown came, yet on a test tally involving a procedural question, the pro-canal vote was 67 to 30. Later, a "killer" amendment was beaten by 55 to 34.

The way things are going, the opposition in the end may not be able to rally more than 25 or 26 votes. In fact, one of the leaders of the anti-treaty forces, Howard Phillips, who is director of the "New Right" organization, now thinks only 22 senators are likely to vote against the treaties.

Of that group 18 are Republicans—fewer than half of the 38 Senate GOP members. If Phillips is right, it would be the first time in years that the Republican conservatives failed to roll up a majority in their own party.

One early premise of the right-wingers that went awry was that prominent GOP officials who had national ambitions for 1980 would have to play ball or invite the kind of opposition that almost defeated Ford for nomination in 1976.

However, such figures as Howard Baker, the Senate minority leader, and former senator Bill Brock, chairman of the Republican National Committee, found ways of resisting the pressure, as did other presidential hopefuls like Sen. Lowell Weicker (R-Conn.).

The ensuing fury of the anti-treaty bloc has boomeranged. After Sen. Baker joined Sen. Robert Byrd (D-W.Va.) in a bipartisan blessing of the treaties, 14 House Republicans demanded that he resign as minority leader. They accused him of "betraying" the country.

They suggested that Sen. Robert Griffin (R-Mich.), the only member of the Foreign Relations Committee to vote against the treaties be the new leader. Griffin was "shocked" and "outraged" at the idea. He said Baker had been "scrupulously fair" during the debate.

If the Senate were less circumspect, it would have been reduced to laughter when Sen. Jake Garn (R-Utah) interrupted the Panamana debate to announce that the American people did not want treaties made "with a corrupt military dictatorship."

Later, a fellow senator privately remarked, "What's Jake talking about? Under Nixon and Ford, all we Republicans did was support military dictatorships from Vietnam to Greece, from Chile to South Korea. So did the Democrats. And we're still doing it all over the world under Carter."

When Congress returned to Washington after the holiday recess, many members compared notes on how their constituents felt about the treaty argument. There was surprising agreement that former secretary of state Henry Kissinger had struck the most telling blow for the treaties when he said:

"A defeat for the treaties would suggest to friends and foes around the world that the United States could not deliver on an agreement negotiated by four presidents of both political parties over a period of 13 years, that it could not perceive its own interests in Western Hemisphere cooperation, and that shifting emotions and institutional statements produced erratic behavior in the most powerful country in the world."

The unanimity of recent presidents, plus united support by the present Joint Chiefs of Staff apparently has greatly deflated wild charges that the treaties are a "giveaway," a "sellout to Marxism" and a "betrayal." The public seems to sense that such talk verges on the idiom of cranks.●

● Mr. MARK O. HATFIELD. Mr. President, during the course of Senate consideration of the proposed Panama Canal treaties I have had contact with a number of individuals and groups in Oregon who have expressed opposition to all, or specific provisions of, the treaties as proposed by the Carter administration. I have had a valuable give-and-take with opponents of the treaties. I have tried always to be responsive to their concerns. While we have not always agreed on this issue, I continue to appreciate the thoughtful and constructive suggestions made by those Oregonians who continue to oppose the treaties that we debate today.

One individual who has devoted a great deal of time and effort to both opposing these treaties and offering constructive suggestions on how they might be changed is Mr. Henry Kane, a lawyer from Beaverton, Oreg. Mr. Kane has spoken and written widely on this subject in Oregon. He has helped form the Oregon Nonpartisan Committee To Save the Panama Canal, Inc., in the best Democratic tradition, Mr. Kane has sacrificed his personal and professional time to raise the questions and concerns he has relative to the substance of the Carter treaties. I will say that I have found his suggestions and questions on the Panama Canal issue to be among the most perceptive received by my office in opposition to the treaties.

Mr. President, Mr. Kane and I have differing views on certain aspects of the proposed treaties. Despite this fact, however, I feel that my colleagues, no matter on which side of this difficult issue, should be made aware of Mr. Kane's extensive personal involvement in the debate on the proposed treaties. He is to be commended, as are the other thoughtful Oregonians who have contacted me on this issue, for their dedication to their own beliefs. In an effort to insure that the suggestions of Mr. Kane, as well as those other Oregonians who comprise the Oregon Nonpartisan Committee To Save the Panama Canal, are given review by the Senate, I ask unanimous consent that amendments proposed by the committee to the treaties be printed in full in the RECORD.

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

PROPOSED AMENDMENTS TO "PANAMA CANAL TREATY"

Amendment No. 1:

Delete the paragraph of the Preamble reading *"Acknowledging* the Republic of Panama's sovereignty over its territory," and inserting in lieu thereof: *"Acknowledging* that the United States is transferring its territorial and certain of its other rights in the Panama Canal Zone to the Republic of Panama,"

Amendment No. 2:

Amend Article I, Section 1, by inserting after the word "supersedes" the words "except as to provisions providing for the defense of the Panama Canal and the Panama Canal Zone:".

Amendment No. 3:

Amend Article II, Section 1, by inserting after the word "Parties" the words "including but not limited to Art. IV, Section 3, of the Constitution of the United States, relating to the power of both Houses of the Congress of the United States to dispose of territory and other property of the United States."

Amendment No. 4:

Amend Article III, Section 2(a) by inserting after the word "date," the words "constructed, owned and/or operated by the United States or the Panama Canal Company on the effective date of this treaty or installations and areas constructed by the United States or the Panama Canal Company for the operation of the Canal or the defense of the Canal after the date of this treaty,".

Amendment No. 5:

Amend Article III, Section 3, by deleting the words "Commission, which shall be constituted by and in conformity with the laws of the United States of America," and insert the words "Company, the present instrumentality of the United States of America, and in conformity with the laws of the United States of America."

Amendment No. 6:

Delete subsections (a), (b), (c), and (d) of Section 3, Article III, and insert in lieu thereof:

"(a) The Panama Canal Company shall employ a Panamanian national as Deputy Administrator no later than January 1, 1990 proposed by the Republic of Panama. Should the United States of America remove the Panamanian national from his position as Deputy Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

Amendment No. 7:

Delete Section 4, Article III.

Amendment No. 8:

Delete Section 5, Article III.

Amendment No. 9:

Delete Section 8, Article III, and insert in lieu:

"8. The Panama Canal Company shall provide for the steady and growing participation of competent Panamanian nationals at all levels and areas of employment up to and including Deputy Administrator, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty."

Amendment No. 10:

Delete Section 10, Article III.

Amendment No. 11:

Amend Article V by deleting the words "Commission" and "Commission" and insert in lieu the words "Company and the Canal Zone Government."

Amendment No. 12:

Delete Section 3, Article VIII and insert in lieu:

"All employees of the Canal Zone Government, the Panama Canal Company, and their

dependents shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law. The United States of America shall furnish to the Republic of Panama a list of said employees and their dependents, identifying the positions they occupy in said Government and Company, and shall keep such list current at all times."

Amendment No. 13:

Delete Section 2, Article IX and insert in lieu thereof:

"2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations, subject to the laws of the United States applicable to the Canal Zone until the termination of this Treaty and shall remain subject to said laws."

Amendment No. 14:

Amend Section 4, Article IX, by deleting the words "in conformity with its laws."

Amendment No. 15:

Delete Section 4, Section 5, Section 6, and Section 7 of Article IX.

Amendment No. 16:

Amend Section 10, Article IX the words "Commission" and inserting the words "Company."

Amendment No. 17:

Amend Section 1, Article X, by deleting "Commission" and inserting "Company."

Amendment No. 18:

Amend Section 2(a), Article X, by inserting after the words "Republic of Panama" the words: "provided that no citizen of the United States employed by the Panama Canal Company shall have his employment terminated to comply with this subsection."

Amendment No. 19:

Amend Section 3(a), Article X, by deleting the word "Commission" and inserting "Company."

Amendment No. 20:

Amend Section 3(b), Article X, by deleting the word "Commission" and inserting "Company."

Amendment No. 21:

Amend Section 3(b), Article X, by deleting the word "Commission" and inserting "Company."

Amendment No. 22:

Delete Section 3(c), Article X.

Amendment No. 23:

Amend Section 3(d), Article X, by deleting the word "Commission" and inserting "Company."

Amendment No. 24:

Amend Section 4, Article X, by deleting "Commission" and inserting "Company."

Amendment No. 25:

Delete Section 5, Article X.

Amendment No. 26:

Amend Section 6, Article X, by deleting "Commission" and inserting "Company."

Amendment No. 27:

Amend Section 6, Article X, by inserting after the word "sex" the word "religion,".

Amendment No. 28:

Delete Section 7, Article X, and insert in lieu:

"7. Persons employed by the Panama Canal Company or Canal Zone Government during the life of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States, or shall receive suitable pensions, which shall be a lien upon the revenues of the Panama Canal Company in the operation of the Canal. Prior to the termination of this Treaty the Panama Canal Company shall fund the retirement obligation set forth in this section.

Amendment No. 29:

Amend Section 8, Article X, by deleting "Commission" and inserting "Company."

Amendment No. 30:

Amend Section 9(a), Article X, by deleting "Commission" and inserting "Company."

Amendment No. 31:

Amend Section 10, Article X, by deleting the words "prior to the entry into force of this Treaty".

Amendment No. 32:

Amend Section 2(a), Article XI, by deleting the word "Commission" and inserting "Company."

Amendment No. 33:

Amend Section 7, Article XI, by deleting the words "only during the transition period" and inserting in lieu: "during this Treaty".

Amendment No. 34:

Delete Section 2(b), Article XII.

Amendment No. 35:

Amend Section 1, Article XII by inserting after the word "debts" the words "other than debts due the United States and retirement benefits".

Amendment No. 36:

Delete Section 2, Article XIII.

Amendment No. 37:

Amend Section 4(c), Article XIII, by adding:

"The United States of America shall not be responsible in the event Canal revenue is insufficient to pay this payment in whole or in part."

Amendment No. 38:

Amend Article XIV by adding:

"If the parties cannot agree, a particular matter shall be submitted to the World Court, the decision of which shall be final."

Amendment No. 39:

Add an Article XV:

"1. No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States of America, affect any right of the United States under this Treaty or any agreement or protocol thereof between the two countries that now exists or may hereafter exist touching the subject matter of this Treaty.

"2. If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this Treaty shall not be in any respect lessened or impaired.

"3. This Treaty shall become null and void and the Isthmian Canal Convention, signed at Washington, D.C., November 18, 1903, and other treaties and agreements listed in Section 1, Article I of this Treaty, shall be reinstated in full force and effect if the Republic of Panama abrogates, violates or refuses to comply with this Treaty or any provision thereof or agreement or protocol in implementation of this Treaty.

"4. This Treaty shall not be abrogated or amended in whole or in part without the prior consent by treaty of the United States of America."

Amendment No. 40:

Repeal the Annex titled " Procedures for the Cessation or Transfer of Activities Carried Out by the Panama Canal Company and the Canal Zone Government and Illustrative List of the Functions That May Be Performed by the Panama Canal Commission."

PROPOSED AMENDMENTS CONCERNING "NEUTRALITY TREATY"

Amendment No. 1:

Amend Article I by adding after the word "permanently" the words "open and".

Amendment No. 2:

Amend Article II by inserting the word "permanent" before the word "neutrality".

Amendment No. 3:

Amend Article II by deleting the words "so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit," and insert in lieu:

"and that the Republic of Panama will not discriminate against any nation, or its citizens or subjects, or vessels or cargo concerning the conditions or charges of transit".

Amendment No. 4:

Amend Section 1(c), Article III by adding:

"Said tolls and other charges shall be limited to levels necessary to operate and maintain the Canal on a nonprofit basis."

Amendment No. 5:

Delete Article IV and insert in lieu:

"1. The Republic of Panama and the United States of America commit themselves in perpetuity to protect and defend and to keep open and neutral the Panama Canal. Each party shall act, in accordance with its constitutional processes to meet the danger of hostile action or the threat of hostile or other actions which threaten the security of the Panama Canal or ships transiting it.

"2. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall continue the Combined Board created pursuant to Article IV of the Panama Canal Treaty, comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the Republic of Panama or the United States of America. The Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

"3. The Combined Board shall, at five-year intervals review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Governments respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.

"4. The Republic of Panama grants the United States of America permission to retain and maintain on a caretaker basis, with personnel sufficient to perform the caretaker function, military installations and bases in the former Panama Canal Zone built and maintained by the United States prior to the entry into force of this Treaty and so designated to the Republic of Panama by the United States of America.

"5. The Republic of Panama grants the United States permission to retain and maintain defense intelligence and surveillance facilities, maintained and operated by personnel of the United States of America, in the former Panama Canal Zone constructed prior to the entry into force of this Treaty and so designated to the Republic of Panama by the United States of America."

Amendment No. 6:

Amend Article VIII by inserting after the word "Parties" the words "including but not limited to Art. IV, Section 3, of the Constitution of the United States, relating to the

power of both Houses of the Congress of the United States to dispose of territory and other property of the United States."

Amendment No. 7:

Delete Article V.

Amendment No. 8:

Add a new Article:

"Upon the entry into force and effect of this Treaty on 12:00 noon, Panama City time, December 31, 1999, the United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to the Panama Canal and all other real property and improvements in the former Panama Canal Zone, provided that the United States may remove military equipment before and after said date."

Amendment No. 9:

Add a new article:

"1. No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States of America, affect any right of the United States under this Treaty or any agreement or protocol thereof between the two countries that now exists or may hereafter exist touching the subject matter of this Treaty.

"2. If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this Treaty shall not be in any respect lessened or impaired.

"3. The Panama Canal Treaty shall become null and void and the Isthmian Canal Convention, signed at Washington, D.C., November 18, 1903, and other treaties and agreements listed in Section 1, Article I of said Treaty shall be reinstated in full force and effect if the Republic of Panama abrogates, violates or refuses to comply with said Treaty or this Treaty or any provision thereof or agreement or protocol in implementation of said Treaties.

"4. This Treaty shall not be abrogated or amended in whole or in part without the prior consent by treaty of the United States of America." ●

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, as in legislative session, not to continue beyond 7 p.m. today, and that Senators' statements be limited therein to 10 minutes each.

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

SOME NEIGHBORLY IDEAS

Mr. SPARKMAN. Mr. President, within the last few days, we had exhaustive hearings on housing legislation. The Secretary of HUD gave us, I thought, a wonderful report of the progress that is being made in the field of decent houses, for all of our people, in decent surroundings. An editorial appeared in the Washington Post of yesterday, entitled "Some Neighborly Ideas." I think it is a very fine editorial, dealing with cities, urban improvement, and housing programs generally. I am sure that my chairman (Mr. PROXMIRE) would join me in recommending this editorial to be read by all. I ask unanimous consent to have it printed in the RECORD at this point as a part of my remarks.

Mr. PROXMIRE. Mr. President, if the Senator will yield to me for just a minute, I certainly do join the Senator from Alabama. These hearings were excellent. The Secretary of HUD made a fine report to us and that editorial is an excellent editorial, one that I think should be called to the attention of our colleagues.

I thank my friend from Alabama.

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

SOME NEIGHBORLY IDEAS

Last year, the D.C. Department of Housing and Community Development took a new approach to helping local residents figure out how to improve their neighborhoods. It invited several community groups from across the country to meet with District residents and explain the kinds of things they were doing to improve their own communities. The visitors discussed a variety of successful activities that had not required large amounts of money—mini-bus service for handicapped persons, training in housing renovation for school drop-outs, and the like. Moreover, they gave invaluable advice about the mistakes they had made and the lessons they had learned. Afterwards, local groups from almost every part of town sat down with their neighbors and came up with some specific things they wanted to do. And just the other day, city officials selected 19 groups to receive funds to manage some innovative activities in the city.

By early summer, a great deal of activity should begin throughout the city as a result. For instance, teenage residents of public housing who are interested in attending college will be tutored, tested and counseled by College Here We Come, Inc. The H Street Business Association will begin to renovate small shops in the northeast section of the city. A "how-to" guidebook on neighborhood research and historic preservation will be published by Don't Tear It Down, and their workshops will explain how city laws effect neighborhood preservation. The 14th Street Project Area Committee (PAC) will provide tenant-counseling for families moving into newly constructed apartments in the 14th Street NW area. City officials intend to give these neighborhoods a special boost, too: paving over some vacant city-owned lots to use for parking, for example, and increasing street-light repairs. What's more, according to the Department of Housing and Community Development, several city agencies will work right along with the groups, so that there are as few mishaps as possible.

These programs still must be approved by the Advisory Neighborhood Councils and the Department of Housing and Urban Development, though that should only take a short while. In the meantime, the groups will be meeting with community residents to discuss their ideas, and with local officials to iron out any bureaucratic snarls. Although it may be sometime before anything much can be said about the activities themselves, we think that both the city's Housing and Community Development office and the selected groups deserve some support. This public-private effort is exactly the type of neighborliness that residents have been asking for. We hope it works.

GOOD WORK BY THE FOREST SERVICE

Mr. STEVENS. Mr. President, also as in legislative session during the 95th Congress we have been, and will continue to be, called on to make decisions affecting the use and management of millions of acres of public lands. Already we have addressed endangered wilderness legislation, the expansion of the Redwood National Park, and many others. In doing this, we consider many different methods of protecting and managing public lands. These are decisions that will not be easily reversed.

The U.S. Forest Service has, in the past, done an admirable job managing our natural resources. These include providing leadership in development of Federal, State, and local forest lands, enhancing fish and wildlife habitats, harvesting timber for badly needed timber products, extracting minerals and oil, and protecting wilderness values. The Forest Service has carried out congressional directives by designing multiple use policies to protect massive areas of public lands.

All too often, this is a thankless task. Far too few people realize the efforts that the U.S. Forest Service engages in to provide the public with a well rounded natural resource management plan. There are 290,000 acres of national forest in Alaska, soon there may be much more.

The Forest Service in region X has done an excellent job in the Tongass and Chugach National Forests. Mr. John A. Sandor, regional forester for region X, has maintained a strong leadership role in this time of decisionmaking in the State of Alaska. Mr. Sandor has helped the Forest Service in Alaska respond to the many facets of public and private uses and needs in our national forests.

At this time, I should like to share with my colleagues an article that was authored by Mr. Sandor, which appeared in the January 1978 issue of the Alaska Construction & Oil Journal. The information that is contained in the article should help my colleagues when they are asked to evaluate legislation affecting Alaskan public lands.

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:

THE FOREST SERVICE'S CHALLENGE IN ALASKA

(By John A. Sandor)

Managing forest resources on public and private lands continues as a major challenge in Alaska. The challenge has many facets: Providing leadership in the development of state and private forest lands, enhancing fish and wildlife habitats, harvesting timber for much needed forest products, extracting minerals and oil, and protecting wilderness values.

Improving the quality of life is also a major challenge. Employment programs for young people are being expanded, and improvements of local as well as federal public lands and facilities will soon be seen. Other quality-of-life improvements include increasing the recreational opportunities near population centers, offering environmental education and interpretive programs, and preserving the many historic and archeological sites on national forest lands.

DEVELOPING STATE AND PRIVATE FOREST LANDS

More than 90 percent of Alaska's 365-million-acre land base was once under federal ownership. By 1984, as result of the Alaska Statehood Act and the Alaska Native Claims Settlement Act, 104 million acres will be transferred to state ownership. And, 40 million acres will be conveyed in fee title to Native Corporations.

The state is gradually assuming fire prevention and protection responsibilities for

areas formerly administered by the Bureau of Land Management. Federal assistance to the state for developing adequate forest fire protection capabilities is made available through the Forest Service's Cooperative Forest Fire Control Program for non-Federal lands.

Regional and village Native corporations that were authorized by Congress are struggling with many social, economic and cultural decisions. Often, these decisions directly relate to management of the high-value resources on or under their newly acquired lands.

These new Native corporaitons, as well as other private owners of forest lands, may receive technical assistance from the State and Private Forestry Program. This program is a cooperative effort of the Alaska Department of Natural Resources' state forester and the forest service. At present, more than 50 Native corporations are involved in such activities as training in basic forestry and engineering techniques, using state tree nursery services, planning for the use of resources, learning fire management procedures and forest insect and disease management techniques.

Much of the most valuable timber land to be acquired by Native corporations lies within the Tongass National Forest. A cooperative timber management venture among the southeast Alaska Native villages may, in time, involve the management of nearly 500,000 acres of timber land. The potential annual timber harvest from these lands could be an estimated 100 million board feet or more. This will offer an economic development opportunity to help overcome the critical unemployment problems now prevalent in many rural communities through the management of renewable forest resources.

ENHANCING FISH AND WILDLIFE

The fish habitat improvement program was started in 1962. Since then, more than 200 habitat improvement projects have been completed on the Chugach and Tongass National Forests through cost-sharing efforts with the Alaska Department of Fish and Game. The Cooperative Fish and Wildlife Management Plan (Sikes Act proposal), approved by the state and USFS in December 1976, is a comprehensive plan for habitat management projects on the Chugach and Tongass National Forests. The proposed projects are now being incorporated into budget requests with projects to be accomplished as financing is provided.

Stream improvement and rehabilitation projects include beaver dam removal, fishway construction, fish planting, pothole blasting, log jam clearance and removal of blowdown and debris. Most of the projects are intended to protect and enhance habitat for the five kinds of salmon which provide significant economic and social benefits to the state. They also reflect a growing demand for quality sport fishing. Such projects as fishways often are quite expensive—as much as $300,000 for each installation. But, the return on these investments is as high as $20 for each $1 expended.

Wildlife habitat improvement is receiving more emphasis. Pilot programs using small clearcuts in critical winter deer range may help create openings which increase forage production. Planned burning on the Kenai Peninsula will increase forage for moose. Potholes made in the Stikine and Copper River deltas have improved conditions for migrating waterfowl and shorebirds.

The number of fisheries and wildlife biologists and other forest service specialists have been increased to help with the expanded land management planning programs and related field administrative work. They work closely with other agencies in conducting surveys, inventories and research and in guiding the designs of construction and other human activities that affect habitats.

Although the potential for serious adverse effects from logging exists for fisheries, wildlife and watershed values, little evidence of actual significant damage has been found. In the few instances of apparent damage, the probable causes appear to be violations of timber sale contract requirements.

In the last few years, small streams have been recognized as important fish-rearing areas. Removing vegetative canopy from some streams, especially small ones, can increase stream temperatures during the summer. Forest Service guidelines prescribe cutting patterns around such streams and require removing excess limbs, bark and needles from the channels.

Proper size, shape, and installation of culverts in road construction are essential to the passage of fish. A strong program has been developed to correct existing installations where necessary and to assure proper installations in the future. By going to actual sites where these new protective measures are being used, Forest Service personnel have been able to demonstrate that protecting the fish and wildlife habitat and harvesting timber are compatible if properly planned.

PROVIDING TIMBER PRODUCTS

Coordinating a timber management program with management of other equally important resource values is certainly one of the most challenging forest service responsibilities in Alaska. Balancing timber's importance to the general economy with the need to enhance other resource values presents several complex and important problems.

About 50 timber harvesting operations take place on the Chugach and Tongass National Forests each year under the very strict requirements contained in timber sale contracts. To administer more adequately these timber sales, additional funding has been provided for such specialists as resource management assistants, sale administrators, engineers, soil scientists, fisheries biologists and others.

Allowable timber harvests depend on several variables. These include forest productivity, current logging technology, fertilization and thinning practices, and the interrelationship with other forest resources and the environment. The amount of timber harvested in the future will depend on the results of the land management planing currently underway.

About 290,000 acres, or about 15 percent of national forests in Alaska, have been harvested in this century. Most of this area has been harvested since the first major pulpmill was built in the fifties.

At present, the timber industry in Southeast has the capacity to handle about 660 million board feet a year. During the poor markets of the past two years, only about 450 to 470 mmbf has been processed by the mills each year. No definite estimates are available for south-central Alaska because of a lesser demand.

During fiscal year 1976, total federal funding for the USFS Alaska Region was $21 million, not including trust funds and manpower programs. During that period, harvesting from Alaska's national forests and receipts from various special use permits returned $18 million to the federal treasury, including $11.6 million in new roads constructed by timber purchasers in connection with their timber sale activities.

Each year, the federal government sends "Payments In Lieu Of Taxes" to qualified local governments. The National Forest Management Act of 1976 revised the method of computing these special payments. Payments to Alaska communities for fiscal year 1977 were not available at press time. But, we are expecting a final total of about $2 to $3 million for Alaska.

EXTRACTING MINERALS AND OIL

The only mine operating at present in Southeast is a barite mine near Petersburg. Present prospecting indicates that a large deposit of nickel-copper ore is on Yakobi Island and that an extremely large deposit of molybdenite ore is on the mainland east of Ketchikan. A consortium of mining interests believes there is a commercially valuable find of several basic minerals on Admiralty Island.

Elsewhere in the region, we know of smaller deposits of these minerals as well as uranium, nickel, tungsten, lead and zinc. Radioactive minerals are being actively searched for on northern Kuiu Island with three companies involved. Four companies are searching in the Bokan Mountain area of Prince of Wales Island.

The copper deposits of Gravina Island are being drilled to determine the extent of mineralization. Copper and iron deposits are being explored at Mt. Jumbo.

In the Groundhog Lake area and Bradfield Canal east of Wrangell, exploration covering several large groups of claims is being pursued. At least three companies are involved.

The iron deposits of Union Bay and at Snettisham are being held by location. At least two major companies are prospecting the Sumdum area for copper. Limestone deposits on Heceta, Dall, and Long Islands are being developed.

All national forest lands, unless withdrawn, are subject to entry and mining under the General Mining Law of 1872, as amended. The Secretary of Agriculture's regulations protecting surface values in mining activities on national forest lands are also administered by the USFS.

Japan and the U.S. West Coast appear to be the logical volume markets for Alaskan ores and concentrates. The ability of Alaska minerals to compete in these markets is affected by the high costs of mining operations, particularly high labor costs.

Developing mineral resources in this region will have an increasingly important effect on the economies of communities as well as on other resources. Many secondary effects that are social and economic in nature will affect National Forest management. In some places, offshore oil development cannot be accomplished without onshore support facilities which may occur on national forest lands.

Certainly, the USFS recognizes the importance of oil, gas and mineral resource development to the well-being of Alaska and the nation. It also faces the challenge of integrating such development into the management and protection of all other resource values.

PROTECTING WILDERNESS VALUES

The forest service's roadless area review and land management planning processes are nearing completion. These processes are useful tools in identifying areas which will be recommended for classification as wilderness, wilderness study, or as areas in which resources will be managed for many uses.

In wilderness areas, a key issue is what existing manmade features and uses will be allowed. Airplane access, motorboat use, and cabins are the most important types of uses on which decisions must be made.

Protection measures for designated wilderness areas will, in some cases, conflict with the demands for other resource uses, especially along expanding transportation corridors. But, the effects on wilderness will be avoided with a responsible planning process that involves government agencies, local communities, private industry and others.

TAPPING HUMAN RESOURCES

Unemployment has been a chronic problem in Alaska, especially for young people. As a resource, the productiveness of working people can hardly be matched.

In 1977, Congress amended the Compre-

hensive Employment and Training Act of 1973 to create the Young Adult Conservation Corps (YACC). The Alaska Region of the forest service, with assistance from State Employment Services, Native village corporations, community leaders and others, has embarked on a YACC program which ultimately will employ more than 588 young Alaskans between the ages of 16 and 23.

Through this program, and others such as the Youth Conservation Corps, many benefits will soon be seen. Although designed as an employment program, YACC's other goals are to incorporate meaningful sociability training, environmental awareness, and on-the-job training with an overall improvement in the quality of life in the communities of Alaska. Young people will be constructing bridges and recreation cabins; improving salmon stream habitats; maintaining campgrounds, wildlife enclosures, landing strips, and cabins; and working on other projects on public lands and facilities that are planned in cooperation with community leaders.

PRESERVING CULTURAL RESOURCES

About 500 archeological and historic sites have been noted in Alaska's national forests. They range in age from 10,000 B.C. to the World War II era. These Native villages, camps and cemeteries; historic sites of Caucasoid remains, such as Russian-period settlements; canneries and salteries; mines and prospects, and many homesteads and fox farms are, at present, mostly on Tongass National Forest land.

As timber harvesting and other ground-disturbing activities increase, the chances for discovering new sites will increase. But, special care will also be needed to avoid their possible destruction or disturbance. As a matter of practice, archeological surveys are conducted in advance of all planned activity on National Forest lands so that sites may be identified and measures taken to avoid or otherwise protect them from destruction by the planned activity.

The value of these cultural resources, the danger of their destruction, and Forest Service legal obligations to enforce Federal laws prompted the Alaska Region to hire its first archeologist in 1974. Since then, the needs for archeological surveys have increased, and additional archeologists have been hired.

MEETING THE CHALLENGES

The forest service in Alaska is charged with providing many services to the people. To meet this goal, we need the help and criticism of the people we serve, especially during this period of planning for the best uses of natural resources on public land. The phrase "North To The Future" aptly conveys the Alaska sense of optimism. We are optimistic, too, because Alaska has not only vast resources but constructive people as well.

EXPANDING RECREATIONAL OPPORTUNITIES

Outdoor recreational and aesthetic values on national forest lands blend many resource uses with experiences unmatched elsewhere. To meet increasing demands, especially near major urban areas, the forest service is expanding the opportunities for dispersed recreation in Alaska. And, this expansion will require carefully planned construction of some roads and facilities.

Hunting, fishing, camping, boating and beachcombing account for 75 percent of all recreational uses of Alaska's National Forests. The region is unique for its system of cabins which are rented to the public on a reservation basis for nominal fees. These 187 cabins also serve as emergency shelters during poor flying or boating conditions or for protection from bears.

PROVIDING ENVIRONMENTAL EDUCATION AND INTERPRETIVE PROGRAMS

We are increasing efforts to help teachers promote environmental awareness among the state's students. Teacher workshops are scheduled during the next year in bush communities as well as in the urban areas. And, we hope to participate in the state's telecommunications system for providing useful television programming in remote areas.

A Visitor Information Service, staffed mainly by forest naturalists, provides visitors as well as residents with lectures, slide shows and reference materials that point to the unique features of Alaska. Most of these take place at special centers near Anchorage, Juneau and Ketchikan. In a unique cooperative program with the Alaska Division of Marine Transportation, the forest service naturalists also present the program on the state ferries during summer months.

S. 2684—INVESTMENT IN URBAN HOUSING AND DEVELOPMENT

Mr. PROXMIRE. Mr. President, I am introducing today with Senator BROOKE, Senator CRANSTON, Senator GARN, Senator HEINZ, Senator LUGAR, Senator MCINTYRE, Senator RIEGLE, Senator SPARKMAN, and Senator TOWER, a bill to expand the powers of Federal savings and loan associations to invest in urban housing and development.

As governments face ever tightening constraints on their spending powers, I believe we must turn more and more to the private sector for meeting our Nation's needs. Many public goals can be achieved by private business, consistently with the need to make a profit. In these cases, I believe the appropriate role of government is not to duplicate or substitute for private effort, but rather to assure that the private involvement takes place.

In some cases, encouraging private sector activity requires the provision of government incentives, such as tax breaks or spending subsidies. In other cases, it may require the establishment of direct requirements or restrictions on what businesses may do.

In other cases, however, we can encourage private sector contributions to public goals merely by removing obstacles which were created in the first place, by the Government itself.

The bill which my colleagues and I are introducing today provides an incentive of this last kind. It was drafted by the Federal Home Loan Bank Board, as a means of increasing the opportunity for Federal savings and loan associations to invest in urban development. It is aimed at relaxing restrictions which currently limit this opportunity.

The bill's major provisions are as follows:

First, it would permit savings and loans to make expanded investments, including commercial real estate loans, in areas which are undergoing intensive local use of the Federal community development block grant program. This provision recognizes that viable urban neighborhoods need, in addition to housing, commercial activity to provide shopping and jobs for the residents.

Second, the bill would remove the current law's limitations on savings and loans' ability to make home improvement and rehabilitation loans. Conserving our existing housing stock through repair and rehabilitation has become a major priority of urban housing policy, and is, in fact, absorbing a sizable share of Federal housing assistance. It makes sense that, to the extent possible, this rehabilitation work be financed through private, rather than public, funds.

Third, the bill would broaden the power of savings and loans to invest in State and local government bonds to raise revenue for housing and development, within their own States. Such investment would be permitted up to the amount of the institution's net worth.

The bill would also amend the authority of savings and loans to finance housing cooperatives. This will be an extremely useful new power as cooperatives are an increasingly important means for providing low- and moderate-income housing, and can be an invaluable tool in conserving and stabilizing urban neighborhoods.

Finally, the bill provides for these three substantive changes in the context of a streamlining and reorganization of the statute controlling savings and loans general lending and investment powers. This rewriting of the statute has long been recognized as necessary.

Mr. President, I am pleased to sponsor this bill with many of my distinguished colleagues from the Committee on Banking, Housing and Urban Affairs. We believe that its enactment will provide a major new source of funding for revitalizing the Nation's cities.

I ask unanimous consent that the bill, along with a section-by-section summary by the FHLBB, be printed in the RECORD.

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

S. 2684

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—LENDING AND INVESTMENT POWERS

SEC. 101. (a) With the exception of unnumbered paragraphs 15, 17, and 23, section 5(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(c)), is amended to read as follows:

"(c) An association may, to such extent, and subject to such rules, regulations, definitions, and orders, as the Board may prescribe from time to time invest in, sell or otherwise deal with the following loans, or other investments:

"(1) Loans or investments with percentage of assets limitation.—Without limitation as a percentage of assets, the following are permitted:

"(A) Savings Account Loans: loans on the security of its savings accounts;

"(B) Single Family and Multifamily Mortpage Loans: loans on the security of first liens upon residential real property within one hundred miles of its home office or within the State in which such home office is located; loans so secured shall not exceed $60,000 in principal amount (except that with respect to residential real estate in Alaska, Guam, and Hawaii the foregoing limitation may be increased by not to exceed 50 per centum) for each single family dwelling nor exceed such amount per room within the limits allowable (at the time of the loan) in section 207(c)(3) of the National Housing Act for any other dwelling unit covered by such lien;

"(C) United States Government Securities: investments in obligations of, or fully

guaranteed as to principal and interest by, the United States;

"(D) Federal Home Loan Bank and Federal National Mortgage Association Securities; investments in the stock or bonds of a Federal Home Loan Bank or in the stock of the Federal National Mortgage Association;

"(E) Federal Home Loan Mortgage Corporation Instruments: investments in mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act;

"(F) Other Government Securities: investments in obligations, participations, securities, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association or the Government National Mortgage Association, or any other agency of the United States and an association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act;

"(G) Bank Deposits: investments in the time deposits, certificates, or accounts of any bank the deposits of which are insured by the Federal Deposit Insurance Corporation;

"(H) State Securities: investments in general obligations of any State or any political subdivision thereof;

"(I) Purchase of Insured Loans: purchase subject to all the provisions of paragraph (1)(B), except the area restriction, loans secured by first liens on improved real estate which are insured under provisions of the National Housing Act, or insured as provided in the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38 of the United States Code;

"(J) Home Improvement and Mobile Home Loans: loans made for the repair, equipping, alteration or improvement of any real property, and loans made for the purpose of mobile home financing;

"(K) Insured Loans to Finance the Purchase of Fee Simple: loans as to which the association has the benefit of insurance under section 240 of the National Housing Act, or of a commitment or agreement therefor;

"(L) Loans to Financial Institutions, Brokers, and Dealers: loans to financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the Securities and Exchange Commission, secured by loans, obligations, or investments in which the association has the statutory authority to invest directly;

"(M) Liquidity Investments: investments which, at the time of making, are assets eligible for inclusion toward the satisfaction of any liquidity requirement imposed by the Board pursuant to section 5A of the Federal Home Loan Bank Act, but only to the extent that the investment is permitted to be so included under regulations of the Board or is otherwise authorized;

"(N) Investment in the National Housing Partnership Corporation, Partnerships, and Joint Ventures: investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership or joint venture formed pursuant to section 907(a) or 907(c) of that Act;

"(O) HUD Guaranteed Investments: loans as to which the association has the benefit of any guaranty under title IV of the Housing and Urban Development Act of 1968 or under part B of the Urban Growth and New Community Development Act of 1970 or under section 802 of the Housing and Community Development Act of 1974 as now or hereafter in effect, or of a commitment or agreement therefor.

"(2) Loans or investments limited to 20 per centum of assets.—The following loans or investments are permitted, but authority conferred in the following subparagraphs is limited to not in excess of 20 per centum of the assets of the association for each subparagraph:

"(A) Other Real Estate Loans: loans on security of first liens upon improved real estate; but the amount deemed to be loaned in transactions which, except for excess in amount, would be eligible for such association under subparagraphs (1)(B) or (1)(I) shall be only the outstanding amount of such excess.

"(B) Participation Loans: without regard to the area restriction contained in subparagraph (1)(B), investments for the making or purchase of participation interests in first liens on residential real property;

"(3) Loans or investments limited to 5 per centum of assets.—The following loans or investments are permitted, but the authority conferred in the following subparagraphs is limited to not in excess of 5 per centum of assets of the association for each subparagraph:

"(A) Education Loans: loans made for the payment of expenses of college, university, or vocational education;

"(B) Land Acquisition: an association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, subject to the area restriction contained in subparagraph (1)(B), loans to finance the acquisition and development of land for primarily residential usage;

"(C) Housing Facilities for the Aging: subject to the area restriction contained in subparagraph (1)(B), amortized loans which are secured by first liens upon improved real estate used to provide housing facilities for the aging.

"(D) Community Development Investments: investments in real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under Title I of the Housing and Community Development Act of 1974, as amended and obligations secured by liens on real property so located, but no investment in real property may exceed an aggregate investment of 2 per centum of the assets of the association.

"(E) Nonconforming Loans: loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this section.

"(F) Construction Loans, With or Without Security: subject to the area restriction of subparagraph (1)(B), investments not exceeding the greater of (A) the sum of its surplus, undivided profits, and reserves or (B) 5 per centum of the assets of the association, in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where (i) the association relies substantially for repayment on the borrower's general credit standing and forecast of income, with or without other security, or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party, and, in either case described in clause (i) or (ii), regardless of whether or not the association takes security; and investments under this subsection shall not be included in any percentage of assets or other percentage referred to in this subsection.

"(4) Other loans and investments.—The following additional loans and other investments to the extent authorized below:

"(A) Business Development Credit Corporations: an association whose general reserves, surplus and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings and loan associations chartered by such State are authorized, but the aggregate amount of such investments, loans, and commitments of any such association shall not exceed one-half of 1 per centum of the total outstanding loans of the association or $250,000, whichever is less;

"(B) Service Corporations: investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the home office of the association is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations of that State and by Federal asociations having their home offices therein, but no association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 per centum of the assets of the association;

"(C) Foreign Assistance, Certain Guaranteed Loans: (i) loans secured by mortgages as to which the association has the benefit of insurance under title X of the National Housing Act or of a commitment or agreement for such insurance, or (ii) acquire and hold investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guaranty under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans having the benefit of any guaranty under section 221 or 222 of such Act as hereafter amended or extended, or of any commitment or agreement for any such guaranty. Investments under clause (i) of this subparagraph shall not be included in any percentage of assets or other percentage referred to in this section. Investments under clause (ii) of this subparagraph shall not exceed, in the case of any association, 1 per centum of the assets of such association;

"(D) State and Local Government Obligations: an association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in obligations which constitute prudent investments, as defined by the Board, of its home state and political subdivisions thereof (including any agency, corporation or instrumentality) provided that the proceeds of such obligations are to be used for rehabilitation, financing or the construction of residential real estate, and provided further that the aggregate amount of all investments under this subparagraph shall not exceed the amount of the association's general reserves, surplus and undivided profits.

"(5) Converted State-chartered associations.—Any association which is converted from a State-chartered institution may continue to make loans in the territory in which it made loans while operating under State charter.

"(6) Definitions.—As used in this section—

"(A) the terms 'residential real property' or 'residential real estate' include leaseholds and mean homes (including condominiums and cooperatives), combinations of homes and business property, other dwelling units, or combinations of dwelling units including homes and business property involving only minor or incidental business use;

"(B) the term 'loans' includes obligations and extensions or advances of credit; and

any reference to a loan or investment includes an interest in such a loan or investment; and

"(C) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and any territory or possession of the United States."

(b) Unnumbered paragraph 15 of such section 5(c) is transferred to the end of section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) and redesignated as subsection (m) of that section, unnumbered paragraph 17 of such section 5(c) is transferred to the end of section 5 of the Home Owners' Loan Act of 1933 and redesignated as subsection (l) of that section, and unnumbered paragraph 23 of such section 5(c) is transferred to the end of subsection 5(b) of the Home Owners' Loan Act of 1933 and redesignated as subsection 5(b)(3).".

SECTION-BY-SECTION ANALYSIS

The bill is a restatement and simplification of the existing investment authority of Federal associations found in section 5(c) of the Home Owners' Loan Act of 1933. In addition to promoting comprehension of the investment authority of Federal associations, the bill would amend their lending authority in three areas to further urban lending.

Section 5(c) would be reorganized so that it would list the investment powers of Federal associations according to categories. The first such category would be unlimited investments, followed by 20% of asset investments, then 5% of asset investments, concluding with all other investment authorities. Section headings would be included for each of the general authorities. Because three paragraphs in the existing 5(c) do not strictly deal with investment powers, they would be relocated to other parts of section 5. The three paragraphs referred to concern the trustee power, the authority to borrow from State agencies and the establishment of offices in the District of Columbia.

The opening sentence of the restructured section 5(c) would contain the sole statement of the Bank Board's regulatory authority with regard to the investments authorized thereunder. Accordingly, all other references to the Board's rulemaking authority currently referred to in various paragraphs of section 5(c) would be eliminated.

Proposed section (c)(1). Loans on Investments Without Percentage of Assets Limitation. All authorities are identical to existing law except as follows:

Proposed section (c)(1)(B). Single Family and Multifamily Mortgage Loans. The proposal uses the term "residential real property" which is defined in proposed section (c)(6) "Definitions" as, "homes (including condominiums and cooperatives), combinations of homes and business property, other dwelling units, or combinations of dwelling units, including homes and business property involving only incidental business use." With the exception of the phrase "including condominiums and cooperatives", this definition is identical to the description of housing investments found in the first sentence of existing section 5(c). By using this phrase "residential real estate" in the high cost exception for Alaska, Guam, and Hawaii, the exception is broadened to include all permissible investments, not just dwelling units.

Proposed section (c)(1)(D). Federal Home Loan Bank and Federal National Mortgage Association Securities. This section brings together into one place the existing authority for stock investment in government corporations.

Proposed section (c)(1)(F). Other Government Securities. This section has added the word "securities" in the first line and combines the authority to "issue and sell" Government National Mortgage Association securities found in a later provision of existing section 5(c) and the authority to invest in Student Loan Marketing Association securities.

Proposed section (c)(1)(J). Home Improvement and Mobile Home Loans. This is the first of the three amendments referred to above related to urban lending. The existing statute contains conflicting paragraphs granting authority to invest in home improvement loans. Unnumbered existing paragraph 3 contains unlimited authority to invest in home improvement loans up to $15,000. Unnumbered paragraph 2 limits the investment authority to 20 percent of assets and contains an area and $15,000 dollar amount limitation. The proposal would establish one investment authority for home improvement loans, removing the dollar limitation, area limitation and percentage of assets limitation.

Proposed section (c)(1)(K). Insured Loan to Finance the Purchase of Fee Simple. This section is identical to existing section 5(c), except that the words "or interests therein" have been deleted because "loans" and "investments" have been defined to include interests therein. (See proposed section (c)(6)).

Proposed section (c)(2). Loans or Investments Limited to 20 percent of Assets. All authorities are identical to existing law.

Proposed section (c)(3). Loans or Investments Limited to 5 percent of Assets. All authorities are identical to existing law except as follows:

Proposed section (c)(3)(B). Land Acquisition. The section now authorizes investments of up to 5 percent of withdrawable accounts, not 5 percent of assets as the restatement would provide.

Proposed section (c)(3)(C). Housing Facilities for the Aging. The language in the existing provision establishes loan terms with regard to housing for the aging. These terms would be eliminated because the Board can handle such requirements administratively as it does in connection with all other permissible mortage loans.

Proposed section (c)(3)(D). Community Development Investments. This is the second of the proposed urban lending amendments. The bill would contemporize the existing urban renewal authority to permit investment in areas receiving concentrated development assistance by local governments under title I of the Housing and Community Development Act of 1974, as amended.

The sixth undesignated paragraph in 5(c) dealing with "Short Term Nonamortized Loans" would be eliminated in the proposed bill because it sets forth an authority which is unnecesary in light of Federals' general investment authority.

Proposed section (c)(4)(D). State and Investments. The provisions under this heading are identical to existing law except as follows:

Proposed section (c)(4)(D). State and Local Government Obligations. This is the third substantive change proposed. The amendment would establish a limited investment authority for Federals to invest in State and local government revenue bonds issued for the rehabilitation, financing or the construction of residential real estate. This authority would be limited to investments in the obligations of the State (or political subdivisions thereof) in which these association's principal office is located. The aggregate of a Federal's investment under this authority could not exceed the amount of its general reserves, surplus and undivided profits.

Proposed section (c)(5). Converted State-Chartered Associations. This section is identical to existing law.

Proposed section (c)(6). Definitions. All the significant definitions in existing section 5(c) would be brought together in one new proposed section. Nevertheless the definition of "first liens" appearing in unnumbered paragraph 6 of existing section 5(c) would be deleted because it may be handled administratively with the Board adopting in its regulation the statutory definition. The definitions in this new section are identical to existing law except as indicated above. (See comments for section (c)(1)(B) and section (c)(1)(K).)

"URBAN LENDING AMENDMENTS TO EXISTING SECTION 5(c)"

Section 1—

Section 5(c) of the Home Owners' Loan Act of 1933, (12 U.S.C. 1464(c)), is amended—

(1) by deleting the second unnumbered paragraph thereof and

(2) by deleting from subparagraph (A) of the third unnumbered paragraph the phrase "not exceeding $15,000".

Section 2—

Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is amended by deleting from the eighth unnumbered paragraph thereof the phrase "urban renewal areas as defined in subsection (a) of Section 1460 of Title 42" and substituting therefor the phrase "a geographic area or neighborhood receiving concentrated development assistance by a local government under Title I of the Housing and Community Development Act of 1974, as amended".

Section 3—

Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is amended by deleting the twentieth unnumbered paragraph and inserting in lieu thereof the following: "Subject to regulation by the Board but without regard to any other provisions of this subsection, an association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in obligations which constitute prudent investments, as defined by the Board, of its home state and political subdivisions thereof (including any agency, corporation or instrumentality) provided that the proceeds of such obligations are to be used for rehabilitation, financing or the construction of residential real estate, and provided further that the aggregate amount of all investments under this subparagraph shall not exceed the amount of the association's general reserves, surplus and undivided profits."

PAST HORRORS PROVE NEED FOR GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, on March 5, the 25th anniversary of the death of Josef V. Stalin took place. It is hard to believe that a quarter of a century has passed since Stalin's rule of terror, for the memories are still all too clear.

Stalin was certainly no stranger to genocide. In the course of his purges, he ordered the murder of thousands of people, and those orders were carried out. Some were killed for their political tendencies, others for their religious beliefs. Russians who had been revolutionaries for Lenin were systematically executed. From the 1920's to the 1940's, countless Bolsheviks died terrible deaths in Lubyanka prison or in Siberian concentration camps.

Stalin was also violently anti-Semitic. Jews were placed under widespread arrest, and many thousands were killed.

Last Sunday, March 5, the New York Times printed an excellent article recounting the horrors of Stalin's reign. I

ask unanimous consent that the editorial, entitled "Memory of Moscow and Stalin's Death," be printed in full immediately following my remarks.

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

(See exhibit 1.)

Mr. PROXMIRE. I bring this all up to remind Senators of the importance of the ratification of the Genocide Convention, which was written in the United Nations even as Stalin's reign of terror was continuing. Since then, over 80 countries have seen fit to ratify the Genocide Convention, which condemns genocide as an international crime.

Unfortunately, the United States has yet to add its name to the signatories of this convention. The delay has not been caused by any of our Presidents. President Truman signed the treaty in 1948, and President Carter has also added his endorsement.

In fact, this should be the cornerstone of our human rights endeavors.

President Eisenhower, President Kennedy, President Johnson, President Nixon, President Ford, all urged the Senate to ratify it. It is the Senate which has failed to act affirmatively on this most important matter.

We are talking about both that have to act. It is not the House. The President overwhelmingly approved it. We have learned from the lessons of this century that genocide is continuing. Let us this year not hesitate any longer to act on this treaty. I call upon the Senate to ratify the Genocide Convention as soon as possible.

EXHIBIT 1

A MEMORY OF MOSCOW AND STALIN'S DEATH

(By Harrison E. Salisbury)

At 9:50 on the blustery night of March 5, 1953—or so the official communiqué stated—Josef V. Stalin died of a massive brain hemorrhage.

Twenty-five years have passed since then, but no one who lived through the winter of 1953 in Moscow will ever forget the terror that slowly rose during the weeks before the great dictator's death. It was a time of shadowy fear that became more and more palpable.

Moscow under Stalin was never a comfortable city, haunted as it was by thoughts of purges past and purges future. The ghosts of a generation of revolutionaries put to death by Stalin walked the wide streets of the Russian capital, particularly in the hours after midnight when a scudding wind clutched at the fur-lined coat of a correspondent hurrying back to the Metropole Hotel after hours of waiting for the censor to pass his dispatches.

By the winter of 1953 Stalin had ruled Russia for 25 years. On Dec. 21 he had celebrated (without public notice) his 73d birthday. By all outward signs his health was good, his reign unchallenged. But something was going on. Few doubted that a new act in the succession of horrors over which he had presided was in preparation.

The inward side of Stalin's rule had the character of the grand guignol. In the 1920's he had driven the old Bolsheviks from power and exiled Leon Trotsky. In the 1930's he conducted trial after trial, sending generations of Bolsheviks, first the old and then the young, to the death cellars of Lubyanka prison and the concentration camps of Siberia. During World War II the executions quietly went on and after the war came a new series: the "Leningrad Affair," which wiped out that city's party leadership; an anti-Semitic drive against so-called cosmopolitans; the execution of the Jewish anti-Fascist committee. The details were kept secret but the rumors spread.

Nor were the effects confined to Moscow. The paranoid personality of Stalin permeated the international atmosphere, turning the Big Three alliance of World War II into the poisonous confrontation of the Cold War, casting the shadow of nuclear holocaust over the world.

Then came the winter of 1953. Already Moscow's nerves were raw. In October 1952, after a lapse of 13 years, Stalin convened a Communist Party congress. A vast shuffling occurred. Old comrades-in-arms dropped down in the pecking order. A cry for vigilance was sounded by Aleksandr N. Poskrebyshev, Stalin's sinister chef de cabinet. Cryptic items appeared in the press, sometimes headlined "Chronicle." They told of "criminals" being shot by military tribunals.

On the morning of Jan. 13, the most sinister item Moscow correspondents had ever seen appeared on the back page of Pravda. It was only 10 brief paragraphs. The headline again was "Chronicle." Nine doctors, six of them Jews, had been arrested on charges of plotting against the lives of high government and military leaders. All were said to have had "Zionist-British-American" intelligence links.

In the days that followed came new arrests, new charges. The outline of the targets began to emerge. They were Stalin's oldest and closest associates: Molotov, Voroshilov, Mikoyan, Kosygin and Beria, the chief of the secret police. Rumors raced around: Molotov's wife had been arrested; Jews were being arrested; Beria's henchmen had been purged in Georgia.

On Feb. 17 the Indian Ambassador met with Stalin and reported that all through the talk, the Soviet leader had doodled on a pad of paper with a red pencil. Again and again, Stalin drew sketches of wolves and he talked, too, about wolves. Russian peasants knew how to deal with wolves, he said. They exterminated them. And wolves knew this and behaved accordingly.

Then a high police official, a Jew named Mekhlis, suddenly died. Marshal Vasily D. Sokolovsky—without public notice—took over the post of chief of staff. An important general named Purkayev died in an unexplained accident. Were these events part of a secret Kremlin drama? To this day no one knows.

On the morning of March 4 came the announcement that Stalin had suffered a brain hemorrhage. Finally at 4 A.M. March 6 the droning voice of the Tass dictation service read out the communiqué: Stalin had died the night before.

Stalin was gone. He has been gone now for 25 years. But the mark that his sinister era gouged into his own country and the world has not yet been entirely erased.

U.S. PREPAREDNESS MEASURES

Mr. PROXMIRE. Mr. President, a review of Federal preparedness programs by the Joint Committee on Defense Production last year revealed that the U.S. preparedness measures were inadequate, duplicative, and wasteful. In April, Senator PERCY and I introduced S. 1209, the Federal Emergency Assistance and Preparedness Act of 1977, a bill to consolidate the three major Federal agencies responsible for emergency preparedness and disaster assistance.

The National Governors' Association during its recent winter meeting in Washington passed unanimously a resolution urging such a consolidation.

Mr. President, I ask unanimous consent to have the resolution passed by the National Governors' Conference printed in the RECORD at this point.

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

NATIONAL GOVERNORS' ASSOCIATION, POLICY POSITION A.—17: EMERGENCY PREPAREDNESS AND RESPONSE

State government is responsible initially and primarily for the prevention, mitigation and control of the effects of natural and man-made disasters.

The federal government now assists the states to prepare for nuclear disasters and to deal with the effects of natural disasters, but has no continuing, comprehensive policy that calls for a federal role in aiding the states to prepare for natural and man-made disasters.

The federal bureaucratic structure currently distributes responsibilities for civil and nuclear preparedness and disaster relief assistance among more than twenty federal agencies, with principal responsibility resting with the Defense Civil Preparedness Agency (DCPA), the Federal Disaster Assistance Administration (FDAA) and the Federal Preparedness Agency (FPA).

This lack of national policy concerning natural and man-made emergency preparedness, coupled with a dispersion of federal responsibility among numerous federal agencies, work a great hardship on the states and hampers their ability to handle disaster situations with maximum effectiveness.

The consolidation of federal emergency preparedness and disaster relief responsibilities into one office would make the management and operation of the federal effort more effective and efficient.

The President is urged to:

1. Declare as national policy that it is proper and appropriate for the federal government to aid the states to prepare for natural and man-made disasters, as well as nuclear defense.

2. Reorganize existing federal emergency preparedness and disaster relief responsibilities of DCPA, FDAA and FPA into one agency. The federal reorganization effort should evaluate the effectiveness of existing aid programs in helping states meet the needs created by natural and man-made disasters, with a special emphasis on the ability of these programs to deliver aid and assistance expeditiously with a minimum of bureaucratic delay.

3. Establish the new agency in the Executive Office of the President, or as an independent agency. The new agency should be headed by a presidentially appointed director who is charged with the responsibility to direct all federal preparedness and response activities and to work closely with the states to meet those responsibilities.

4. Immediately charge the new combined agency director to report directly to the President in times of major emergencies and to work with top-level presidential aides and the National Security Council at all times, and to designate that person as the single point of contact for a Governor confronted with an attack, man-made or natural disaster, who may call upon any agency of the federal government for aid and assistance as determined appropriate.

5. Charge the new combined agency director with the additional responsibility for coordinating the efforts of all federal agencies that deal with emergency prevention, mitigation, any special preparedness and disaster response activities in other federal agencies, and short and long-term recovery assistance.

6. Charge the new director with the immediate responsibility of consolidating planning, reporting, staffing and funding arrangements, as well as emergency related nomen-

clature into a cohesive, accountable organization which can readily work with existing state structures, and to make known clear procedures to state and local government as well as the general public.

It is essential that the new agency include a continuing strong regional operation so that state-federal and intra-federal coordination be maintained on a regular basis.

Further, the President is urged to declare a comprehensive emergency program in which discrete and coordinative roles of federal, federal-regional and state government are defined.

The Congress is urged to hold hearings on, and give prompt consideration, as soon as the federal emergency preparedness and response study of the President's Reorganization Project recommendations are submitted, to reorganizing, consolidating and coordinating federal emergency preparedness and disaster relief agencies and programs of other agencies with emergency-related activities toward a viable system of comprehensive emergency mitigation, preparedness, response and recovery.

The administration and the Congress should also review existing legislation to update and revise laws to be consistent with new comprehensive emergency policy and reorganization.

ADDITIONAL COSPONSOR—S. 1209

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Senator from Ohio (Mr. METZENBAUM) be added as a cosponsor of S. 1209, the Federal Emergency Assistance and Preparedness Administration Act of 1977, a bill to consolidate functions and to increase efficiency and coordination in the area of disaster assistance, emergency preparedness, and mobilization readiness.

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

SENATOR BROOKE URGES MORE BLACK PARTICIPATION IN THE REPUBLICAN PARTY

Mr. PERCY. Mr. President, I accompanied Senator ED BROOKE when he delivered on February 25 a brilliant speech before Operation PUSH (People United to Save Humanity) in Chicago. Senator BROOKE spoke of the need for more black participation in the Republican Party. Senator BROOKE stated that—

I think that the Grand Old Party, with its historic emphasis on the rights of individuals, particularly the right to enjoy the fruits of free enterprise, can appeal to millions of Black Americans who are tired of living on an economic reservation.

Noting that "there are twice as many black people out of work today as 10 years ago" and that "the national median black family income stands at 59 percent of whites," he said that blacks need to be "freed from the welfare line (and become) able to feel the joy of independence, of a good job and the ability to feed, clothe, educate, and house our families." Senator BROOKE stated that these dreams could only be achieved if blacks maximize their political effectiveness. "It is the political power that is ultimately going to set you free—economic power follows political power."

Senator BROOKE quoted the Reverend Jesse Jackson, president of Operation PUSH, who, in speaking last month to the Republican National Committee, commented that—

Mutual need is the basis of an alliance. Black people need the Republican Party to compete for us so that we have real alternatives for meeting our needs.

I agree wholeheartedly with Rev. Jackson's statement. The Republican Party needs to actively encourage black participation in order to broaden its base and effectiveness, and blacks need the Republican Party in order to have a greater impact on our political processes.

I ask unanimous consent that Senator BROOKE's speech before Operation PUSH be printed into the RECORD. I am sure that my colleagues will find Senator BROOKE's remarks informative and stimulating.

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

REMARKS OF SENATOR EDWARD W. BROOKE

I am pleased to be here in Chicago this morning and to have this opportunity to talk with the men and women who make Operation PUSH one of the most hopeful signs on a national landscape marked by indifference to the aspiration of black people.

A month ago, my friend and your esteemed leader, Reverend Jesse Jackson, stepped before the National Committee of my party and told a receptive audience that black people might just pull a Republican lever if Republicans would just take the time to care.

"Mutual need", he said, "is the basis of an alliance. Black people need the Republican Party to compete for us so that we have real alternatives for meeting our needs."

I have never heard the essence of politics so concisely and so neatly stated.

For too many years, Republicans thought it was enough to quote Abraham Lincoln, and the black vote was sure to follow. Now the shoe is on the other foot. For over 40 years, Democrats have quoted Franklin Roosevelt, convinced that what worked in the 1930's will still work in the 1980's.

For too many years, it was an article of faith with some Republicans that opposition to big federal government was the same as creative problem solving. Well, it wasn't. And Jesse Jackson has afforded our Republican Party a golden opportunity to demonstrate what Republicans really mean when they talk about individual rights and free enterprise.

Though I have been a member of the Republican Party for many years, and intend to remain a Republican for the rest of my life, I cannot say what the Republican Party precisely means. However, I can say what its members should and must mean, if they are to attract black votes into their ranks.

They must mean a total rejection of second class citizenship for all Americans. They must mean a total rejection of federal paternalism based on the belief that blacks require special treatment when the only treatment blacks seek is justice and equality of opportunity. But when Black people talk about justice and equality of opportunity in America, we are talking about much more than voting rights or open accommodations. We are talking about economics, and the digity and the power that flow directly from financial independence.

Paternalistic government is the exact opposite of that independence. It demeans the black voter by taking him or her for granted, and it fails to acknowledge that black people in business are capable of winning the confidence—and the patronage—of American consumers.

And there is another side to paternalistic government. It is shown in disturbing detail in a recently issued report from the National Urban League. According to league statistics, there are twice as many black people out of work today as there were ten years ago. The national median black family income stands at 59 percent that of whites, a gain of exactly one percent in ten years. And, among black teenagers, joblessness has climbed to an unconscionable 40 percent.

And so, the first initiative, the absolute rock bottom starting point for any Republican courtship of the black vote must be economic. And, that means adequate income levels, and, most of all, that means jobs!

Now, I grew up believing in work and the rewards of a job well done. I believe that productive labor gives a man and a woman pride and a sense of hard-earned self-esteem. I believe that to deprive an individual of such an opportunity at self-realization is nothing short of criminal.

But how do we accomplish that self-realization? It is not a question of big government or small government. It is the question of a government that cares enough about its disadvantaged people to try new solutions to old problems. Let me outline two seemingly different, but in my opinion complementary, approaches to the problems of chronic unemployment affecting so many of America's minorities and youth.

The first is the direct involvement of the government in creating jobs. I am proud of my co-sponsorship of the Humphrey/Hawkins Full Employment Bill. It is no eulogy to Hubert Humphrey. Hubert Humphrey requires none. His accomplishments for America's underprivileged speak for themselves. I support Humphrey/Hawkins because we need to have written into law the commitment of the federal government to full employment for all.

This is not, as some have claimed, government jobs for all who want them. This is not, as some have claimed, top heavy or socialized central palnning. This is a thoughtful, coherent way in which to coordinate monetary, fiscal and anti-inflationary policies to promote jobs in the private sector.

Under Humphrey/Hawkins, the major responsibility for economic planning would be the President's, aided by an advisory committee on full employment and balanced growth. No sprawling new bureaucratic structure would be created. No massive infusions of federal dollars would be required. Humphrey/Hawkins would provide grants during periods of high unemployment and low production, and would also provide community and youth jobs programs. as well as efforts to combat discrimination against groups historically overlooked when it comes to job hunting.

Humphrey/Hawkins is not a radical bill, as some have charged. It is a conservative bill, in the classic sense of the word. It seeks to preserve private enterprise by correcting those deficiencies and abuses which have placed more than five million people on the national unemployment roll.

And, Washington can do other things to assist the economically disadvantaged, of whom a disproportionate number are black or Hispanic. Last year, we in the Congress passed a new minimum wage bill, which, by 1981, will raise the base wage to $3.35 an hour. It should have been higher, but the House of Representatives refused to accept our higher Senate figure.

Fortunately, however, the Congress did pass and the President signed into law my amendment, a Republican amendment, to the wage legislation to correct long-standing injustices to the more than 2.4 million Americans who earn their living in the restaurant, hotel, and motel industries. Until now, unlike other workers, it was necessary for waiters, waitresses, cooks, and dishwashers to

work 46 hours a week before receiving any compensation for overtime. The Brooke amendment cuts the hours to 44 this year and the standard 40 hours in 1979 where it should have been all along. Those waiters and waitresses, cooks and dishwashers have it hard enough without any longer suffering economic discrimination at the hands of their Federal Government.

Of course, there is much that the Federal Government can and should do. But the Federal Government—any government—can do only so much to stimulate the economy. It can provide CETA jobs for up to a year. It can admit a small number of young men and women to Job Corps Training programs, and it can try to educate Americans for whom English is not their native tongue, so that they stand a better chance in the job market. It can pay benefits to people who are unable to work or who can't find work, and it can and should reach out to assist those unable to find meaningful employment.

But, make no mistake about it, the federal government cannot create millions of essential permanent jobs. And, it cannot train millions of young people to fill those jobs. It is the private sector, and only the private sector, that can create permanent jobs and adequately train employees. It is the private sector than can permanently cut the rate of unemployment among blacks and Hispanics. This is a simple fact of economic life.

Of all the Republican principles, the most trumpeted is the commitment to American free enterprise. Tragically, this has had the least relevance to most black Americans. For we really need more black-owned businesses. We need to translate the historic Republican concern for free enterprise into action, building the black business community, instead of the black unemployment line.

Too often, Republican orators latch on to the glories of private enterprise, extolling its virtues before starry-eyed audiences. And for some of them, private enterprise seems almost like a religion, with an emphasis on ritual instead of service. Blacks, too, believe in private enterprise, but they also believe in economic parity. But there will never be economic parity for black and white Americans until the free enterprise system embraces blacks as more than a potentially useful fringe benefit.

Most would agree that the federal government has an obligation to assist those who cannot themselves make it in a capitalist society. It also has an obligation to create an economic environment favorable to minority business. And the fact is that we have just not done a very good job of this.

Historically, minority-owned businesses have been confined to the small retail market, small service industries, minor construction, and light manufacturing. Our aspirations to succeed as capitalists were undermined by a pre-conception that a black person's greatest value was as a laborer or deliverer of goods and services. Even for the most dedicated, the ability to own a business remained a dream.

You will recall that all the way back to the 1930's you would always find at least eight of America's largest black firms in either the insurance or the funeral parlor business. It seemed to some that the only way to succeed as a black in business was to hope either that your neighbors did not die or that they did, depending on the nature of your establishment.

Thankfully, that is beginning to change now as more enter a rapidly expanding market. Black people in America now consume more goods and services than the population of all the nations in the world save ten. In the four years before the recession of 1974–75, sales of the nation's 100 top black firms increased by 25 percent. Automobile dealers has replaced funeral directors as the top minority business leader. Close behind are manufacturers, publishers, and entertainers.

Oh yes, some progress has been made. But let's not delude ourselves about that progress. We still have a long way to go. All of America's black-owned banks together do not equal the assets and deposits of the nation's fiftieth largest bank and trust company.

The largest black industrial firm, Motown Industries, reported $43.5 million in sales in 1975. That sounds impressive. But it is less than 15 percent of the sales recorded by the smallest company on Fortune's survey of 500 white industrial firms.

Even worse, the decade past saw nearly 20 percent of small black businesses liquidated within two years or less.

The genius of private enterprise knows no color. But unless we get more capital into the hands of minority businesses, then we are doomed to an even higher rate of failure.

We are at least beginning to attack the problem. Last year, again as a Republican, I introduced a bill which was passed by the Congress and signed into law by the President, and which set aside at least ten percent of all federal public works monies for minority firms. This means that $400 million or more will go directly to the minority firms that show the greatest potential to provide jobs for minorities.

But that's only a start. We must remove the barriers to credit which often cripple a business before it can ever get off the ground.

Undercapitalized businesses often result from the reluctance of banks or other financial institutions to lend financial assistance and lines of credit. And we all know that credit ratings are especially hard to come by if you are a minority businessperson with serious hardships in obtaining credit from suppliers and wholesalers.

To try and circumvent this chronic difficulty, we in the Congress have undertaken a number of initiatives aimed at providing greater access to capital to those who have been denied such access in the past. We have amended the Small Business Act to double the $100,000 economic opportunity loans. We have also increased to $500,000 the maximum size of a regular Small Business Administration loan. We have passed my amendment, the so-called Brooke amendment, to the Equal Credit Opportunity Act which prohibits discrimination in the extension of credit.

Last March, the Congress voted to raise by more than a billion dollars the ceiling on SBA's business loan and investment fund. This is critical because the SBA can be an important conduit for minority businesses seeking guidance, but not dictation, from the Federal Government. More directly, black businesspersons should take advantage of the $60 billion of goods and services purchased each year by the Federal Government.

In 1977, less than two percent of the Federal Government's procurement contracts were awarded to black-owned business firms. That is nowhere near a fair approximation of our needs or capabilities. That is nowhere near a fair share or slice of the federal pie.

The painful fact is that minority businesses are new to the contract game. To succeed in business, minorities must seek opportunities wherever they might exist. They must compete, they must ask for, apply for, qualify for, government procurement contracts. Sixty billion dollars is a lot of money and two percent of it is unacceptably low.

Many new fields are now open. For example, the field of energy, where millions and millions of dollars in energy-related contracts are available. It is a brand new industry, like oil drilling a century ago, or television in the 1940's.

We must prepare for these new challenges. And there are some things that can be done immediately to help prepare our young people for the demands of the working world. We can tailor our educational agenda to teach basics like punctuality and personal neatness. We can remove artificial barriers around such jobs as construction work, taxi hacking, barbering, plumbing, and others. We can make training in these fields more open and licensing procedures less burdensome.

For some people, a college degree is useful. For others, vocational training is preferable. Neither is the solution for everyone. Here, as elsewhere, individuality should be encouraged.

The first thing you learn, at home, in school, or on the streets, is pride. Pride in your families, pride in your neighborhoods, and most important, pride in yourself.

Your Operation PUSH is all about pride, individual and corporate pride. Jesse Jackson preaches the kind of pride and self-respect that sustains an individual or family through hard times.

I want to reiterate that message. But, I also want you to take pride in your participation in your country's political life. I want you to remember that in 60 of America's Congressional districts, black people comprise 25 percent or more of the electorate.

I want you to remember that black voters elected Jimmy Carter President of these United States. I also want you to remember that, while there are more black elected officials now than ever before, that number is still a mockery of our competence to govern.

Personally, I would like to see more of my fellow blacks vote Republican. Along with my national chairman, Bill Brock, I would like to see more blacks seek office under the Republican banner. To do less would be like putting all of the proverbial eggs in one basket, and losing the political eggs in one basket, and losing the political leverage that is ours.

Most of all, I think that the Grand Old Party, with its historic emphasis upon the rights of individuals, particularly the right to enjoy the fruits of free enterprise, can appeal to millions of black Americans who are tired of living on an economic reservation.

I want us to get off the reservation—I reject any system that perpetuates the myth of black people as perpetual consumers. I want our children and grandchildren to be producers, out from under the stigma of dependency, freed from the welfare line, able to feel the joy of independence, of a good job, and the ability to feed, clothe, educate and house our families.

And for those who, because of disability, must seek welfare, I want a welfare system that is humanitarian in its concern for the poor, instead of insensitive and degrading.

These goals can be achieved. But, they can only be achieved by maximizing our political effectiveness. This morning there are seven million unregistered black voters in this country. Can you imagine that potential? Can you conceive of the influence, the power, and the impact that seven million unregistered black voters, all literally up for grabs, could have upon this Nation? Can't you see that we won't be talking about one percent or two percent of anything, or even potentials, but that we would at long last have realized true equality of opportunity in the American free enterprise system.

Ten years ago, I served as a member of the Kerner Commission, which President Lyndon Baines Johnson appointed to investigate the roots of racial violence in the wake of the riots of 1967. After our work was concluded, we issued a report. In that report, we concluded that America was moving toward "two societies, one black, one white—separate and unequal". We made powerful recommendations for change.

I wish it were different, but I see little evidence of change since then. Precious few of those recommendations have been adopted. In many parts of this land, segregation in

education, housing and jobs is worse than it was in 1968.

And the problem is further complicated by the fragmentation of the old civil rights coalition, as many of our old allies lost heart or lost interest.

That coalition must be recreated, and broadened, or we will go on hearing platitudes from the people in power, while the people in the streets of Chicago and elsewhere across this country fall victim to hopelessness or become perpetual wards of an uncaring state.

This morning I have tried to discuss just some of the problems that face us black people in this society to which my party—the Republican Party—must address itself if it is serious about attracting black voters.

And by the Authority of the Chairman and National Committee of the Republican Party—which I do not have—I invite you to join our ranks. If on occasion you find, as I have, that it does not live up to your hopes and aspirations, then I say do as I have done and try to change it to more accurately reflect those hopes and aspirations. But one thing is certain, you'll never change it from the outside.

THE ENCYCLOPEDIA BRITANNICA HIGHLIGHTS ENERGY WASTE

Mr. PERCY. Mr. President, I have just completed a review of the 1978 Encyclopedia Britannica Book of the Year. I have found this publication to be a superb compendium of articles on some of the major news trends of 1977. I commend the Britannica publishers for their consistent quality.

In particular, I was intrigued by a brief article on the energy we waste by our failure to use falling water at existing dams around the country. Small-scale hydroelectricity potential received a good deal of attention in 1977, thanks to the efforts of Dr. David Lilienthal. The Britannica article describes the unused electrical potential of navigational dams on the Mississippi. Engineers from Chicago's Commonwealth Edison say that lock 11 at Dubuque, Iowa, has an unused capacity of 30 megawatts, or half of Dubuque's needs. The famous locks and dam 26 at Alton, Ill., has a potential capacity of 167 megawatts.

Congress took significant action on small-scale hydroelectricity last year. The national energy plan contains a grant program for engineering work, as well as protections for small power producers who want to sell surplus power. Once these provisions finally become law, I hope that private capital will move ahead and invest in our 49,000 unused dams, equivalent to about 24 new large nuclear or coal powerplants.

Mr. President, I ask unanimous consent that the Encyclopedia Britannica yearbook article "Wasted Energy" be printed in the RECORD at this point.

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

WASTED ENERGY

Examples of usable energy sources close to home are many. Some of these sources, like the following, are potentially large.

Lock and Dam No. 11 are located on the Mississippi River at Dubuque, Iowa. That far upriver the volume of water is not nearly so high as it is downstream, but even so, an average of 40,000 cubic feet of water comes churning, rolling, and roaring through the sluice gates over a fall of 11 feet at Dam No. 11 every second. No generating turbines harvest this tremendous free-flowing power. No power lines are strung from the dam into Dubuque, which sits right on the riverbank by the dam.

Electrical engineers at Commonwealth Edison, the largest electrical utility in the Midwest, calculate that the volume of water at the Dubuque dam would be sufficient to generate 30,000 kilowatts of electricity, or enough to meet about half the total electricity needs of the city of Dubuque.

Dam No. 11 is but one of 27 such dams between the headwaters of the Mississippi and the city of St. Louis, yet electrical power is generated at only four of these dams, and at these by private power companies.

Electrical engineers estimate that if all of these dams were turned into power-producing stations they would do much to light up the entire Mississippi Valley with continuously available, nonpolluting energy. At Dam No. 26 at Alton, Ill., for example, the water volume averages 98,570 cubic feet per second and the lift is 24 feet, giving a potential power yield of 167,000 kilowatts.

A July 1977 report by the U.S. Army Corps of Engineers states, "The development of all of the hydropower potential at existing hydropower and non-hydropower dams could generate almost 160 billion kilowatt hours of electricity and save 727,000 barrels of oil per day."

SUN DAY RESOLUTION PASSES HOUSE

Mr. PERCY. Mr. President, our colleagues in the House of Representatives yesterday passed, by a vote of 348 to 7, House Joint Resolution 715, establishing May 3 as Sun Day. Sun Day will celebrate the present-day capacity and the future potential of solar energy to meet our energy needs. Educational and expositional activities will take place on May 3 in every State of the Union and in at least 11 foreign countries.

I congratulate Congressmen RYAN, OTTINGER, and JEFFORDS, the sponsors of House Joint Resolution 715, on its overwhelming success. I look forward to similar results with Senate Joint Resolution 110, the identical resolution. At present, Senate Joint Resolution 110 awaits Judiciary Committee action.

QUORUM CALL

Mr. PROXMIRE. Mr. President, I yield the floor, and 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.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination, which was referred to the Committee on Armed Services.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:52 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 8903) to amend the National Trails System Act, and for other purposes.

The message also announced that the House has passed the following joint resolutions, in which it requests the concurrence of the Senate:

H.J. Res. 578. A joint resolution authorizing the President to proclaim the third week of May of 1978 and 1979 as "National Architectural Barrier Awareness Week," and

H.J. Res. 715. A joint resolution proclaiming May 3, 1978, "Sun Day."

HOUSE JOINT RESOLUTIONS REFERRED

The following joint resolutions were read twice by their titles and referred as indicated:

H.J. Res. 578. A joint resolution authorizing the President to proclaim the third week of May of 1978 and 1979 as "National Architectural Barrier Awareness Week"; to the Committee on the Judiciary.

H.J. Res. 715. A joint resolution proclaiming May 3, 1978, "Sun Day"; to the Committee on the Judiciary.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–3005. A communication from the Secretary of State, reporting, pursuant to law, payment by the Panamanian Government on October 26, 1977, to Dr. Halla Brown for loss or injury which has arisen from the accident of April 20, 1974; to the Committee on Appropriations.

EC–3006. A communication from the Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law, approval of an REA insured loan in the amount of $8,144,000 and a commitment to guarantee a non-REA loan in the amount of $9,056,000 to M&A Electric Power Cooperative of Poplar Bluff, Missouri; to the Committee on Appropriations.

EC–3007. A communication from the Administrator, Rural Electrification Administration, Department of Agriculture, reporting, pursuant to law, approval of a commitment to guarantee a non-REA loan in the amount of $167,280,000 to Dairyland Power Cooperative, of LaCrosse, Wisconsin, to finance certain generation and transmission facilities; to the Committee on Appropriations.

EC–3008. A communication from the Deputy Secretary of Defense, transmitting a draft of proposed legislation to authorize certain construction at military installations and for other purposes; to the Committee on Armed Services.

EC–3009. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation

to further the rationalization, standardization, interoperability, and effectiveness of the land, air, and naval forces of the North Atlantic Treaty Organization countries; to the Committee on Armed Services.

EC–3010. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to extend the authorizations for rural housing programs; to the Committee on Banking, Housing, and Urban Affairs.

EC–3011. A communication from the Secretary of Agriculture, transmitting a draft of proposed legislation to amend Title V of the Housing Act of 1949; to the Committee on Banking, Housing, and Urban Affairs.

EC–3012. A communication from the Administrator, National Aeronautics and Space Administration, reporting, pursuant to law, the proposed use of $806,000 of "Construction of Facilities" (CoF) funds appropriated to NASA for Fiscal Year 1976, to construct a Water Immersion Facility (WIF) capable of supporting underwater extravehicular activity (EVA) training of Shuttle flight crews at the Lyndon B. Johnson Space Center (JSC), Houston, Texas; to the Committee on Commerce, Science, and Transportation.

EC–3014. A communication from the Asretary of the Treasury, transmitting, pursuant to law, a report on the activities of the Office of Revenue Sharing, U.S. Department of the Treasury, for fiscal year 1977; to the Committee on Finance.

EC–3014. A communication from the Assistant Secretary for Congressional Relations, Department of State, transmitting, pursuant to law, a report on excess defense articles delivered to foreign governments in the first quarter of fiscal year 1978; to the Committee on Foreign Relations.

EC–3015. A communication from the Administrator, Agency for International Development, Department of State, transmitting, pursuant to law, a report on studies to identify the energy needs, uses and resources which exist in developing countries; to the Committee on Foreign Relations.

EC–3016. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the Third Annual Report on the Activities of the Health Maintenance (HMO) Program; to the Committee on Human Resources.

EC–3017. A communication from the Administrator, National Aeronautics and Space Administration, reporting, pursuant to law, on authority utilized through the Contract Readjustment Board during calendar year 1977; to the Committee on the Judiciary.

EC–3018. A communication from the Secretary, The American Battle Monuments Commission, reporting, pursuant to law, with respect to administration of the Freedom of Information Act during fiscal year 1977; to the Committee on the Judiciary.

EC–3019. A communication from the Director, Federal Mediation and Conciliation Service, reporting, pursuant to law, with respect to administration of the Freedom of Information Act during calendar year 1977; to the Committee on the Judiciary.

EC–3020. A communication from the Chairman, Council on Environmental Quality, Executive Office of the President, transmitting, pursuant to law, a report on administration of the Freedom of Information Act; to the Committee on the Judiciary.

EC–3021. A communication from the Chairman, Federal Deposit Insurance Corporation, transmitting, pursuant to law, a report on administration of the Freedom of Information Act during calendar year 1977; to the Committee on the Judiciary.

EC–3022. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, a report on administration of the Freedom of Information Act during calendar year 1977; to the Committee on the Judiciary.

EC–3023. A communication from the Assistant Attorney General, Antitrust Division, Department of Justice, transmitting, pursuant to law, a report on identical bidding in advertised public procurement during calendar year 1976; to the Committee on the Judiciary.

EC–3024. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, a report on administration of the Freedom of Information Act during calendar year 1977; to the Committee on the Judiciary.

EC–3025. A communication from the General Counsel, Legal Services Corporation, transmitting, pursuant to law, a report on administration of the Freedom of Information Act for the period from January 1, 1977 through December 31, 1977; to the Committee on the Judiciary.

EC–3026. A communication from the Acting Director, Selective Service System, transmitting, pursuant to law, a report on administration of the Freedom of Information Act for calendar year 1977; to the Committee on the Judiciary.

EC–3027. A communication from the Assistant Administrator for Legislative Affairs, Agency for International Development, Department of State, transmitting, pursuant to law, a report on administration of the Freedom of Information Act for calendar year 1977; to the Committee on the Judiciary.

EC–3028. A communication from the Information Officer, Postal Rate Commission, transmitting, pursuant to law, a report on administration of the Freedom of Information Act during calendar year 1977; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EAGLETON, from the Committee on Governmental Affairs, without amendment:

H. Con. Res. 464. A concurrent resolution approving an amendment to the District of Columbia Charter relating to initiative and referendum (Rept. No. 95–673).

H. Con. Res. 471. A concurrent resolution approving an amendment to the District of Columbia Charter relating to recall of elected officials (Rept. No. 95–672).

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. HAYAKAWA:

S. 2677. A bill for the relief of Ching Wu Wang; to the Committee on the Judiciary.

By Mr. CANNON (for himself and Mr. PEARSON) (by request):

S. 2678. A bill to authorize appropriations for the fiscal years 1979 and 1980 for certain maritime programs of the Department of Commerce, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CURTIS:

S. 2679. A bill to amend the Clean Air Act in order to remove a prohibition against the use of alcohol as a fuel additive; to the Committee on Environment and Public Works.

By Mr. MATHIAS:

S. 2680. A bill to eliminate the reduction in social security benefits for spouses and surviving spouses receiving certain Government pensions, as recently added to Title II of the Social Security Act by section 334 of the Social Security Amendments of 1977; to the Committee on Finance.

By Mrs. HUMPHREY:

S. 2681. A bill for the relief of Mrs. Bertha Alicia Ceballos; to the Committee on the Judiciary.

By Mr. McGOVERN:

S. 2682. A bill to authorize construction of the Gregory County pumped-storage facility; to the Committee on Environment and Public Works.

By Mr. WALLOP:

S. 2683. A bill for the relief of Theodore H. Gies; to the Committee on the Judiciary.

By Mr. PROXMIRE (for himself, Mr. BROOKE, Mr. CRANSTON, Mr. GARN, Mr. HEINZ, Mr. LUGAR, Mr. MCINTYRE, Mr. RIEGLE, Mr. SPARKMAN, and Mr. TOWER):

S. 2684. A bill to expand and facilitate urban lending investment by Federal savings and loan associations; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GARN (for himself and Mr. HATCH):

S.J. Res. 117. A joint resolution designating the fourth Wednesday of October of each year as "Seventy-Plus in High School Day;" to the Committee on the Judiciary.

By Mr. JOHNSTON:

S.J. Res. 118. A joint resolution to declare November 6 through 12, 1978, to be "Emergency Medical Services Week"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CANNON (for himself and Mr. PEARSON) (by request):

S. 2678. A bill to authorize appropriations for the fiscal years 1979 and 1980 for certain maritime programs of the Department of Commerce, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MARITIME APPROPRIATION AUTHORIZATION ACT, 1979 AND 1980

● Mr. CANNON. Mr. President, I introduce today, at the request of the Department of Commerce, and on behalf of myself and my colleague, Mr. PEARSON, a bill to authorize appropriations for fiscal years 1979 and 1980 for certain maritime programs of the Department of Commerce, and for other purposes.

I ask unanimous consent that the text of the bill, the letter of transmittal, and the statement of purpose and needs, be printed in the RECORD.

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

S. 2678

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 "Maritime Appropriation Authorization Act for Fiscal years 1979 and 1980".

SEC. 2. Funds are authorized to be appropriated without fiscal year limitation as the appropriation Act may provide for the use of the Department of Commerce, for the fiscal years 1979 and 1980, as follows:

(1) For acquisition, construction, or reconstruction of vessels and construction-differential subsidy and cost of national defense features incident to the construction, reconstruction, or reconditioning of ships not to exceed $157,000,000 for fiscal year 1979, and such sums as may be necessary for fiscal year 1980;

(2) For payment of obligations incurred for operating-differential subsidy, not to exceed $262,800,000 for fiscal year 1979, and such sums as may be necessary for fiscal year 1980;

(3) For expenses necessary for research and development activities, not to exceed $17,500,000 for fiscal year 1979, and such sums as may be necessary for fiscal year 1980;

(4) For maritime education and training expenses, not to exceed $22,483,000 for fiscal year 1979, including not to exceed $15,359,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $5,220,000 for financial assistance to State marine schools, and $1,904,000 for supplementary training courses authorized under section 216(c) of the Merchant Marine Act, 1936, and such sums as may be necessary for fiscal year 1980; and

(5) For operating expenses, not to exceed $34,845,000 for fiscal year 1979, including not to exceed $5,516,000 for reserve fleet expenses, and $29,329,000 for other operating expenses, and such sums as may be necessary for fiscal year 1980.

SEC. 3. There are authorized to be appropriated for the fiscal years 1979 and 1980, in addition to the amounts authorized by section 2 of this Act, such additional supplemental amounts for the activities for which appropriations are authorized under section 2 of this Act, as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law, and for increased costs for public utilities, food service, and other expenses of the Merchant Marine Academy at Kings Point, New York.

FEBRUARY 24, 1978.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed are six copies of a draft bill "To authorize appropriations for the fiscal years 1979 and 1980 for certain maritime programs of the Department of Commerce, and for other purposes," together with a statement of purpose and need in support thereof.

The Department has determined that this proposed legislation does not constitute a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949, and OMB Circular A-107.

We have been advised that there is no objection from the standpoint of the Administration's program to the submission of this legislation to the Congress, and that its enactment would be in accord with the program of the President.

Sincerely,

JUANITA M. KREPS.

Enclosures.

STATEMENT OF PURPOSE AND NEED OF THE DRAFT BILL, "TO AUTHORIZE APPROPRIATIONS FOR THE FISCAL YEAR 1979 AND 1980 FOR CERTAIN MARITIME PROGRAMS OF THE DEPARTMENT OF COMMERCE, AND FOR OTHER PURPOSES."

Section 209 of the Merchant Marine Act, 1936, provides that after December 31, 1967, there are authorized to be appropriated for certain maritime activities of the Department of Commerce only such sums as the Congress may specifically authorize by law. This draft bill authorizes appropriations for those activities listed in section 209 for which the Department of Commerce proposes to seek appropriations for fiscal years 1979 and 1980.

"(1) For acquisition, construction, or reconstruction of vessels and construction-differential subsidy and cost of national defense features incident to the construction, reconstruction, or reconditioning of ships not to exceed $157,000,000 for fiscal year 1979 and such sums as may be necessary for fiscal year 1980."

Construction subsidies are based on the difference between United States and foreign shipbuilding prices. These sums are paid to shipyards so that U.S. operators can purchase American-built vessels at prices equivalent to prices for similar foreign-built vessels.

The request for construction subsidies for fiscal 1979 is $157,000,000. This, together with $122,000,000 of carryover funds, totaling $279,000,000 will fund six ships: two Roll-on/Roll-off ships, two Liquefied Natural Gas carriers, and two containerships.

"(2) For payment of obligations incurred for operating-differential subsidy, not to exceed $262,800,000 for fiscal year 1979, and such sums as may be necessary for fiscal year 1980."

Operating subsidies are based upon the difference between United States and foreign vessel operating costs and are paid to promote the maintenance of a U.S.-flag merchant fleet capable of providing essential shipping services. Essential services are defined as those ocean services, routes and lines, and bulk carrying services essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States. Operators receiving subsidies for the provision of such services must operate American-built vessels manned by American crews. The fiscal year 1979 and 1980 authorization request will finance operating subsidies to qualified U.S.-flag operators in order to support the continuation of essential American merchant marine services.

An estimated $336,526,000 in subsidy will be paid to U.S.-flag operators in 1979. Approximately $73,726,000 of this amount is projected to become available from 1978 balances brought forward to 1979. Estimated payments during 1979 include $259,718,000 for 160.4 ship years of liner ship operations, $27,964,000 for 21.5 ship years of bulk carrier ship operations, and $48,844,000 for balances of subsidy estimated to be due for ship operations through 1978. Funds requested for fiscal year 1979 include $3,750,000 for U.S.-flag carriage of grain purchased under the long-term U.S./U.S.S.R. grain purchase agreement for shipment during the year. The requested funding for the 1979 program reflects escalation of U.S. and foreign costs over 1978 costs, full year costs of ships delivered in 1978, and reductions in subsidy resulting primarily from the projected termination during 1978 of subsidy for two passenger ships.

"(3) For expenses necessary for research and development activities, not to exceed $17,500,000 for fiscal year 1979, and such sums as may be necessary for fiscal year 1980."

The purpose of the research and development program is to advance technological development to enable U.S. shipyards and ship operators to become more competitive.

The program level for 1979 includes projects for the development of improved and more efficient shipboard machinery, improved ship design and construction methods, and the improvement of shipboard operations and shipping systems for greater productivity and safer operations. These activities will assist U.S. shipping and shipbuilding companies in competing in world trade. Cost-sharing and participation by industry in research and development projects assure that projects have practical and meaningful objectives, increase potential for industry implementation, and enhance the research effort by obtaining a larger return for the Federal investment.

"(4) For maritime education and training expenses, not to exceed $22,483,000 for fiscal year 1979, including not to exceed $15,359,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $5,220,000 for financial assistance to State marine schools, and $1,904,000 for supplementary training courses authorized under Section 216(c) of the Merchant Marine Act, 1936, and such sums as may be necessary for fiscal year 1980."

The 1979 maritime education and training program includes operation of the Merchant Marine Academy, continuing assistance to the six State marine schools, and supplementary training for eligible merchant marine personnel. Funding requested for the Merchant Marine Academy will provide for increased operating costs and for development and implementation of a specialized automated information system in support of the registrar and admissions functions. The State marine school program, established by the Maritime Academy Act of 1958, assists States in the operation and maintenance of maritime academies for the training of merchant marine officers. Assistance is provided to participating States (California, Michigan, New York, Maine, Massachusetts, and Texas) in the form of annual grants, allowances to cadets, and maintenance and repair of ships on loan for use as training ships. No funding increases have been requested for 1979. Supplementary training provided under Section 216(c) of the Merchant Marine Act, 1936, as amended, provides training courses in the use of shipboard collision avoidance radar, gyro compass operation and maintenance, use of Loran C, field exercise training in shipboard firefighting, and operation and maintenance of medium and slow speed marine main propulsion diesel engines. The 1979 budget request includes funding for one firefighting field exercise facility on the West Coast to complete the current facilities development program and also provides for expansion of collision avoidance radar training.

"(5) For operating expenses, not to exceed $34,845,000 for fiscal year 1979, including not to exceed $5,516,000 for reserve fleet expenses, and $29,329,000 for other operating expenses, and such sums as may be necessary for fiscal year 1980."

The reserve fleet program provides for preservation maintenance and security of ships in the National Defense Reserve Fleet and for administration of the ship transfer and scrap ship sales programs. The National Defense Reserve Fleet provides a viable inventory of ships preserved in such manner as to facilitate activation to meet requirements for additional shipping capacity in times of national emergency. The 1979 budget requests additional funding for Maritime Administration expenses in the joint Navy-Maritime Administration Ready Reserve Fleet program. This program, initiated in 1977, is designed to make available a sealift capacity of 340,000 measurement tons (about 30 ships) that can be activated within 5–10 days of notification.

Funding authorized under the category "other operating expenses" provides for the direction and administration of all Agency programs other than the Merchant Marine Academy, supplementary training and reserve fleet programs and for all program costs not separately authorized above. In 1979 additional resources are requested to obtain better information on costs of building ships in foreign shipbuilding centers, design and improved automated information system that will provide data and analysis of the U.S. maritime labor force, and provide additional staff for administration of the cargo preference program and the Agency's accounting systems.

Section 3 of the draft bill would authorize to be appropriated for 1979 and 1980, additional supplemental amounts for the activities for which appropriations are authorized under section 2 of the bill to the extent necessary for increases in salary, pay, retirement, or other employee benefits authorized by law. The purpose of this section is to provide authorization for supplemental appropriations for these purposes.

Also requested is necessary authority for supplemental appropriations, should they be needed, for uncontrollable cost increases in public utilities, food services and other expenses at the Merchant Marine Academy at Kings Point, New York.●

By Mr. MATHIAS:

S. 2680. A bill to eliminate the reduction in social security benefits for spouses and surviving spouses receiving certain

Government pensions, as recently added to title II of the Social Security Act by section 334 of the Social Security Amendments of 1977; to the Committee on Finance.

AMENDMENT OF SOCIAL SECURITY ACT

● Mr. MATHIAS. Mr. President, we are all aware of the need to revitalize the social security system. Congress last year passed and President Carter signed into law the Social Security Amendments of 1977. The President and the majority of Congress thought at the time that tax increases and elimination of certain benefits were a solution. I did not share their view.

Under the new law, people who retire on a civil service pension will not be able to collect any social security dependent or survivor benefits to which they would otherwise be entitled, unless the social security benefit is larger than the civil service pension payment. In that case, the dependent or survivor will only be able to collect from social security the difference in amount between the social security benefit and the civil service pension payment.

The present law strikes me as blatantly discriminatory. I see no reason why benefits should be denied dependents who happen to have worked for the Federal Government. Granted, they have not paid into the social security system, but neither have many other dependents who remain entitled to social security auxiliary benefits.

These people have planned their retirement based on these benefits. They are entitled to them.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

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

S. 2680

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 334 of the Social Security Amendments of 1977 is amended—

(1) by striking out subsections (a), (b)(3), (c), (d)(3), (e), and (g); and

(2) by striking out "is amended to read" and all that follows in subsections (b)(2) and (d)(2) and inserting in lieu thereof in each instance "is repealed.".

(b) Subsections (a)(1) and (b)(1) of section 336 of such Amendments are each amended by striking out all that follows "Act" where it first appears and inserting in lieu thereof "is amended by striking out all that follows 'subsection (q)' and precedes 'and subparagraph (B)'.".

SEC. 2. Subsection (a) of the first section of this Act shall be effective with respect to benefits payable for months beginning with the month in which the Social Security Amendments of 1977 were enacted in accordance with section 334(f) thereof (as though the amendments made by such subsection (a) had been incorporated in section 334 of such Amendments upon its enactment); and the amendments made by subsections (a), (b)(2), (b)(3), (c), (d)(2), (d)(3), and (e) of such section 334 as in effect without regard to this Act shall be deemed never to have become effective. The amendments made by subsection (b) of the first section of this Act shall become effective (as though they had been included upon the enactment of such Amendments) as provided in section 336(c)(1) thereof.●

By Mr. McGOVERN:

S. 2682. A bill to authorize construction of the Gregory County pumped-storage facility; to the Committee on Environment and Public Works.

GREGORY COUNTY PUMPED-STORAGE FACILITY

● Mr. McGOVERN. Mr. President, the U.S. Army Corps of Engineers has in the last year completed a review report for water resource development along the Missouri River in South Dakota, Nebraska, North Dakota, and Montana. In the introductory material to this "umbrella study" the Corps reminds us once again of the staggering nature of demand for water resource development which is taking place in that region.

As my colleagues will recall, six large dams have already been constructed on the mainstem of the Missouri River in this region and are currently providing hydroelectric power as a base of supply for electric consumers in several States. This has certainly been a beneficial development. Yet, as grand as this development has been in terms of providing electricity, in the next 20 years peak loads are projected to increase to the point that 37,500 megawatts of additional capacity will have to be added to regional power supplies. In graphic terms, this means another 18 projects of the scale already in place in the Missouri mainstem for hydroelectric power generation will be needed to meet the peak demand for electricity in 1995. The implications of this are awesome to contemplate and yet it only represents a relatively small part of the national energy picture.

One of the purposes of the corps' umbrella study was to determine what additional hydroelectric power generation capability the Missouri River might still provide. The prospect is not overly promising.

After preliminary screening early in the study, the corps found potential for hydropower additions at four of the mainstem dams and four locations suitable for pumped-storage. After further analysis only two of the original four hydropower additions seemed at all feasible, and in the final analysis, a decision on these has been deferred. Of the four pumped-storage sites only one survived the final cut. To quote from the corps report:

> At Fort Randall a differential of 700 feet or more between the right bank plateau and the elevation of Lake Francis Case proved to be a feasible location for a pumped-storage hydro-plant which has been designated as "Gregory County."

Mr. President, I am, therefore, today submitting a bill authorizing the Gregory pumped-storage facility.

In the recent past, there has been some concern relating to South Dakota's resolve in providing local support for water development projects. In that vein, let me point out at the outset, a coequal concern of mine in submitting this bill for consideration is the extent of local support which has already been demonstrated for this development, not only the project's ability to provide some improvement in the regional power picture.

Here is how the Corps of Engineers describe the project in their report:

> A 1180 megawatt pumped-storage powerplant adjacent to Lake Francis Case, located about three miles south of the Platte-Winner bridge in Gregory County, South Dakota. The pumped-storage facility would consist of a leveed-forebay with an active storage capacity of 46,800 acre-feet; a 1.6 mile long, 30-foot diameter, underground power conduit; a powerhouse with three 394-megawatt reversible pump-turbine units; and a 3,000 foot long trapezoidal-shaped tailrace section. The project would develop an average gross head of 711 feet for peaking capacity. Utilization of the reversible turbines to lift water for municipal and agricultural use to the forebay for ultimate distribution to towns and farms in and near Gregory County could be included as an ancillary function of the project. Perhaps one-half percent of the active forebay storage could be required to meet potentially daily irrigation and municipal needs. . . . The water surface area of the forebay would be 1155 acres. About 1630 acres of private land would be required for the project including seven sets of farm buildings.

I will be candid with you. This development, like just about any other which is undertaken, will have its adverse environmental effects. The flora and the fauna on the 1650 acres (less than three sections of land) would in large be destroyed. During operation of the power plant in the pumping mode, fish will be killed unless corrective measures are taken. Operation of the powerplant in the generating mode will increase turbidity in the river, disturbing river sediments thereby degrading water quality to the detriment of the aquatic community, unless corrective measures are taken.

I raise the idea of corrective measures because they have already been suggested by the U.S. Fish and Wildlife Service in their review of this study. To quote FWS Regional Director Harvey Willoughby's letter to the Corps Division Engineer:

> The Gregory County pumped-storage project appears to be acceptable from a fish and wildlife standpoint, provided fish screening devices and proper energy dissipators are used in the afterbay intake area.

In other words, fish screens can reduce the adverse impact on fish which otherwise might be pulled into the pumps and energy dissipators can reduce the turbidity which would otherwise disturb river sediments harmful to the aquatic community.

I should also note that the South Dakota Department of Game, Fish and Parks concurs in this conclusion, providing adequate mitigation measures are adopted to reduce the overall impact of inundating less than three sections worth of flora and fauna. These do not seem like insurmountable obstacles in the way of development of this project.

On the economic feasibility side of the picture, the Gregory County pumped storage facility has a benefit-cost ratio of 1.5: 1, which does not include benefits to agriculture and municipal water users. The benefits and costs of the project were evaluated on 1976 price levels and an interest rate of 6⅜ percent with a project economic life of 50 years. In evaluation of all the plans embodied in the "umbrella study" the Corps of Engineers utilized a "comparability test" which means that hydropower costs had to be

less than the costs of the most likely alternative evaluated on the basis of fully comparable financial factors, thereby eliminating the advantage which accrues to Federal projects solely because of a lower interest rate.

Having provided this cursory analysis of the project on environmental, engineering, and economic grounds, what then is the extent of local support for the project? Let me quote a few examples:

I have already told you of the U.S. Fish and Wildlife Service and State Department of Game, Fish and Parks reactions. What about the Environmental Protection Agency? To quote:

EPA feels that the Gregory County pumped storage unit can be made environmentally acceptable with controls on intake facilities and a monitoring program to observe sedimentation effects in the afterbay. (Lake Sharpe).

The National Wildlife Federation says:

We accept the Corps proposal for a pumped storage unit in Gregory County as the alternaive producing the least adverse environmental impacts.

The secretary of the South Dakota Department of Natural Resource Development says:

I am pleased to know the Corps of Engineers is seriously considering local multiple purpose uses of water from the Gregory County pumped storage unit. This will greatly enhance the project facility which will apparently be needed to provide greatest hydropower benefits from the Missouri River System. The State and local interests in Gregory County are moving forward with arrangements to plan and implement this multiple use of water.

As for onsite support, a nonprofit corporation has been organized in Gregory County to pursue the matter of requesting beneficial use of water from this facility in Gregory and Tripp Counties in South Dakota and possibly parts of Boyd and Keya Paha Counties in Nebraska. This local organization is called the Gregory County Pumped Storage Site Water Corporation, and their interest has not only been sustained over time, but has increased.

A subentity of South Dakota government, the West River Conservancy Sub-District, has requested the Corps to include 1200 acre feet of water supply storage daily for its water supply needs, in behalf of the Gregory County group, and has provided assurance that if the pumped storage site is authorized it will, prior to the initiation of construction, contract for repayment of project costs associated with providing a water supply for local uses.

The Tripp County Water User District endorses and supports the development. The Basin Electric Power Cooperative supports the facility.

This strong showing of local interest with only limited objection to the project should provide adequate justification for our authorizing this project. As my colleagues will note, there is language in this bill to allow for multiple purpose development under this project, specifically provision of water for agricultural and municipal use in the vicinity of the reservoir.

Under the conditions of design for the project multiple purpose beneficial use provides distinct advantages with only minimal impact on operation of the facility for hydropower generation. The amount of water required to irrigate 10,000 acres could be raised from Lake Francis Case to the Gregory County forebay by operating the pumps for a maximum additional duration of 1½ hours per week. The municipal requirements of a community of 1,000 people could be met by running the pump one additional second per day.

It is understood, however, that the costs of distributing the water from the reservoir to points of beneficial use in the surrounding area are outside the authority of the Corps of Engineers. These costs would have to be borne by local interests and as I have already indicated, that interest already exists locally.

For these reasons, it seems to me there is every reason why this development should go forward. I hope my colleagues will concur in that judgment. The House of Representatives are already considering such a possibility due to the efforts of Congressman JAMES ABDNOR of South Dakota who submitted similar legislation earlier this week.

At this time, then, I ask unanimous consent that the bill authorizing the Gregory pumped storage facility be printed in the RECORD.

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

S. 2682

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Pick-Sloan Missouri Basin Program, authorized by the Flood Control Act of 1944 (58 Stat. 887) as amended, is hereby further amended to authorize the Secretary of the Army, acting through the Chief of Engineers, to construct and to hydraulically, electrically, and financially integrate with the existing Missouri River Basin Federal power system for operation and marketing of power, an adjacent-type pumped-storage hydroelectric facility with an estimated total capacity of 1,180 megawatts as part of the Fort Randall Dam—Lake Francis Case Project, South Dakota, with multiple-purpose use of forebay waters under conditions which the Secretary of the Army may subsequently determine, at an estimated cost of $250,000,000.●

By MR. PROXMIRE (for himself, Mr. BROOKE, Mr. CRANSTON, Mr. GARN, Mr. HEINZ, Mr. LUGAR, Mr. MCINTYRE, Mr. RIEGLE, Mr. SPARKMAN, and Mr. TOWER):

S. 2684. A bill to expand and facilitate urban lending investment by Federal savings and loan associations; to the Committee on Banking, Housing, and Urban Affairs.

(The remarks of Mr. PROXMIRE when he introduced the bill appear earlier in today's proceedings.)

By Mr. GARN (for himself and Mr. HATCH):

S.J. Res. 117. A joint resolution designating the fourth Wednesday of October of each year as "Seventy-Plus in High School Day"; to the Committee on the Judiciary.

SEVENTY-PLUS IN HIGH SCHOOL DAY

● Mr. GARN. Mr. President, during the 2d session of the 94th Congress I introduced Senate Joint Resolution 194 which was identical to the resolution I am introducing today. I am reintroducing this resolution to proclaim an annual "Seventy-Plus in High School Day" because it has value in today's society that is often divided by what has come to be known as the "generation gap."

A few years ago, Mr. Weldon Matthews, formerly of the Salt Lake County Division for the Aging, initiated and successfully administered a program of Seventy-Plus in High School. The program was so successful in Utah that the former Governor designated the fourth Wednesday in October as "Seventy-Plus in High School Day" throughout the State. Subsequently, the Utah State Legislature provided for the annual observance of the day.

This is an exceptional program: Instead of seniors volunteering to help with the instructional or management tasks in a high school, the students personally invite senior citizens to share the school day with them, and provide transportation where necessary. Each senior is invited to share a typical high school day with a student—to attend classes, eat in the cafeteria, and attend other activities. The mutual respect and understanding which can develop in such situations benefits both the students, who learn to appreciate the experience and wisdom of years, and the seniors, who learn to appreciate the enthusiasm and idealism of youth. This program can help establish a cooperative relationship between young and old, and it deserves the consideration and support of the United States Senate.

I ask unanimous consent that the resolution be printed in the RECORD.

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

S.J. RES. 117

Whereas, a program has been initiated in the Utah schools known as "Seventy-Plus in High School Day" wherein senior citizens of the State are invited to become involved in school activities with students;

Whereas, this program allows schools to participate in a voluntary program of inviting citizens over the age of seventy to attend and participate in regular high school activities for one day each year;

Whereas, the "Seventy-Plus in High School Day" provides tremendous potential for accomplishing the objectives of establishing better understanding between high school students and senior citizens and combining the energy of youth with the wisdom of years;

Whereas, the Legislature of the State of Utah has declared the fourth Wednesday in October to be "Seventy-Plus in High School Day" in the State of Utah; and

Whereas, "Seventy-Plus in High School Day" has received the enthusiastic support of the Honorable T. H. Bell, former U.S. Commissioner of Education, and Honorable Walter D. Talbot, Utah State Superintendent of Public Instruction: Now therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourth Wednesday in October of each year be and is hereby designated as "Seventy-Plus in High

School Day" and that the President is authorized and requested to issue an annual proclamation calling upon interested groups of educators, senior citizens, and students to participate in the program.●

ADDITIONAL COSPONSORS

S. 28

At the request of Mr. MATHIAS, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 28, a bil to provide for financial assistance to improve the capabilities of units of local government to deal with career criminals, to establish the Office of Repeat Offenders Prosecution Projects within the Law Enforcement Assistance Administration.

S. 991

At the request of Mr. RIBICOFF, the Senator from Tennessee (Mr. BAKER) was added as a cosponsor of S. 991, a bill to establish a separate, Cabinet-level Department of Education in the Federal Government.

S. 1209

At the request of Mr. PROXMIRE, the Senator from Ohio (Mr. METZENBAUM) was added as a cosponsor of S. 1209, the Federal Emergency Assistance and Preparedness Administration Act of 1977.

S. 1559

At the request of Mr. HATFIELD, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 1559, a bill to provide for the reinstatement of civil service retirement survivor annuities for certain widows and widowers whose remarriages occurred before July 18, 1966, and for other purposes.

S. 2297

At the request of Mr. CANNON, the Senator from Colorado (Mr. HASKELL) was added as a cosponsor of S. 2297, a bill to impose a moratorium on grazing fees for the 1978 grazing season.

S. 2354

At the request of Mr. DOMENICI, the Senator from Hawaii (Mr. MATSUNAGA) was added as a cosponsor of S. 2354, the equal access to the courts bill.

S. 2462

At the request of Mr. DOLE, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of S. 2462, a bill to permit a limited individual retirement deduction to individuals who are participants in retirement plans.

S. 2493

At the request of Mr. CANNON, the Senator from Illinois (Mr. STEVENSON), the Senator from Kentucky (Mr. FORD), the Senator from Michigan (Mr. RIEGLE), the Senator from Alaska (Mr. STEVENS), and the Senator from New Mexico (Mr. SCHMITT) were added as cosponsors of S. 2493, the Air Transportation Regulatory Reform Act of 1977.

S. 2580

At the request of Mr. MCGOVERN, the Senator from Iowa (Mr. CLARK) and the Senator from Minnesota (Mr. ANDERSON) were added as cosponsors of S. 2580, the National Home-Delivered Meals Act of 1978.

S. 2583

At the request of Mr. DOLE, the Senator from Missouri (Mr. DANFORTH) was added as a cosponsor of S. 2583, a bill to provide for the temporary transfer of the hospital ship U.S.S. *Sanctuary* to Life International.

S. 2627

At the request of Mr. GRAVEL, the Senator from Idaho (Mr. CHURCH), the Senator from Oregon (Mr. MARK O. HATFIELD), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 2627, the Nonqualified deferred compensation bill.

S. 2648

At the request of Mr. MCGOVERN, the Senator from Minnesota (Mr. ANDERSON) was added as a cosponsor of S. 2648, the Hubert Humphrey Commemorative Stamp Act.

SENATE JOINT RESOLUTION 101

At the request of Mr. DOMENICI, the Senator from Texas (Mr. TOWER) was added as a cosponsor of Senate Joint Resolution 101, to authorize the President to issue a proclamation designating a memorial Sunday for firefighters who have been disabled or killed in the line of duty during the preceding year.

SENATE RESOLUTION 402

At the request of Mr. ALLEN, the Senator from Georgia (Mr. TALMADGE) was added as a cosponsor of Senate Resolution 402, relating to the ban by the FDA on antibiotics in animal feeds.

SENATE CONCURRENT RESOLUTION 69—SUBMISSION OF A CONCURRENT RESOLUTION ENDORSING RHODESIAN SETTLEMENT

Mr. DOLE (for himself, Mr. LUGAR, Mr. HAYAKAWA, Mr. HATCH, Mr. TOWER, Mr. ALLEN, Mr. HARRY F. BYRD, JR., Mr. GARN, Mr. GRIFFIN, Mr. WALLOP, Mr. LAXALT, and Mr. BARTLETT) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 69

Whereas, the present constitutional situation in Rhodesia has led to armed conflict within Rhodesia and from neighboring territories;

Whereas, the United States, in concert with its allies, has lent its efforts during the past several years towards a resolution of conflict in Rhodesia through transition arrangements for Majority Rule;

Wheras, on March 3, 1978, delegates of the Rhodesian Government, African National Council, United African National Council, and the Zimbabwe United People's Organization reached agreement on fundamental principles to be embodied in a new constitution for Rhodesia, and designated December 31, 1978, as independence day: Now, therefore, be it

Resolved by the Senate (House of Representatives concurring), that it is the sense of the Congress of the United States that—

(1) the agreement reached in Salisbury, Rhodesia, on March 3, 1978, relating to transition to Majority Rule for Rhodesia, is a positive step towards settlement of internal differences and towards peace within the region; and

(2) the agreement is a vindication of the principle and peaceful settlement of local disputes by local parties, and a repudiation of the path of violence encouraged by certain external Communist powers; and

(3) the agreement merits the strong endorsement and the support of the American People and the United States Government; and

(4) the President of the United States should instruct the United States Ambassador to the United Nations to lend his dedicated efforts towards gaining international support for the internal agreement.

● Mr. DOLE. Mr. President, on behalf of myself and the Senator from Indiana (Mr. LUGAR), the Senator from California (Mr. HAYAKAWA), the Senator from Utah (Mr. HATCH), the Senator from Texas (Mr. TOWER), the Senator from Alabama (Mr. ALLEN), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Utah (Mr. GARN), the Senator from Michigan (Mr. GRIFFIN), the Senator from Wyoming (Mr. WALLOP), the Senator from Nevada (Mr. LAXALT), and the Senator from Oklahoma (Mr. BARTLETT), I am submitting today a concurrent resolution to support the move toward peace in Rhodesia.

Many Americans were pleased, as I was, to learn that an internal settlement had been reached last week among political factions in Rhodesia on the matter of majority rule for that nation. After years of difficult bargaining, black and white Rhodesian leaders have reached an historic agreement that will protect rights and interests of all citizens of that nation. It is a momentous accomplishment, and this historic opportunity must not be allowed to deteriorate.

The Western Powers, who have long encouraged just such a peaceful resolution of the Rhodesian problem, should now do their part to insure that radical, Communist-supported factions do not disrupt this unique chance for peace. For that reason, I believe the United States should now take the initiative to fully endorse the multifaction agreement and to encourage the support of other nations as well.

DOLE RESOLUTION

My resolution calls attention to the significance of the accord signed on March 3, 1978, laying the foundation for transition to majority-rule government by the end of this year. The resolution recognizes the positive implications of this internal settlement to what is essentially an internal problem, and expresses Senate support for the agreement. Perhaps most importantly, it calls upon our Ambassador to the United Nations to actively encourage international support for the settlement.

There are some who will actively oppose this settlement, whose interests are served only by continuing discord and bloodshed within Rhodesia. We can well expect that the Soviet Union, which already encourages and finances warfare on the horn of the African continent, will chastise this agreement. We know of the opposition of the so-called Patriotic Front of Communist-supported guerrilla units, whose leader threatens to make voting booths "military targets" if settlement provisions are carried out.

It is precisely because of criticism from these elements that we have a special

responsibility to endorse and encourage the peaceful transition of governments in Rhodesia. The resolution I am introducing today will give the U.S. Senate the oportunity to act early and responsibly in this manner.●

● Mr. GARN. Mr. President, I am pleased to join with my colleague from Kansas today in this resolution of support for the Rhodesian negotiations now taking place between all parties of good will involved in Rhodesia. I would like to take just a moment to comment on that statement, "parties of good will."

In the last week or two, I have read repeatedly in the press accounts of how the guerrilla, or terrorist, groups have been "excluded" from the negotiations and, therefore, cannot be expected to abide by the agreement. These were not statements by the terrorists themselves. Both the Washington Star and the Washington Post carried news accounts calling the Nkomo and Mugabe excluded, as a matter of news. They did not say that the terrorists claimed to be excluded, but that they were, in fact, excluded.

Now Mr. President, that is simply not the case. The Joshua Nkomo and Robert Mugabe were repeatedly invited to participate in the talks in Salisbury, and they refused. Even that is perhaps not the whole story. There was at one point an indication that Joshua Nkomo might come to the negotiations, since it was apparent that he was getting nowhere off where he was. And then our Ambassador to the United Nations came out with his statement that what was happening in Salisbury was irrelevant, and that he—and by implication the United States—would not be satisfied until Prime Minister Ian Smith of Rhodesia "surrendered." That was Andrew Young's word, "surrendered." At that point, Mr. Nkomo decided that perhaps he would hold out a bit longer, and maybe the United States would hand him what he would never be able to win at the ballot box, and what would be very difficult to win on the field.

Mr. President, I greatly resent the implication in Mr. Young's statement. I do not care if he would not be satisfied with the negotiated settlement. He can go on, as a private citizen, inciting violence and bloodshed in southern Africa as long as he likes. But I feel strongly that the United States should not be party to that incitement. Our commitment should be to a negotiated process, one that is acceptable to the parties who will have to live under it. And there is no indication that either Mr. Nkomo or Mr. Mugabe have anything to say about that.

For in fact, neither represents anyone in Rhodesia. The total strength of the terrorist forces is very small, and it is quite likely that a significant share of what strength Mugabe and Nkomo do have will lay down their arms when the agreement goes into effect, choosing to participate in the political process opened to them. In the meantime, the fighting is not what one would call a real revolution anyway. It consists mainly of border skirmishes, raids on unprotected civilians, its aim being more to get food and subsist than to win territory, influence, or respect.

And the terrorist movement deserves no respect. Certainly the United States should take its stand alongside those who are working peaceably to work out a negotiated settlement. We should reject those who prefer to shun the peace table, and who prefer armed terrorism.

That, Mr. President, is what this resolution does. It places us firmly on the side of peaceful negotiations, self-determination, and orderly political processes. It should come as no surprise that Marxist terrorists are not satisfied with the results, but it is certainly surprising that our own Ambassador to the United Nations lines up with the terrorists, and against those who are working for peace and stability.

I urge my colleagues to join with us and to pass this resolution as a signal to those forces of peace and stability, and to the rest of the world of our true intentions.●

AMENDMENTS SUBMITTED FOR PRINTING

PANAMA CANAL TREATIES—EX. N, 95–1

AMENDMENT NO. 65

(Ordered to be printed and to lie on the table.)

Mr. LAXALT submitted an amendment intended to be proposed by him to the Panama Canal Treaty Ex. N, 95–1.

● Mr. LAXALT. Mr. President, article V of the treaty concerning the permanent neutrality and operation of the Panama Canal has a laudable purpose: It seeks to preclude Panama from inviting other countries to establish military bases in Panama when U.S. forces depart by the year 2000. I certainly do not want to see the Soviet Union, Cuba, or any other potentially hostile power in a position to control a waterway as vital as the Panama Canal. But, if these treaties are ratified, what happens between now and the year 2000?

Panama is not supposed to be allowed to invite in foreign troops after the year 2000, but nothing in either treaty would prevent her from granting basing privileges to the Soviet Union or anyone else right up until December 31, 1999. I think if we are to leave we should be certain that no third power is allowed to take our place. For this reason, I intend to offer an amendment to the Panama Canal Treaty to insure that such an unfortunate eventuality would be effectively precluded before, as well as after, 2000.

Mr. President, I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

AMENDMENT No. 65

At the end of Article IV, Section 1, add the following:

"2. No nation or entity not a party to the Treaty shall, for any reason, have military forces stationed in Panama.".

Renumber subsequent paragraphs accordingly.●

NOTICES OF HEARINGS

SUBCOMMITTEE ON SEPARATION OF POWERS

● Mr. ALLEN. Mr. President, I wish to notify the Senate that on Saturday, March 11, 1978, the Subcommittee on Separation of Powers, of the Committee on the Judiciary, will meet to receive testimony concerning the congressional power to dispose of public property in the Isthmus of Panama and for consideration of and action on the staff draft of the subcommittee report on the same subject.●

SENATE ETHICS COMMITTEE

● Mr. STEVENSON. Mr. President, the Select Committee on Ethics will hold hearings in executive session concerning alleged attempts by representatives of the Republic of Korea improperly to influence Members and employees of the U.S. Senate. The hearings are scheduled in S–407, the Capitol, as follows:

March 13-March 18, 9:30 am-12:30 pm, 2 pm-5 pm.

March 22, 10 am-12:30 pm, 1:30 pm-5 pm.

April 10-April 11, 10 am-12:30 pm, 1:30 pm-5 pm.●

PENSION SUBCOMMITTEE

● Mr. BENTSEN. Mr. President, on March 15, 1978, the Pension Subcommittee of the Senate Finance Committee will hold hearings on S. 1587 dealing with the reporting requirements and tax treatment of State and local pension plans. In addition, on March 15 the subcommittee will receive testimony on the proposed tax regulations dealing with nonqualified deferred compensation plans.

I ask unanimous request that the Senate Finance Committee press release announcing these hearings be printed in the RECORD.

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

FINANCE SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS SETS HEARINGS ON S. 1587 AND ON THE DEFERRAL FROM INCOME OF CERTAIN AMOUNTS DEFERRED UNDER NON-QUALIFIED DEFERRED COMPENSATION PLANS

Senator Lloyd Bentsen (D.-Tex.), Chairman of the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Senate Committee on Finance, announced today that the Subcommittee will hold hearings on March 15 on S. 1587, a bill to exempt State and local government pension plans from Federal income tax liability and from reporting requirements required by the Employee Retirement Income Security Act of 1974 (ERISA), and on the deferral from income of certain amounts deferred under non-qualified deferred compensation plans.

The hearings will be held in room 2221 Dirksen Senate Office Building and will begin at 10 a.m.

Witnesses who desire to testify at the hearing should submit a written request to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by no later than the close of business on March 8, 1978.

Legislative Reorganization Act.—Senator Bentsen stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) A copy of the statement must be filed by noon the day before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Committee, but are to confine their fifteen minute oral presentations to a summary of the points included in the statement.

(5) Not more than 15 minutes will be allowed for oral presentation.

Written Testimony.—Senator Bentsen stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies by April 10, 1978, to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510.●

ANNOUNCEMENT OF CHANGES OF TIMES FOR HEARINGS BY SUBCOMMITTEE ON THE HANDICAPPED

● Mr. RANDOLPH. Mr. President, as chairman of the Subcommittee on the Handicapped, I wish to announce that our subcommittee has changed the time of the hearings scheduled for March 10 and March 14, 1978 from 9:30 a.m. to 9 a.m. The hearing for March 10 will be held in 4232 Dirksen Senate Office Building, and the hearing for March 14 will be in 4200 Dirksen Senate Office Building. The subject of these hearings will be S. 2600, Rehabilitation Amendments of 1978.●

SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

● Mr. KENNEDY. Mr. President, the Subcommittee on Antitrust and Monopoly will be conducting hearings on the issue of rate competition among motor common carriers of freight. The hearings will focus on the process of collective ratemaking in the trucking industry, and on the overall effectiveness of ICC regulation in keeping rates just and reasonable.

Witnesses for Friday, March 10, 1977 are:

(1) Panel of Motor Common Carriers of General Freight:

James T. Hite, III, Interstate Motor Freight System, Grand Rapids, Mich.

Gene T. West, Consolidated Freightways Corporation, Menlo Park, Calif.

Timothy L. Shay, Shay's Service, Inc., Danville, N.Y.

Gerald Cole, Sr., Cole's Express, Bangor, Maine

William J. Jones, Wilson Trucking Corporation, Fisherville, Va.

(2) International Brotherhood of Teamsters.

(3) Panel of Independent Owner-Operators:

Independent Truckers Association, Mike Parkhurst, William Scheffer.

National Independent Truckers Unity Council (NITUC): John Mullen (President, Independent Truckers of Northeast Pennsylvania). Jack Bailey (Executive Vice President, Owner-Operators Independent Drivers Association of America).

The hearing will be held in room 2228 of the Dirksen Building, beginning at 9:30 a.m.●

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. HARRY F. BYRD, JR. Mr. President, the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, has scheduled a hearing on extension of the temporary limit on the public debt. The Honorable W. Michael Blumenthal, Secretary of the Treasury, and Mr. James T. McIntyre, Director of the Office of Management and Budget, will testify on the public debt at 10 a.m., Tuesday, March 14, 1978, in room 2221, Dirksen Senate Office Building.

The permanent debt limitation under present law is set at $400 billion, with a temporary additional limit of $352 billion. This temporary debt limit of $752 billion is due to expire March 31, 1978.

SUBCOMMITTEE ON AGRICULTURAL RESEARCH AND GENERAL LEGISLATION

● Mr. LEAHY. Mr. President, I wish to announce that the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition, and Forestry has scheduled 5 days of hearings on reauthorization of the Commodity Futures Trading Commission.

On March 14 and March 16, 1978, the members of the Commission will testify.

On March 20, 21, and 23, 1978, public witnesses will have the opportunity to present their views.

As I have previously announced, I am including in this notice of hearings questions that Chairman TALMADGE and I have sent to the Commissioners of the CFTC, and the responses received to date, dealing with some of the major areas in the field of futures regulation, so that the industry and the public may have an opportunity to address these same questions.

These hearings will be held in room 324 of the Russell Senate Office Building beginning at 8 a.m. and ending at 11 a.m. each day.

Anyone wishing to testify or wishing additional information with regard to the hearings should contact Ms. Denise Love at (202)224-0014.

Mr. President, I ask unanimous consent that the correspondence to which I have referred be printed in the RECORD.

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

WASHINGTON, D.C.,
January 26, 1978.

HON. WILLIAM BAGLEY,
Chairman, Commodity Futures Trading Commission, Washington, D.C.

DEAR MR. CHAIRMAN: The Commission's significant allocation of time and resources to the options trading question will be a major consideration in the Commodity Futures Trading Commission's reauthorization process. We believe it would be helpful if you would provide us with answers to the following questions:

1. Are commodity options simply another form of futures market instrument, serving substantially the same purposes as commodity futures contracts? If not, what are the unique features of commodity options that differentiate them from commodity futures contracts?

2. Has the Commission conducted studies of the economic utility of options trading, its impact on the futures markets, or who probable option customers will be? If so, what were the conclusions of the studies?

3. What is the Commission's best estimate of the time and manpower necessary to complete and resolve the 26 investigations and litigation resulting therefrom of options companies and clear reparations dockets emanating from options transactions?

4. How does the Commission proposed to protect customers of option merchants who would be put out of business when your proposed suspension of option trading goes into effect?

5. Will the Commission publish its final regulations for the Part B options pilot program prior to congressional approval of your request for supplemental appropriations?

6. What evidence does the Commission possess to substantiate a conclusion that exchange traded options will serve the economic purposes of valid commodity price discovery, commercial risk transferrance, and fairly-priced opportunities for speculators' gain?

7. If the supplemental appropriation request is approved would these new personnel be deployed among the various functions of the Commission? How long would it take to hire and train the sixty additional people contemplated in the request?

8. What evidence does the Commission possess to substantiate the position that the exchanges will, in fact, be able to regulate both futures and options trading?

9. It has been reported that the SEC has misgivings about the uses to which securities options may be put by those who have opposite positions in the underlying securities, and vice versa. Is a commodity option writer faced with a strong temptation to manipulate the price of the underlying commodity futures contract?

Will the Commission view the taking of opposite positions in commodity options and futures as hedging or as manipulation, and why?

We would appreciate having your response to these questions within two weeks. Thank you for your assistance in this matter.

Sincerely,

HERMAN E. TALMADGE,
Chairman.

WASHINGTON, D.C.,
February 17, 1978.

HON. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture, Nutrition and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of January 26 in which you seek our replies to a series of important questions about commodity option trading.

At the outset it should be noted that the Commission will vote shortly whether to suspend all London and dealer options, except commercial transactions, and whether to approve in principal a limited pilot program for commodity option trading on domestic exchanges.

The pilot program has been designed to permit the Commission to meet the mandate of Section 4c(b) of the Commodity Exchange Act to determine whether option trading in the previously unregulated commodities should be allowed and, if so, under what terms and conditions.

Its purpose is to determine (a) the economic utility of option trading, (b) the nature and extent of the impact of option trading on underlying futures and cash markets, and (c) whether option trading can be accomplished with adequate customer protection.

Details of the proposed pilot program and its evaluation are contained in this report as part of the response to question 5.

Certainly, we will not only seek but appreciate the advice of the Senate Committee on Agriculture, Nutrition and Forestry in these complex matters. I am obviously aware that various legislation on commodity option trading has been introduced, and we look forward to discussing these matters with the Committee at the appropriate time.

As to the particular questions asked in your letter of January 26, 1978, our responses follow:

1. Question—Are commodity options simply another form of futures market instrument, serving substantially the same purposes as commodity futures contracts? If not, what are the unique features of commodity options that differentiate them from commodity futures contracts?

Response—A futures contract is a legally binding obligation to deliver or take delivery during a specified delivery month of a given quantity and quality of a commodity at a price agreed on when the contract is made. A commodity option is a unilateral contract giving the purchaser of the option the right, but not the obligation, to buy (in the case of a call) or sell (in the case of a put) an underlying futures contract or physical commodity at a specified price (the strike price) for a specified period of time. Unlike a futures contract, the buyer and the seller of the option do not have an equivalent obligation to perform. The purchaser of an option has the right but not the obligation to perform under the option contract, and the seller is obligated to do so only if the buyer exercises the right. The option purchaser pays the seller a premium for this right. If the option purchaser exercises his option the seller is obligated to sell (in the case of a call) or buy (in the case of a put) the underlying futures contract or physical commodity at the strike price. The seller of an option cannot require the purchaser to exercise the option. Only the buyer has the right to require fulfillment of the contract terms.

As distinguished from a futures contract, a commodity option is a lower risk, lower return financial instrument. The potential loss to an option purchaser is limited to the "premium". If the price of a futures contract or commodity underlying an option moves against the purchaser of the option, he is not liable for payments in excess of the premium. This special characteristic of commodity options protects the cash flow position of the option purchaser and keeps him from being whip-sawed out of the market when price movements are volatile. In contrast, the holder of either a long or short futures position remains liable for markin calls as long as his position remains open.

A purchaser's potential for gain when buying a futures contract is limited only by the extent of the price movement on the underlying commodity. Theoretically, an option purchaser's potential gain also is limited only by the extent of the price movement on the underlying commodity or futures contract, reduced, however, by the cost of the option premium.

The grantor of a commodity option assumes higher risks than the buyer and, in return, the grantor receives the option premium. Although the option grantor's potential net return is limited to his premium, his ultimate liability on the option contract is virtually unlimited, as is the case for holders of futures positions. However, since the option grantor, unlike the futures trader, is assured of receiving a payment for his risk assumption, the grantor's net liability is moderated by the premium, which offsets (partially or completely) adverse price movements in the underlying futures contract.

Commodity options thus present the potential to fill a gap in the risk-return spectrum available to commodity producers, processors, dealers and speculators. In particular, purchasers of options can hedge against adverse price movement in one direction in the underlying futures contract or commodity without also locking in a price so that they cannot benefit from favorable price movement in the other direction as they do in futures. The option premium is the cost to an option purchaser of protecting himself against one way price movements. The seller of an option receives the premium for assuming the risks of such movements.

2. Question—Has the Commission conducted studies of the eccnomic utility of options trading, its impact on the futures markets, or who probable option customers will be? If so, what were the conclusions of the studies?

In developing its proposed pilot program for commodity option trading on domestic boards of trade, the Commission has studied all forms of option trading with particular emphasis on three forms of exchange-traded options. These forms, each of which differs in important institutional respects from the form of trading contemplated under the proposed pilot program, are: commodity options currently traded on the London Metal Exchange and the terminal market associations of the London Commodity Exchange; securities options currently traded on the Chicago Board Options Exchange, the American Stock Exchange and several regional stock exchanges; and, "privileges" on grain futures traded on the Chicago Board of Trade before 1936. A principal area of Commission analysis in all three cases has been the effect of option trading on underlying markets. In its analyses of commodity option markets, the Commission has also been interested in learning the degree of commercial participation in the option markets and the likely reasons for that level of commercial use.

The Commission also considered the report of the Advisory Committee on Definition and Regulation of Market Instruments on commodity options which contain several members' views on the economic uses and effects of commodity option trading.

A. PRIVILEGE TRADING ON THE CHICAGO BOARD OF TRADE BEFORE 1936

The Commission has reviewed option trading on United States exchanges in the decade before it was outlawed in regulated commodities by the Commodity Exchange Act of 1936. In particular, the Commission has studied the 1934 Department of Agriculture report by Paul Mehl, then Senior Agricultural Economist of the Grain Futures Administration. Mehl's report, entitled "Trading in Privileges on the Chicago Board of Trade," concluded that there was limited commercial use of these option-type instruments and that there had been significant abuses in their trading. Mehl's conclusions appear to be correct. Privileges were very short-term instruments, often expiring the day after they were written or at most a week later. As a result there was no secondary market for these instruments and every day was expiration day for a large number of them—a situation which created the potential for congestion during the last few minutes of each day's trading. Moreover, the commercial usefulness of very short-term options is quite limited. (Domestic exchanges have indicated that commodity options which they intend to trade under the Commission's pilot program will have maturities of at least six to nine months.) Finally, the regulatory environment of the 1930's, in which alleged abuses in both futures and option markets abounded, was considerably more lax than the regulatory environment in which futures are currently traded and in which options are proposed to be traded.

B. LONDON COMMODITY OPTIONS

In the spring of 1976, the Commission contracted with Dr. Geoffrey Bean of Bean, Bower & Co., London, England, to study "London" options.[1] Bean was asked to address, among other issues, the questions of commercial use of the London option markets and the impact of trading in "London" options on prices and volume in the underlying futures markets. His report, submitted to the Commission in the summer of 1976, concluded that there was limited commercial use of the London option markets, but that these markets did not appear to affect prices or volume in the underlying futures markets.

To investigate the commercial use of London options, Bean contacted commercial interests in the metals, cocoa, sugar and coffee trades. Many of those interviewed indicated a reluctance to use the London option markets for several interrelated reasons: the markets were considered thin, volume was relatively low (normally less than two or three percent of London futures volume in the soft commodities), and the lack of a mechanism to close out existing option positions by offset programs, particularly for option grantors. (Under the proposed pilot program domestic exchanges plan to make markets primarily, if not exclusively, in options which may be liquidated by offset, i.e., "transferable options".)

Bean undertook statistical analyses to answer the second question—the effect of option markets on prices and volume in the underlying futures markets. He concluded that option trading did not have a statistically significant effect on prices or volumes in the underlying futures markets for coffee, sugar and cocoa (the markets for which data was available). In the short time allocated to his study, Bean was not able to develop sophisticated econometric techniques, but his conclusions are consistent with the more sophisticated analyses discussed below for stock options.

C. SECURITIES OPTIONS

Studies of the effects of stock option trading on the volume and price patterns of underlying stocks have been made by Robert R. Nathan Associates, Inc., the Chicago Board Options Exchange (two studies), and the Securities and Exchange Commission. This last report has not been made public, pending the development of a general policy on releasing professional staff studies. However, press reports indicate that the SEC's analysis, as well as the three studies sponsored by the industry, concluded that stock option trading did not produce, in the aggregate, statistically significant effects on the volume or price patterns in the underlying stocks. (Some issues raised by the SEC's discovery of trading abuse in stock options are discussed below in response to question 9.)

In summary, the Commission has reviewed the relevant experience in option trading—current and past, domestic and foreign, commodities and securities. On the basis of these analyses the Commission has endeavored to design a pilot program in exchange-traded commodity options which avoids the pitfalls of past and present option markets and which will provide a valid test of such options commercial utility.

It must be reiterated that there is not at present, nor has there been in the past, a commodity option program comparable in most essential respects to the one presently proposed for domestic exchange-traded op-

[1] London options are options on futures contracts for certain commodities that are traded in London, England on or subject to the rules of either the London Metal Exchange or several other exchanges whose transactions are cleared through the International Commodities Clearing House, Ltd. in London. These options may be exercised, abandoned or allowed to lapse bv an option purchaser. They are "nontransferable" options in that they may not be liquidated by an offsetting transaction.

tions. The intrinsic differences in stocks and futures contracts and the manner in which they are traded make options on these two financial instruments not comparable in many respects. (This issue is discussed in more detail in response to question 9.)

3. Question—What is the Commission's best estimate of the time and manpower necessary to complete and resolve the 26 investigations and litigation resulting therefrom of options companies and clear reparations dockets emanating from options transactions?

Response—We now have 32 "London" commodity option firms either under investigation or in the initial phases of litigation. It is our best estimate that approximately 16 of the investigations can be completed within the next three months; the remaining investigations will take approximately six months to complete. Based on past experience, it is our best estimate that injunctive actions will take approximately six months at the appellate level. In those cases in which we proceed by way of administrative process, it will take approximately 10 to 12 months for final decision by the Commission. The appellate process thereafter should take an additional six months. The manpower estimate to accomplish this will require the full time activity of 40 percent (12 staff years) of our Washington Enforcement staff and 50 to 60 percent (25 to 28 staff years) of our Regional Office staff.

It is much more difficult to estimate the time necessary to clear the reparations dockets of pending options-related cases since the parties involved are private litigants and the time necessary to resolve these actions is dependent upon the facts and circumstances of each particular case.

4. Question—How does the Commission propose to protect customers of option merchants who would be put out of business when your proposed suspension of option trading goes into effect?

Response—If the Commission elects to suspend the offer and sale of dealer and foreign commodity options in the United States until the Commission is satisfied that adequate customer protection can reasonably be assured, affected firms presently dealing in commodity options will not be relieved of their duty to fulfill all obligations (including the obligation to segregate option customer funds until expiration or exercise of the options) that they have to customers arising out of options sold prior to the effective date of the suspension.

The Commission would consider the failure to discharge those obligations a violation of law. The Commission intends to use all of the tools at its command, including investigation, intensive auditing and enforcement, in appropriate cases, to insure that all commitments to existing customers are met. In this connection, the Commission in formulating several approaches to treat possible violations and may coordinate its efforts with the Department of Justice and other governmental entities and may endeavor to enlist the cooperation of banks and banking authorities to safeguard customer funds on deposit.

Of particular concern to the Commission is the possibility that option customer funds segregated in accordance with Rule 32.6 of the Commission's interim commodity option regulations may be endangered by adoption of the proposed suspension, should unscrupulous firms attempt to misappropriate those funds. Rule 32.6 basically requires firms selling commodity options to segregate 90 percent of the purchase price paid by a customer for an option in a separate account until all obligations owed to that customer under that option have been performed. This requirement was designed to put an option customer in a position to recoup 90 percent of the money paid for an option in the event that the person from whom the option was purchased proved unable or unwilling to exercise the option when directed to do so. See 41 Fed. Reg. 51809, 51812–51813 (November 24, 1976).

The Commission realizes, of course, that it may not anticipate all of the adverse consequences that adoption of the proposed suspension could visit upon existing option customers, and has therefore specifically requested public comment upon this issue. See 43 Fed. Reg. 4870 (February 6, 1978). In addition, the Commission recognizes that notwithstanding its efforts to protect the interests of existing customers, some of those customers may suffer losses which may not be recoverable even through private court action. Even if this should occur, however, the Commission presently believes it more important to insure against the greater adverse public consequences that would result in having additional customers fall victim to fraudulent and unsound business practices.

5. Question—Will the Commission publish its final regulations for the Part B options pilot program prior to congressional approval of your request for supplemental appropriations.

Response—The Commission has made a determination on nearly all of the issues for the initiation of trading domestic commodity options under a pilot program. The Commission has before it a staff draft of a resolution containing the major elements to be included in the final regulations for the pilot program for option trading on domestic boards of trade. If adopted by the Commission, the resolution will instruct the Commission's staff to finalize the drafting of these regulations for Commission approval. On February 17, 1978 the Commission determined to delay temporarily consideration of the resolution. It is uncertain at this time exactly when the final regulations for the pilot program will be published. Of course, among the factors the Commission will consider in connection with the adoption and implementation of its proposed pilot program will be the availability of additional funds and staff positions and its ability to monitor and supervise adequately exchange option markets. No program will be approved which is not deemed to be in the public interest.

However, the evolution of the program is important for consideration. The Commission first outlined the scope of the test program in a resolution dated September 13, 1976 following analysis of a report and recommendations on commodity options of its Advisory Committee on the Definition of Regulation of Market Instruments. The Commission adopted interim regulations governing the sale of so-called dealer options on physical commodities and options originating on or through the facilities of foreign boards of trade and prescribed registration, disclosure, book and recordkeeping, financial and other customer protection requirements.

Despite implementation and enforcement of these interim regulations, fraudulent activities continue to pervade current forms of commodity option sales activity—including evasion of lawful requirements and high pressure sales techniques. The Commission has encountered difficulty in verifying the details of option transactions for U.S. citizens by members of the London commodity exchange.

Options traded on domestic exchanges and utilizing exchange clearing mechanisms, should provide an inherent guarantee of performance, allow control and supervision of trading and facilitate the gathering and dissemination of market data. Current surveillance and monitoring functions could be adopted to the pilot program.

6. Question—What evidence does the Commission possess to substantiate a conclusion that exchange-trade options will serve the economic purposes of valid commodity price discovery, commercial risk transferrance, and fairly-priced opportunities for speculators' gain?

Response—As stated in our response to Question 2, one of the purposes of the Commission's proposed pilot program is to determine the economic utility of commodity option transactions.

The three potential economic purposes of options you mention are discussed separately below:

(a) Valid commodity price discovery

The Commission has not asserted that price discovery would be a valid economic function of commodity option markets. There have, however, been suggestions that option markets may generate information on the level of expected price volatility in underlying futures markets. This hypothesis has intuitive appeal, but at present lacks both a means for empirical verification and a satisfactory theoretical model for statistical testing.

(b) Commercial risk transferrance

In addition to the Bean and Wehl studies (mentioned above in response to question 2), many interested parties provided the Commission with examples of commercials' actual use of London and dealer options and hypothetical uses for U.S. exchange-traded options. In particular, several submissions were made to the Advisory Committee on the Definition and Regulation of Market Instruments, and in response to the April 5, 1977 Federal Register notice on the Commission's proposed pilot program (42 Fed. Reg. 18246, *et seq.*). During the spring of 1976 the Commission staff also interviewed several New York commercials in the metals and sugar industries to obtain information on their actual and potential use of commodity options. Two examples of possible commercial uses of options, which were mentioned were (a) protecting buyers against default by suppliers, and (b) hedging offers to buy or to sell when the acceptance of the offer, or the quantity to be exchanged, is uncertain.

An actual example of an option-type instrument currently used by commercials is the GNMA "standby commitment"—an agreement to purchase a specified face amount of GNMA securities at a given price (similar to an option strike price) within a specified period of time. These standbys are, in effect, put options sold over-the-counter by GNMA dealers and thrift constitutions to mortgage bankers. The mortgage bankers use them to hedge themselves against losses on their mortgage inventories. The Chicago Board of Trade has proposed developing a put and call option market in the GNMA futures contracts traded thereon. This market would provide for auction trading of standardized contracts, with wide dissemination of option prices and a mechanism for offsetting trades. If developed, such a market could well provide the mortgage finance industry with a hedging instrument that is more useful and more liquid than the present standby commitment.

(c) Fairly-priced opportunities for speculators' gain

The proposed pilot program in option trading on domestic exchanges is designed to foster a competitive environment, including the wide and rapid dissemination of price data, and to inhibit market and customer abuses. To this end the Commission, in conjunction with the exchanges, will monitor option trading to encourage competitive conditions and to ferret out and prosecute abuses which may nevertheless be perpetrated.

Transaction costs, such as commissions and mark-ups, should be relatively low in highly competitive financial markets in which information is effectively disseminated. Under such conditions the fees paid to middlemen, such as brokers or futures

commission merchants, should not create a large wedge between the amount an option buyer pays and the sum an option grantor receives. If a competitive option market is also relatively free from trading abuses (such as price manipulation and brokers' trading before their customers) then the circumstances are set for speculators to have fairly-priced opportunities for gain.

7. Question—If the supplemental appropriation request is approved how would new personnel be deployed among the various functions of the Commission? How long would it take to hire and train the sixty additional people contemplated in the request?

Response—If the supplemental appropriation for the Commission's pilot program is approved, it is planned to allocate the new personnel as follows:

To the Division of Trading and Markets	18
To the Division of Enforcement	19
To the Office of Surveillance and Analysis	8
To the Office of the General Counsel	3
To the Office of the Chief Economist	6
To the Office of the Executive Director	6
Total	60

Geographically, 16 of these positions are now planned to be assigned to the Commission's home office in Washington, D.C., 13 to its regional office in Chicago, Illinois, and 31 to its regional office in New York City.

The hiring of these persons will commence immediately upon approval by the Congress and the President. We anticipate 30 of the 60 could be hired within 8 weeks. The other 30 people will be hired over a two to three month period. This amount of time will be required to allow us to expand our physical facilities to accommodate them, to permit us to identify and recruit highly qualified persons with the necessary experience required to do the job, and to appoint candidates in accordance with Civil Service Commission regulations.

All new employees receive two weeks of formal classroom training conducted by the Commission within their first 17 weeks of employment. This is a new program which has been developed and used extensively during the last nine months.

We estimate a minimum of 2 to 4 months of on-the-job training will be needed to bring new employees to productive performance levels in their grade levels.

8. Question—What evidence does the Commission possess to substantiate the position that the exchanges will, in fact, be able to regulate both futures and option trading?

Response—Since options on futures contracts are expected to be traded much like futures contracts, a judgment on the ability of exchanges to regulate options on futures (together or with futures) is based on how well exchanges now regulate futures trading. Section 32.5 of the proposed option regulations requires each exchange seeking a license to trade options to demonstrate that it has an appropriate rule enforcement program. As the Commission pointed out in its Federal Register release of October 17, 1977 (42 Fed. Reg. 55544) reproposing its regulations for the pilot program for public comment, it will not recommend that an exchange be licensed for domestic commodity option trading unless it is satisfied that the exchanges' surveillance and enforcement programs for both options and futures are adequate to assure compliance with the exchange's rules.

The Commission is in the process of conducting reviews of exchange rule enforcement programs. We have current information on the rule enforcement programs of the three Chicago exchanges.[2] We expect that rule enforcement reviews of the four New York exchanges eligible for option trading[3] will be completed by the time petitions for licensing are submitted. Our initial reviews of exchange rule enforcement programs, and other investigations, indicate that some exchanges may not now have the ability to regulate trading in both options and futures. Should this be the case, such exchanges could not obtain a license to trade options under the proposed pilot program until adequate enforcement and surveillance capability is demonstrated.

9. *Question*—It has been reported that the SEC has misgivings about the uses to which securities options may be put by those who have opposite positions in the underlying securities, and vice versa. Is a commodity option writer faced with a strong temptation to manipulate the price of the underlying commodity futures contract?

Will the Commission view the taking of opposite positions in commodity options and futures as hedging or as manipulation, and why?

Response—As you mention, the SEC has recently uncovered alleged instances of manipulation of securities' prices to affect prices of options written on these stocks. One variant of this alleged practice is known as capping, whereby the grantor of a call option attempts to place an upper limit or cap on the price of the underlying stock so that it will not be called away from him.

The Commission recognizes that option grantors (like any commodity trader) may be tempted to try to manipulate prices of underlying futures contracts. As a result, the proposed option regulations, along with the Commission's regulations on futures trading contain provisions which make such manipulation difficult and likely to be detected, thereby reducing the temptation faced by option grantors.

Manipulation of liquid commodity futures or cash markets is relatively difficult when, among other factors, the terms and conditions of futures contracts conform to commercial practices. Under such circumstances, attempts at manipulation are discouraged by the threat that traders would have to make or take large numbers of deliveries. In addition, attempts at manipulation are detectable, and therefore to a large extent deterred, through Commission and exchange surveillance systems. The proposed option regulations require a futures market to meet these standards for contract terms and conditions and to provide an adequate market surveillance system as a precondition to be licensed to trade options on a futures contract.

To increase the likelihood that manipulative activity will be detected in futures trading, the Commission and the exchanges have developed and implemented trade practice rules, reporting requirements, and monitoring devices. The option regulations propose similar, and in some instances more comprehensive and stringent, trading and reporting requirements for option markets. The thrust of these regulations is to enhance the Commission's ability to monitor traders whose positions are large enough to impact on the market and to reconstruct trading activity by means of accurate audit trails. Among the provisions in the proposed option regulations which are directed toward these ends are: identifying executing and opposite brokers, matching trades of opposite brokers and opposite clearing members, time sequencing of option trades, and daily reporting of open positions by large (over 25 contracts) option traders.

Moreover, various types of manipulative activities which can occur in stocks because of their limited supply should be considerably less effective in most futures markets where deliverable supplies of underlying commodities are generally greater. Of course, there is not an unlimited supply of any commodity available for delivery. However, the exchanges and the Commission at present have monitoring devices in place to assist in assuring that orderly liquidations of futures contracts take place. In addition, the proposed option regulations recognize the impact that exercising options could have on orderly liquidations. The Commission accordingly plans to examine, as part of its licensing process for option markets, the relationship of action expiration dates and the delivery period of underlying futures contracts.

The Commission does not anticipate categorizing the taking of opposite positions in commodity options and futures as hedging or manipulation per se. The principal reason is that there may be valid commercial and portfolio management reasons for maintaining opposite positions in commodity options and futures. However, as your example from stock options trading indicates, such positions may involve price manipulation. The purpose of the trade practice and reporting provisions of the proposed option regulations is to reconstruct trading activities so that manipulative opposite position taking can be detected.

Should you have any questons concerning our responses or require any further information please contact me.

Sincerely,

WILLIAM T. BAGLEY,
Chairman.

COMMITTEE ON APPROPRIATIONS,
Washington, D.C., February, 9, 1978.

HON. WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission, Washington. D.C.

DEAR MR. CHAIRMAN: It has been brought to my attention that "limited risk forward contracts" trading has the potential for the same fraudulent practices that are currently being disclosed in options trading. It has further been suggested that the present dealers of options will shift to "limited risk forward contracts" as soon as options trading is suspended.

I have three major concerns with these possible develcpments. First, we may continue to witness a parade of fraudulent activities in commodities trading. Second, these practices could do irreparable harm to traditional forward contracts that are important to the Nation's farmers and ranchers. Third, it is plausible that the Commission might not be able to establish a claim of regulatory authority over forward contracting.

While specific jurisdiction is given to the Commission, by section 217 of the Commodity Futures Trading Commission Act of 1974, to regulate leverage contracts for gold and silver, which represent a form of forward contract, the Commission's jurisdiction over other unspecified forward contracting would surely be disputed by financially interested forward contract merchandisers. In addition, the SEC and the various States' securities administrators might well claim jurisdiction, unfettered in any way by the exclusive jurisdiction provision of section 2(a)(1) of the Commodity Exchange Act. Merchandisers of "limited risk forward contracts" might, in the absence of Commission action to the contrary, assert license to write option-like instruments with respect to domestic agricultural commodities, undeterred by section 4c(a)(B) of the Commodity Exchange Act.

I fear that a forward contract scandal following closely on the heels of the London options scandal has the potential to damage

[2] The Chicago Board of Trade, the Chicago Merchantile Exchange and the MidAmerica Commodity Exchange.

[3] Commodity Exchange, Inc., the New York Merchantile Exchange, the New York Cocoa Exchange and the New York Coffee and Sugar Exchange. The commodities currently traded on the New York Cotton Exchange (cotton and orange juice) are prohibited from having options traded thereon by Sections 2a(1) and 4c(b) of the Commodity Exchange Act.

irreparably the public's image of the entire futures industry, which involves a related contract process.

In a similar vein, concerns have been expressed regarding the Commission going ahead with regulation of leverage contracts. Clearly anticipatory and preventive measures would be appropriate at this time.

To facilitate our role of over sight, it would be helpful if you would provide me with answers to the following questions:

(1) What steps is the Commission currently taking to determine and avert the potential for fraud in the area of limited risk forward contracts?

(2) Does the Commission believe that the Commodity Futures Trading Commission Act of 1974 requires amendment to clarify the Commission's jurisdiction over limited risk forward contract trading?

(3) Has the Commission conducted studies to determine (a) economic utility of leverage trading, (b) its impact on the futures markets, (c) who leverage customers probably will be, (d) whether leverage contracts will serve the economic purposes of commodity price discovery and commercial risk transference, accompanied by fairly-priced opportunities for speculators' gain, and (e) what positive economic role is served by speculators' purchase of leverage contract?

(4) How many firms are now actively writing any leverage contracts and what is the volume of such contracts?

(5) Is it possible that promulgation of leverage contract regulations will give birth to a new industry?

(6) What effect will regulation of leverage contracts have on deployment of Commission personnel and resources if options trading is suspended, as proposed?

The question of the Commission's exclusive jurisdiction has been raised most recently in regard to the purported initial inability of the States to take action against unscrupulous options dealers. Does the Commission believe that it would have exclusive jurisdiction over "limited risk forward contracts" under these circumstances, or does it have any recommendations for modification of its grant of exclusive jurisdiction in section 2(a)(1) of the Commodity Exchange Act to facilitate State prosecutions in specified instances?

Thank you for your assistance in these matters. I will be looking forward to receiving your response in advance of the commencement of reauthorization hearings for CFTC.

Sincerely,

PATRICK J. LEAHY,
U.S. Senator.

COMMITTEE ON APPROPRIATIONS,
Washington, D.C., February 9, 1978.

Hon. WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission, Washington, D.C.

DEAR MR. CHAIRMAN: Title III of the Commodity Futures Trading Commission Act of 1974 authorizes the Commission to register and regulate one or more futures associations of firms and professionals. The Commission in its recently adopted motion to suspend options trading lists among the four criteria for the lifting of the suspension, the registration and operation of such an association.

The regulatory ability of the Commission and the exchanges has been questioned in light of the growing trend within the futures industry for non-member futures commission merchants to trade for their clients through member FCMs.

Because of the significance of Title III issue to the lifting of the options trading suspension and to this Committee's consideration of the Commission's reauthorization, it would be helpful if you would provide me with answers to the following questions:

(1) What steps must the Commission take prior to consideration of an application for registration as a futures association? Is the Commission currently working on the necessary regulations?

(2) Has the Commission formulated any criteria for a determination as to whether registration of a futures association would be in the public interest?

(3) Does the Commission have any indication that there is an industry group which could effectively assume the responsibilities accompanying registration as a futures association?

(4) Have any analyses been performed by the Commission regarding the effect a futures association would have on Commission manpower requirements?

Does the Commission contemplate that a futures association, when formed, would perform regulatory functions which would otherwise demand deployment of Commission manpower and resources? If so, would existing exchanges and FCMs resist or resent being saddled with added duties and expense?

Do existing exchanges and FCMs have any reason to fear that promulgation and enforcement of rules and regulations by a futures association would expose them to greater potential anti-trust litigation or liability than would their enforcement of Commission-promulgated rules and regulations? If so, could, or would, the Commission resist pressures to make the Commission both the rulemaker and enforcer, to the virtual exclusion of futures association from meaningful responsibility?

(5) Is it advisable to develop and publish criteria for registering a futures association prior to the time the Commission makes a finding that the exchanges are engaged in effective self-regulation under Commission established criteria?

(6) What role does the Commission envision itself playing when and if the exchanges are engaged in effective self-regulation and a futures association is engaged in effective self-regulation of futures commission merchants?

(7) What has the Commission done in response to the Department of Justice's objections to the registration of a futures association?

Is the predictable posture of the Anti-Trust Division of the Department of Justice such that a futures association's regulatory initiatives would be consistently impeded?

We would appreciate having your response to these questions as soon as possible before our hearings commence. Thank you for your assistance in this matter.

Sincerely,

PATRICK J. LEAHY,
U.S. Senator.

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, D.C., February 28, 1978.

Hon. WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission, Washington, D.C.

DEAR MR. CHAIRMAN: I am, in preparation for the appearance of the members of the Commission before this Committee in mid-March, requesting that you supply me with answers to the enclosed questions.

As I have stated, the prior submission of these questions will enable the Commission to provide in-depth answers. This process will promote enlightened discourse on the many issues raised in this letter and the previous letters Senator Talmadge and I have sent to you.

You and your staff are undoubtedly under pressure to respond to the authorizing and appropriations committees of Congress. However, in order for your responses to the enclosed questions to be of maximum utility, it will be necessary for us to receive them prior to your appearance.

I

1. What was the sequence of the Commission's actions regarding the regulation of commodity options trading?

2. What was the volume of options trading public action of the Commission's final Part in the non-regulated commodities, prior to A regulations?

3. How many firms were engaged in writing commodity option contracts in the United States prior to publication of the Commission's final Part A regulations?

4. Did the volume of trading and number of firms writing commodity option contracts in the United States increase after publication of the final Part A regulations? If there was an increase, do you believe that this increase is attributable, in part, to Commission action "legitimatizing" these transactions?

5. In retrospect, would it have been more advisable to simply prohibit all commodity option trading in this country until an exchange-traded commodity option program could be implemented?

6. What were the Commission's original estimates of the number of Commission staff man-years necessary to implement the Part A regulations? Were these estimates subsequently revised, and if so, when?

7. Options transactions with respect to defined commodities were banned by the Commodity Exchange Act of 1936. It has been asserted by some that a total ban on sales commodity options in the United States would have had international consequences? What are these consequences? Are they still present?

8. The National Journal in its December 3, 1977 issue ("The SEC's Risky Rat Race of Regulating the Options Market") attributed the following to critics of exchange-traded security options:

"They say that individuals never can benefit from options trading the way professionals can because to assume sophisticated investment postures (such as 'naked straddles' and 'horizontal spreads') involves costly commissions. They say that some brokers are promoting options for investors whose resources or understanding of the market are inadequate. And they point to several examples of fictitious sales by traders in some exchanges to enhance their own tax positions or to create the phony impression that options trading is more volatile than it really is."

Are these criticisms equally applicable to exchange-traded commodity options?

That same National Journal article contained the following regarding the SEC's release of October 17, 1977:

"The commission noted general concern over the five exchanges' 'surveillance systems to detect and prevent fraudulent, deceptive and manipulative activity, both in options and in underlying securities . . .' And it followed these vague doubts with a formidable list of problems. Among those cited:

"widespread fictitious trading by options specialists on an exchange, which has occurred over a period of several months;

"patterns of trading on options exchanges . . . solely for the purpose of attracting [orders] from major brokerage firms doing business with the public". (This, the SEC warned, 'may operate as a fraud upon public customers as well as upon other markets');

"prearranged trades on the floor of an options exchange, for tax or other purposes, which result in the reporting of trades on the transaction tape although the parties have agreed that, after the tax year, the transactions will be reversed;

"matched orders, or other forms or prearranged trades entered into in order to, among other things, give the appearance of increased trading volume;

"manipulation of the price of an under-

lying security for the purpose of pegging or depressing the value of its related option;

"options transactions made on the basis of undisclosed market information that a block of the underlying stock has been or is about to be traded;

"transmission of deceptive sales literature;

"churning of customers options accounts, which involves making multiple transactions to boost income from commissions;

"effecting of options transactions unsuited to customers' financial means and investment objectives;

"extensions of credit to customers in violation of applicable federal regulation;

"disturbing discrepancies between reported and cleared trading volume;

"use of joint accounts by options market makers [dealers who trade only for their own accounts] and others [who] may escape adequate monitoring by present exchange surveillance systems,"

"Most telling of all, the SEC admitted publicly its own 'present inability' to determine whether further options trading would be consistent with its congressional mandate."

Does the CFTC anticipate any or all of these same problems to be present in your exchange-traded commodity options pilot program? If so, what precautions will be built into the pilot program to avoid their occurrence?

9. Does the Commission believe it is realistic, if the Part B pilot program is implemented, to think that the Commission would thereafter move to ban exchange-traded commodity options after the expiration of the three-year pilot program?

10. Is it possible that the pilot program may result in the creation of a monopoly or quasi-monopoly for the participating exchanges with respect to the options contracts that the Commission authorizes a particular exchange to trade?

II

1. The Securities and Exchange Commission, on page 8 of its February 7, 1978 memorandum to the Comptroller General, on the question whether the SEC should assume the functions of the CFTC, stated:

"We believe that the CFTC has focused on expanding its area of exclusive jurisdiction and narrowing the authority of state agencies and of this Commission, without regard for the need to assure adequate protection of the public. Moreover, the amount of time devoted by the CFTC to the preservation and expansion of its exclusive jurisdiction may well be a misallocation of resources affecting the overall ability of the CFTC to carry out its statutory responsibilities.

"In contrast, this Commission has developed a strong and effective working partnership with state securities administrators, who bring competence, integrity and needed resources to the fight against securities law violation."

What is the CFTC's response to this statement?

2. What evidence is currently available that investors in securities are or are not the same people who purchase (A) commodity options, (B) securities options, (C) GNMA futures, and (D) treasury bill futures?

3. The SEC has suggested that the CFTC's grant of exclusive jurisdiction be repealed and in its place a grant of authority to the SEC to exempt from the Federal securities laws, in appropriate circumstances, matters which are within the concurrent jurisdiction of the two agencies. What is the CFTC's response to this suggestion?

The SEC further advocates an amendment to the CFTC enabling legislation requiring prior consultation and cordination between the Commission and the banking agencies in certain circumstances. What is the Commission's response to this proposal?

4. Has the Commission made, or is it considering making, any recommendation respecting interpretation of the Commodity Exchange Act or for amendments to the Commodity Exchange Act, to allow for flexibility in the grant of exclusive jurisdiction that would allow appropriate State agencies and the SEC to (1) institute proceedings under the authority of the Commodity Exchange Act and (2) under their statutory authorities in specified circumstances?

5. What is the Commission's response to the following Securities and Exchange Commission assertion:

"With respect to futures contracts written on fiancial instruments and other securities, and options on such futures contracts, we believe, in view of the interrelation between markets in those futures and the markets in the underlying securities, that the jurisdiction of the CFTC in those areas should be repealed, so that this Commission would have the entire authority over those futures markets and the underlying securities markets."?

III

1. Is the Commission considering modifying its market surveillance so that surveillance will be exercised throughout the contract period while concentrating surveillance efforts on the expiration month?

2. What is the rationale behind the establishment of speculative trading limits? Why have speculative limits not been issued for all commodities? Is the Commission considering alternatives to speculative limits and, if so, what are those alternatives?

3. What does the Commission foresee as the benefits of final promulgation of "Charlies Rule"? Would adoption of this rule potentially remove the possibility of a recurrence of situations such as the Hunt family involvement in soybeans and the May 1976 Maine potato default?

4. Is the Commission confident that its surveillance force on the exchange floors are both adequately trained and of sufficient size to be capable of effective market monitoring?

IV

On June 21, 1976, the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, of this Committee, chaired by Senator Huddleston, held a hearing on the May, 1976 Maine potato default. Certain information regarding the default was unavailable at that time and the Commission, subsequent to the default, took actions that are of interest to this Committee.

1. The Commission concluded that as of May 7, 1976, the last day of trading on the contract, there were adequate supplies of Maine protatoes to satisfy the open short positions. What happened to these supplies between May 7 and May 25, 1976, the last delivery day of the contract?

2. One possible criticism of the Maine potato contract is that delivery can first take place after the last day of trading. Are there other futures contracts on seasonal crops with this feature, and if so, on what commodities? Have any of these other contracts experienced attempted corners or squeezes as May Maine potatoes may have?

3. Did the Commission study the availability of railroad cars, the only acceptable mode of transportation under the contract, to carry the May 1976 potatoes from Maine to New York? If so, did the Commission conclude that there were adequate railroad cars to carry the potatoes and thereby satisfy the contract?

4. Subsequent to the default, the President of the New York Mercantile Exchange, Mr. Richard B. Levine, went to Maine to purchase potatoes to satisfy open long contracts on the May contract. He has testified that he was unable to purchase the potatoes because they were unavailable.

In the Commission's view, why was Mr. Levine unable to purchase the potatoes? Did the New York Mercantile Exchange or Mr. Levine place any conditions or restrictions on the purchases of potatoes by Mr. Levine that may have compounded Mr. Levine's difficulty in his attempted purchases?

5. Subsequent to the default, the Commission worked with the New York Mercantile Exchange to revise the Maine potato contract. What are the major differences between the new and old contracts? What were the possibilities for liquidation of open positions after the last day of trading on the May 1976 potato contract? Has this been changed under the new contract or revision of the Exchange's rules? Are these liquidation possibilities and procedures either identical to or consistent with those utilized for potato contract or other Exchanges?

6. Is trading on the Maine May potato contract atypical of trading on other end of crop year commodity contracts? Would you please provide us with a comparison of past experience with the Maine May potato contract as compared with other end of crop year commodity contracts?

7. What actions has the Commission taken against the New York Mercantile Exchange? Against longs on the May 1976 contract? Against shorts? When will the Commission's follow-up compliance review of that exchange be released? Are you at liberty to release preliminary findings of your review? If so, what are these preliminary findings?

V

Section 2(a)(8) of the Commodity Exchange Act requires the establishment of liaison offices at the Department of Agriculture to be staffed by Commission employees and a liaison office at the Commission to be staffed by USDA employees. Have these offices been established? If not, why not?

If the Commission believes that designating the appropriate liaison personnel and allowing the USDA liaison to attend and observe all deliberations and proceedings of the Commission is sufficient to accomplish the congressional intent of section 2(a)(8), will the Commission be recommending an amendment to that section?

VI

1. Is the Commission considering any further amendments to its dual trading regulations. What is the Commission's response to the allegation that there is no technology available to facilitate implementation of a one-minute time stamp requirement? Would implementation of a one-minute time stamp disrupt trading in active pits or rings?

2. Would the potential for abuse in dual trading be potentially magnified if the floor broker or futures commission merchant was engaged in such trades for his client and himself in both futures and options?

VII

1. The Commission's exchange rule enforcement reviews to date have found discrepancies and inadequacies in exchange practices. In light of these findings, is it realistic to assume that by 1980 these same exchanges will be engaged in effective self-regulation?

2. What are the considerations that the Commission takes into account prior to recommending remedial actions to exchanges?

3. Does the Commission believe that it has the authority to regulate the composition of the exchange's governing bodies? If so, does the Commission intend to issue regulations in the area?

4. Why were copies of the Commission's complete exchange rule enforcement review not forwarded to the exchange being reviewed? How were the results of the reviews communicated to the affected exchange?

5. Has the Commission analyzed the advisability of granting civil immunity to the exchanges from actions brought by customers of futures commission merchants or floor brokers?

6. Has the Commission considered reallocating its resources so that more of its surveillance and enforcement responsibilities could be directed to those exchanges that

first came under Federal regulation after 1974? If not, is such a proposal reasonable?

7. It has been suggested that it is unrealistic to assume that all ten of the futures exchanges will operate identically in all areas, and, therefore, the Commission, absent evidence of public damage, should provide, through regulations, the broad guidelines or skeleton for regulation and the exchanges be allowed to deal with the specifics. What is the Commission's reaction to this suggestion?

VIII

1. What are the Commission's current efforts at discovering the extent of trading by foreign nationals or governments? Do you feel that these efforts are providing you with the necessary information?

2. Is there the potential for foreign nations to enter our futures markets and manipulate these markets? Is the potential for such activity greater in the metal and foreign agricultural futures than in the domestic crop and livestock futures?

IX

1. American consumers have experienced considerable price fluctuations in the cost of coffee. There have been various explanations presented to explain, this phenomena. Do you have any evidence that the inflation in the cash coffee market was spurred or increased by trading in the coffee futures market?

2. When did the Commission first become aware of a potential problem in the December 1977 "C" coffee market? Did the Commission take any action at that time?

3. What facts lead you to believe that there was a potential problem in the December 1977 "C" coffee market?

4. In retrospect, were there any actions that the New York Coffee and Sugar Exchange or the Commission could have taken, short of the issuance of an emergency order, prior to the close of trading on the contract?

5. To what extent were foreign traders in the December 1977 "C" coffee market? Is this unusual for coffee futures? Would this extent of foreign traders be typical for any other futures, and if so, which ones?

6. Could you briefly describe the situation in the coffee market that prompted the Commission to issue an emergency order? What was the New York Coffee and Sugar Exchange's reaction to the developing situation on the December contract?

7. What happened after the promulgation of the emergency order?

X

1. Was the large trader reporting requirement the means by which the Commission became aware of the Hunt family's concentration in the May and June 1977 soybean futures market?

2. What was the magnitude of concentration that the Hunt family had in the market?

3. What actions did the Commission take both administratively and through the courts to modify this situation?

4. Should the futures commission merchants who were handling the various accounts involved in this case have known about the situation that was developing? Was there any requirement for them to bring this situation to the Commission's attention?

5. Is it not true that if the members of the Hunt family had been characterized as hedgers there would not have been a question raised about their trading volume?

6. What is the current status of Commission actions against the Hunt family?

7. What was the difference in approach by the CFTC to the Hunt family's and Cook Industries' positions in the soybean futures market? Why was there a difference in approach?

XI

The participants in futures trading are generally broadly classified as either hedgers or speculators. The hedger has received the greater reverence under the law and is exempted from speculative limits.

1. Is it not true that significant market manipulations that have been successful in the past were accomplished by hedgers?

2. By simply having an interest in the underlying commodity, can all traders in futures of that commodity be properly classified as hedging, e.g., a soybean farmer who produces 15,000 bushels of soybeans and enters into soybean futures contracts for 150,000 bushels of soybeans?

3. If a commercial has already insured his profit margin, as originally calculated in his dealings in the cash market, through his futures transactions, are any further futures trades designed to increase the original profit properly classified as hedging or speculating?

4. What is the rationale for different treatment of hedgers and speculators?

XII

On February 2, 1978, you appeared before Congressman Whitten's Subcommittee on Agriculture, Rural Development and Related Agencies. At that time, Congressman Whitten released an Investigative Study on the Commodity Futures Trading Commission and requested that you review it and respond in writing to the points raised in the study. In addition, you have been requested to submit answers in writing to several questions raised by members of the House Committee on Agriculture and the House Appropriations Committee. In the interest of avoiding duplication of effort, would you please forward copies of your responses to Mr. Whitten and to the questions submitted to you by Congressmen to this Committee?

Thank you for your kind cooperation in this matter. I am looking forward to receiving your responses.

Sincerely,

PATRICK J. LEAHY,
U.S. Senator.●

ADDITIONAL STATEMENTS

THE MINERS HAVE A POINT

● Mr. RIEGLE. Mr. President, the coal miners of America have been on strike for more than 3 months and now the President, in the wake of the most recent failure of the miners and the coal operators to reach an accord, has begun the process of obtaining an injunction against the strike under the Taft-Hartley law.

The work stoppage affects us all, but is, of course, most severe in the coalfields. Not simply miners, but the Nation and particularly the region in which the miners and their families live are suffering continued economic hardship. It is time that a contract is reached, that the men return to work, and that the suffering end. But we should understand why the miners are striking and we should not ask a single miner to return to work under anything but honorable conditions.

This morning an editorial appeared in the Wall Street Journal which deals with one aspect of the controversy surrounding the contract negotiations: The proposed wage and benefits settlement. This editorial demonstrates the devastating effect inflation and Federal tax policy have on the earnings of American workers. Coal miners deserve a fair deal; they have not been getting one.

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:

THE MINERS HAVE A POINT

Everyone is wondering what's bugging the coal miners, who just voted down a 37% wage and benefit increase. But the more we look at it, the more we think that if we were a coal miner we'd have voted against the proposed contract too.

Now that President Carter has moved for an 80-day cooling off period, everyone wonders how to get the miners to comply. If we were a miner, what we'd want wouldn't be the contract raise immediately, as Mr. Carter suggested. We'd much prefer some assurance that the supposedly smart guys would make constructive use of the 80 days, burning up the last agreement and starting from scratch.

UMW President Arnold Miller, the mine owners and the federal mediators can begin by apologizing for not following instructions in the first place. Before the negotiations began last year the miners were surveyed on their demands, and cited health benefits first, pension benefits second and wages third. Yet their union boss went the other way. The 37% package breaks down to 31% in wages and only 6% in fringe benefits. And Mr. Miller negotiated away the all-expenses health plan the miners have had for 30 years.

The point of all this, and the reason we'd have voted against the pact if we were coal miners, is that health benefits are not subject to federal income tax and pension benefits are deferred and taxed at lower rates, while wage increases are gobbled up at the miners' marginal tax rates. The deductibles that Mr. Miller negotiated into the health plan, for instance, now must be paid in after-tax dollars, rather than tax-free ones. Similarly, the miners wanted to have pensions increased for those who retired prior to 1975—often their fathers and grandfathers. This is another way for a household to keep a pre-tax dollar from being clawed by Uncle Sam. The negotiators threw this idea out too.

Instead, these private sector management and labor people seemed determined to maximize the government's cut of this new contract. And what thanks do they get; the government economists fret that the 31% increase in wages may be "inflationary." If those economists looked at what the miners face they might be able to understand what is happening to all of us.

We asked Steve Entin, of the Joint Economic Committee of Congress, to figure out how much real income the coal miner is going to have in 1980 out of that 31% increase. He took a miner filing jointly, with two children and taking the standard deduction. He assumed a 6% per year inflation rate, that the Social Security tax increases would be retained, and that President Carter's "tax cut" would be enacted as proposed. The results:

By 1980, the miner working an average 1,800 hours would earn a gross income of $18,360, up from $14,040 last year. Assuming he has the advantage of the proposed Carter "tax cut," his combined federal income and Social Security tax would rise to $2,867 in 1980 from $2,171 in 1977. In 1980 dollars, he would have after-tax income of $15,493, which at an inflation rate of 6% would be worth $13,008 in 1977 dollars. Comparing this with his after-tax net of $11,869, he would have a raise of $1,139, or 9.6% over the three years.

If the inflation rate is 8% instead of 6%, however, half of that gain would be wiped out. And out of whatever is left, the miners have to pay health fees that had been free, and must also help support fathers and grandfathers. There is no small chance that they will end up going backward.

Inflation and taxation have similar effects, of course, on the mine operators' ability to

pay wage increases. But surely the owners can afford to be indifferent as to how a settlement is distributed, and in 80 days Mr. Miller ought to be able to figure out some way other than the one that maximizes the government's cut.

It is not the workers but the negotiators who need a "cooling off" period. The idea that this breakdown has occurred because of an excess of union democracy is absurd. The miners have a point. But nobody seems to listen to them.●

AIDING VICTIMS OF CHEMICAL DISASTERS

● Mr. GRIFFIN. Mr. President, last October the Senate passed a bill, S. 1531, which I authored, to provide interim relief for the innocent victims of chemical disasters.

This morning a subcommittee of the House Committee on Interstate and Foreign Commerce held hearings on the Senate-passed bill and a companion House bill, as well as other related measures.

I was pleased to have had the opportunity to testify in support of the Senate-passed bill, and I ask that a copy of my statement be printed in the RECORD.

The statement is as follows:

STATEMENT BY U.S. SENATOR ROBERT P. GRIFFIN

Mr. Chairman, as the author of Title I of the Senate bill (S. 1531) which provides important interim relief to innocent victims of chemical disasters, I am here to convey to the Subcommittee in the strongest possible terms the urgent need for prompt action by the House.

The pressing need to aid farmers and others injured by dangerous chemical substances is vividly illustrated by the tragic situation in my own state of Michigan, which has experienced the most pervasive chemical catastrophe ever to affect our food chain.

In 1973, polybrominated biphenyl (PBB), a fire retardant chemical, was accidentally mixed with cattle feed. The disastrous effects of the resulting contamination of Michigan's food and livestock are still being felt. Not only has the accident had a devastating economic and health impact on a great number of Michigan's farmers—many of whom have lost entire herds of cattle—but scientific studies indicate that many of Michigan's residents carry traces of PBB in their bodies.

Sadly, the PBB problem is not Michigan's alone. Traces of this chemical have recently been found in such geographically diverse states as Ohio, New Jersey, New York, Illinois, Pennsylvania, Tennessee, California, and Mississippi.

Of course, the need for assistance is not limited to Michigan's painful experience with PBB. Recent history has made us all too well aware that chemical disasters can strike in any state at any time with no advance warning. Within the past decade, Missouri, Mississippi, North Carolina, and Georgia have had to confront Dieldrin contamination; Virginia and Maryland have had Kepone poisoning; the Ohio River has been contaminated by several dangerous chemicals; Utah has lost a large number of sheep to a chemical warfare agent; and vast parts of the United States have been hit by polychlorinated biphenyl (PCB) contamination. The list, unfortunately, could go on and on.

So, while legislation is particularly important to Michigan now, it may be equally vital to the citizens of other states tomorrow. In fact, with the rapidly expanding use of chemical substances—more than 30,000 now in the stream of commerce and another 1,000 new substances likely to be introduced during the next year—it is probable that there will be more, not fewer, PBB-type incidents in the future.

In view of this alarming spectre, I introduced the Toxic Substances Injury Assistance Act (S. 899) in the Senate more than a year ago. This legislation—which was adopted as Title I of S. 1531 passed by the Senate on October 31, 1977—is designed to provide interim assistance to victims of a chemical disaster involving the contamination of food, livestock and poultry.

The approach of this legislation is threefold.

First, since one of the most difficult obstacles to containing a potential chemical disaster often is a lack of state funds, the Senate bill provides a mechanism by which a State can apply to the Environmental Protection Agency for Federal grants of up to 75 per cent of the amount a State pays victims injured by the chemical substance.

This kind of prompt, responsive action is vital because, in most instances, people who are suffering—those who are sick or whose livestock is wiped out—just cannot wait years for relief while their litigation claims drag through the courts. To qualify for grants under this bill, the State would have to assure the EPA Administrator that it will take over the litigation rights of chemical victims and return to the Federal government a proportionate share of any recoveries.

I believe it is important to emphasize here that the Senate bill contemplates assistance that is interim in nature. The intent is to allow people who suffer economic and physical injury to be "made whole" financially as quickly as possible, while litigation claims are pending. Since—as I have indicated—the State would be required to furnish assurances to the EPA Administrator that it would take over the legal rights of those victims who receive assistance and return a proportionate share of the recoveries, the Federal government's financial liability under this part of the program would be limited only to 75 per cent of those amounts that were not recovered by the State through legal action. This mechanism will insure that actual federal expenditures are relatively moderate in most cases of chemical accidents.

Second, the Senate bill provides for Federal grants to States for detection and monitoring of the effects of the chemical substances on the environment—particularly on humans and animals—and for the treatment of injured individuals and livestock.

Finally, authority is provided for grants to individuals—applied for through State governments—to reimburse actual medical expenses (not covered by insurance) of persons who have been injured by chemical contamination.

The Senate bill authorizes $50 million in this and each of the two succeeding fiscal years to cover the costs of this legislation.

In its deliberations, I think it is important for the Subcommittee to recognize that financial relief for victims of chemical accidents is not unprecedented. Let me cite a few examples:

The Department of Agriculture, pursuant to Congressional action, has established a dairy indemnity program that compensates dairy farmers and manufacturers whose milk or milk products are directed to be removed from the market because they are found to contain chemicals that present hazards to human health.

The recently enacted farm bill (P.L. 95–113) includes provisions to expand indemnity payments for dairy products contaminated by nuclear radiation or fallout and residues of chemicals or toxic substances in cases in which no other legal recourse is available.

The Bee Keeper indemnity program paid $3.7 million in 1976 to farmers who lost bees due to chemical pesticides. Incidentally, the farm bill extended this program too.

And, in 1944, Congress gave the Secretary of Agriculture specific authority to make indemnity payments for animals destroyed for disease control. (However, this law is inapplicable in cases of chemical contamination as it applies only to organic diseases.)

Unfortunately, these laws—while they are instructive as precedents—do little to help those who suffer from pervasive chemical catastrophies of the magnitude of the PBB tragedy.

I believe the bill passed by the Senate represents a fair, responsible, and responsive approach to a most serious and growing problem—how our government can best protect our citizens from the hazardous chemical accidents which are increasingly inevitable in a society increasingly reliant upon chemical substances.

Accordingly, Mr. Chairman, I strongly urge the members of this Subcommittee, the members of the full Interstate and Foreign Commerce Committee, and the House of Representatives to act quickly and favorably to approve effective legislation along the lines of S. 1531.●

THE RIGHT KIND OF TAX REFORM

● Mr. BIDEN. Mr. President, everyone is talking these days about the need for tax reform and tax simplification. No one who looks at my record will ever accuse me of being opposed to either. I am concerned recently, however, that more of the talk about reform centers around those tax provisions that many low- and middle-income families rely upon to help them meet some of the basic costs of living and bringing up a family. These reforms become tax increases for wide numbers of our taxpayers who are already shouldering a heavy burden.

It is these same people who pay heavy Federal income and payroll taxes; who pay heavy State income taxes; and pay ever-increasing local and school district property taxes. In fact, the property tax burden is getting to be one of the heaviest. We do not directly control State or local taxes here in Washington. However, when we propose tax reductions or tax reforms, we should consider the load imposed by other taxing authorities.

It is for this reason that I am disturbed by the recent talk about eliminating deductions of substantial importance to the average taxpayers, thus increasing his overall tax burden. This is not my idea of tax reform. I believe a primary goal of tax reform is to assure that every citizen pays a fair share of the cost of government. The people I am worried about already do. The first goal of tax reform should be to reach the person or company that deliberately shelters income from taxation in order to avoid paying an equitable share.

For this reason, my attention was captured by a headline in the New York Times on Sunday, February 8, 1978, that read: "The Art World Turns to Original Prints as Tax Shelters." This article, by Grace Glueck, told about an ingenious new tax shelter being put together recently in an effort to overcome the obstacles to sheltering money from

taxes included in the Tax Reform Act of 1976.

While some apparently felt that this will be of benefit to artists and promote new creative efforts, the Art Dealers Association of America is quoted as calling them schemes that involve the use of "art work solely as a device to avoid paying taxes." This is the kind of effort that tax reformers must guard against. Even if some side benefits accrue to the art world from a scheme like this, they are seldom large enough to be worth the tax money lost, that must be made up by other taxpayers. I believe this article well describes the kind of tax avoidance that should be the prime target of tax reforms. It is these schemes that should be attacked first, not the provisions of tax law providing tax relief to millions of American taxpayers.

Mr. President, I believe this article is most instructive. I therefore ask unanimous consent that it be printed in the RECORD.

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

THE ART WORLD TURNS TO ORIGINAL PRINTS AS TAX SHELTERS

(By Grace Glueck)

The flower etching by the well-known artist Lowell Nesbitt was beautiful, the affluent investor thought. And the plate from which it has been made, plus the rights to everything produced from the plate, was for sale for $234,000, with only $44,000 cash on the line.

The investor was told he could profit from the sale of prints, posters and other items made from the plate. But even more attractive was the income-tax write-off. Because the plate was a "depreciable property" with a "useful life" of seven years or more, he'd get an investment tax credit for the first year of his ownership, and could deduct for the plate's depreciation over a long period. The write-off in the first two years alone would be $64,400. He plunked down the initial payment and signed a 10-year note for the rest. And so he was in the business of producing artists' prints.

The transaction is typical of a trendy but controversial new development in the art world—the use of original-print editions as tax shelters. With changes in the 1976 tax law discouraging shelters in such fields as motion pictures, agriculture, oil wells and equipment leasing, a number—200 to 300 as a "guesstimate"—have already turned to the lucrative field of art.

OTHER USES INVOLVED

Beginning with a year-end rush that started last fall, promoters have been busy packaging deals in which the "master" matrix—metal plate, stone, woodblock, transparency, screen or other material from which the artist makes his print or photograph—is exploited for maximum production.

After a run of limited-edition graphics, the matrix, or plate, may be used to make posters, post cards, greeting cards, wallpaper, table mats, ceramic plates, T-shirts and other ancillary products, depending on the tastes of the participants. More than a dozen "names" are involved in the deals including, besides Mr. Nesbitt, James Rosenquist, Richard Lindner, Arman, Allan D'Arcangelo, Pierre Alechinsky, Karel Appel and the German movie actress Elke Sommer, who is also a painter and printmaker.

But many established print publishers and dealers look askance at the shelter proposals. In fact, the Art Dealers Association of America, a trade group of leading gallery owners, has recently issued a statement condemning them. Referring to the shelters as "schemes," the statement maintains that they are not "genuine and realistic" business ventures but involve the use of artworks "solely as a device to avoid paying taxes."

"FORM OF DEFERRAL"

Nevertheless, promoters of the shelters hold that besides their profit-making potential (a required feature if the Internal Revenue Service is to regard them as genuine business investments), they attract new money and marketing expertise to the art world. "If done right, it's a very good idea," says Rubin Gorewitz, an accountant who specializes in art-world clients, and is serving as consultant on a package that includes some big-name artists as well as lesser-knowns. "It stimulates the art market."

Mr. Gorewitz goes on to assert: "The Government doesn't lose anyway, since the shelters are a form of tax deferral. The investor eventually pays taxes on the income he earns from the venture. If it isn't profitable, then he has to eventually pay back the taxes deferred on the stated original value of the plate. It's a cheap way for the Government to subsidize art."

At present, there may be between 10 and 20 shelter packages—lawyers, accountants and businessmen who are reluctant to publicize their projects lest they be construed by the Securities and Exchange Commission, which has broad oversight in the investing field, as subject to its regulatory provisions.

LITTLE CASH DOWN

While details of the deals differ, depending on the promoter, the standard plan is for an affluent taxpayer to buy a plate, along with its reproduction rights, at a price determined by appraisal. (The deals do not pay unless a taxpayer is in at least the 50 percent bracket, because under that level the tax savings do not warrant the risk of the investment.)

The taxpayer gives the promoter a relatively small cash payment, and the balance of the purchase price, up to 80 percent or more, is paid with a "nonrecourse" note—that is, one for which the taxpayer cannot be held personally liable unless sales are made. The note is paid off through sales of the plate's products as they occur.

In the case of the Lowell Nesbitt flower etching, a breakdown of the $44,000 cash-on-the-line payment made by the investor would go this way: The promoter would take approximately 25 percent, or $11,000 for printing and advertising; another $11,000 for payment to accountants, lawyers, salesmen and "finders" who recruit investors. Approximately 60 percent or $13,200 of the remaining $22,000, would go to the artist, with the other 40 percent, or $8,800, as profit for the promoter.

The investor would make his profits, theoretically, in the sale of a large poster edition and then from other works produced with the plate, reinvesting a certain percentage, as in any business, for production costs. He would also take tax deferrals each year on the depreciation of the plate, even though he had only "paid" its full price with a nonrecourse promissory note.

Many artists and print dealers, however, are concerned about the possible uses to which the plate may be put over a nine-year life, which gives maximum tax deductibility.

Most of the shelter plans call for an initial run of, say, 175 to 300 limited-edition prints, each signed by the artists. But the "ancillary products," it is feared, may cheapen the artist's image.

FLOOD CALLED POSSIBLE

Some promoters, however, say that the artists they are working with retain "esthetic discretion." "If something is in bad taste, they can complain," Ron English, an investment consultant now promoting shelters, said. "After all, when Alexander Calder painted the sides of a Braniff plane, did it cheapen his image?"

As ancillary products of one Lowell Nesbitt plate, Mr. English intends to produce 10,000 posters and "limited edition" ceramic plates—in runs of, say, 12,500—which he says sell well in the Middle West for $65 to $70 apiece.

But for Mr. Nesbitt, as for some other artists, the benefits of the shelter plans outweigh concern about what is produced from them. Asserting that the deals in which he is involved have allowed him to do print series "that I never would have done otherwise, with complete artistic freedom," the artist adds: "I don't care if they eventually use the plate to make paper napkins. At that stage, no one will know who really did it, anyway. Listen, eat off Mona Lisa plates that I bought somewhere."

Another concern of those who dislike the shelter plans is that the market may be flooded with prints. Sylvan Cole Jr., a member of the dealers' association and head of Associated American Artists, one of the country's largest print galleries, says that the tax shelters will "create huge print editions, sold at inflated prices." They may glut the market and drive prices down drastically," he added.

Though some artists spurn the shelter proposals that would involve them in the market because of the plans' blatant commerciality, others have turned to a different kind of shelter arrangement that will, they hope, end up placing their work in museums. As detailed by at least one entrepreneur, the plan involves the commissioning of top-drawer artists with established market prices to do print editions.

The prints are sold, at "wholesale" prices, to taxpayers who hold them for several years, then donate them to museums at an "appreciated" value, which amounts to the price the print would bring on the retail market value, the donated print because institutions are allowed deductions at full market value, the donated print becomes a tax write-off.

OPINIONS VARY

Will the shelters really work, in terms of profits, for the artist and the investor? Jerald Ordover, a lawyer for many art-world clients, replies with a cautious "yes," adding "If the deal is legitimate, with fair valuations on the plate and the prints, the artists not abused and the prints well handled."

But another accountant, who preferred to remain anonymous, took a dim view of the returns for the investor. "You buy a plate for, say, $200,000, and in no way are you going to make that money back by the time the artist and promoters get theirs."

Another key question raised by the dealers' association and others is whether the new shelters will pass muster by the Internal Revenue Service. The association thinks they will not. It cites appraisals it has examined as "highly problematic" and "grossly inflated," and urges artists and the public not to participate in the projects.

A spokesman for the I.R.S. in Washington, said that the tax examiners, in assessing all the shelter deals, would be interested in such questions as "the proximate value of the nonrecourse notes to the property purchased, whether there is genuine profit motive, and the relationship of the taxpayer's actual income to the deductions he claims."

He added: "When claimed tax benefits are based on exaggerated appraisals or misallocations of costs or what we believe to be doubtful legal theories, then we'll raise the issues on audit and carry them to litigation if necessary."●

UNITED NATIONS RESOLUTION 242 AND ISRAELI WITHDRAWAL

● Mr. CHURCH. Mr. President, an article in yesterday's Washington Post points out that there are significant differences within Israel over the interpretation of U.N. Resolution 242 and Israeli withdrawal from the West Bank. Two former Prime Ministers, Golda Meir and Yitzhak Rabin, have expressed their disagreement with Prime Minister Begin over his statements concerning withdrawal from territory captured in the 1967 war.

Anthony Lewis also commented on the latest domestic developments within Israel in his column of Monday, March 6, 1978. Both the Star article and the Lewis column are deserving of our attention 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 the Washington Star, Mar. 6, 1978]

BEGIN WEST BANK VIEWS CHALLENGED

TEL AVIV.—Former Prime Ministers Golda Meir and Yitzhak Rabin testified last night that Israel was committed to withdraw from the West Bank of Jordan under a key United Nations Security Council resolution.

They thus backed the United States government against Prime Minister Menachem Begin in a dispute over the interpretation of Security Council Resolution 242.

The resolution adopted Nov. 22, 1967, and accepted the following year by the Israeli government headed by Levi Eshkol calls for "withdrawal of Israeli armed forces from territories of the recent conflict," as one of the principles for a just and lasting peace.

Begin has maintained that the resolution does not specify the withdrawal must be on all fronts and that Israel would honor its commitment by giving up territory in Sinai alone.

The Israeli leader has not refused to negotiate a withdrawal from the West Bank, but has insisted he is not bound in advance to one.

This is one of the obstacles to attempts by Under Secretary of State Alfred Atherton, to bring the Jordanians into the peace-making process and to secure an agreement between Israel and Egypt on a declaration of principles for a Middle East peace settlement.

At a meeting of political leaders of the Labor Party, which ran the government until last May's parliamentary elections, Meir and Rabin said all Labor governments had agreed that Resolution 242 covered the West Bank.

THE TACTICS OF PEACE?

(By Anthony Lewis)

WASHINGTON.—American officials concerned with reviving the peace talks between Israel and Egypt are in a discouraged state. The reason is a position taken by Prime Minister Begin in private and now starting to emerge in public. Mr. Begin is arguing that the basic United Nations resolution on the Middle East, calling for Israeli withdrawal from occupied land, need not apply at all to the West Bank.

Resolution 242, approved unanimously by the Security Council on Nov. 22, 1967, states two "principles." One is 'withdrawal of Israeli armed forces from territories occcupied" in the six-day war of 1967. The other is an end to belligerency and a recognition that every state in the area has a "right to live in peace within secure and recognized boundaries."

Because the resolution coupled those two ideas instead of just demanding withdrawal, it was regarded at the time as a big gain for Israel. And its acceptance has generally been considered since then as a fundamental premise of negotiation by any party.

Of course there has always been argument about the extent of "withdrawal" required. The Arabs have said it must be total, to the borders of June 1967. American Governments have said there could be minor adjustments here and there. Israeli has called for territorial compromises. But until now no one has suggested, as Mr. Begin now has, that 242 would be satisfied by withdrawal on only one front: the Sinai, for instance.

It is a startling argument for several reasons. One is that it has no support in the legislative history of resolution 242. The principal spokesmen when it was adopted—including Arthur Goldberg, then the American delegate—never suggested such a partial meaning.

Another reason for surprise is that Mr. Begin himself has previously viewed 242 as requiring at least some withdrawal on the West Bank. He objected on that very ground when Israel formally accepted 242 as a "framework" for negotiation, in response to a Nixon Administration initiative in 1970. Mr. Begin was a member of a coalition cabinet then, and he quit because—he said—Israel had undertaken to negotiate withdrawal from "Judea and Samaria."

If the Begin Government persists in this new contention, the chances of reviving the hopes of peace in the Middle East must be rated as bleak. For in effect Israel will have limited the possibilities to a separate peace with Egypt, excluding all other issues, and there is no sign that President Sadat will—or for that matter can—agree to such a purely bilateral settlement.

Since his visit to Jersusalem Sadat has said that any Egyptian agreement with Israel must at least set a pattern or principle for all of Israel's neighbors to make peace. He plainly regards that as a minimum protection against the criticism he has had from other Arabs for negotiating at all. And his particular concern is to set principles for the West Bank.

Israel has indicated that it cannot negotiate West bank issues with Sadat—that King Hussein of Jordan and perhaps some representatives of the West Bank Palestinians must join the talks. But neither Hussein nor, certainly, the Palestinians will negotiate except within the framework of Resolution 242.

All this explains why Alfred Atherton, Jr., the Assistant Secretary of State, has been unsuccessful so far in his shuttle efforts to get agreement between Israel and Egypt on a Statement of Principles that would let their direct talks resume. The crucial obstacle is Israel's refusal so far to accept the principle of 242 for the West Bank.

Apparently Mr. Begin argues that he is being asked to accept a "precondition" for negotiations. But 242 is the only imaginable framework for agreement among the parties and for broad international support. To abandon that framework, as President Carter said the other day, would be to abandon the hope of peace for "many months or years."

Mr. Begin's new position on 242 is unhappily reminiscent of his Government's performance in establishing and expanding Israeli settlements in the occupied territories during the peace negotiations. It is a slippery argument, less than straightforward. Can anyone really believe that such tactics are likely to produce the confidence needed for peace?

And there is a broader concern. Israel has a great moral claim on the world. She earns and gets sympathy especially from this country. We could understand when she held territory to bargain for security. But understanding will diminish if Israel is offered genuine security and insists on retaining territory for its own sake.

Sadat has offered what for 30 years was a dream: full diplomatic relations, trade-security arrangements. More importantly, he now offers a chance for Israel to form an entente with the moderates in the Arab world—with Jordan and Saudi Arabia as well as Egypt. That is an end desired not only by Israel but by all the West. Is Mr. Begin really going to throw the opportunity away? ●

PRELIMINARY NOTIFICATION OF PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD in accordance with previous practice.

I wish to inform Members of the Senthat such a notification was received on March 3, 1978.

Interested Senators may inquire as to the details of this preliminary notification at the offices of the Committee on Foreign Relations, room S–116 in the Capitol.

I ask unanimous consent that the letter be printed in the RECORD.

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

DEFENSE SECURITY
ASSISTANCE AGENCY,
Washington, D.C., March 3, 1978.

Mr. WILLIAM RICHARDSON,
Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. RICHARDSON: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency indicates that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERNEST GRAVES,
Lieutenant General, U.S.A., Director, Defense Security Assistance Agency.●

THE OUTER CONTINENTAL SHELF OIL AND NATURAL GAS REVENUE SHARING

● Mr. TALMADGE. Mr. President, the Georgia State Senate, now in session in Atlanta, has adopted a resolution which,

for myself and my colleague, Senator NUNN, I bring to the attention of the Senate, and ask unanimous consent that it be printed in the RECORD.

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

RESOLUTION

Whereas, Outer Continental Shelf oil and natural gas resources both discovered and undiscovered are expected to be an important means of satisfying future national energy needs; and

Whereas, it is the policy of the federal government to develop such resources in the national interest; and

Whereas, it is expected that in excess of 109 billion dollars may accrue to the federal government from lease purchase payments and royalties on undeveloped Outer Continental Shelf oil and natural gas resources; and

Whereas, adjacent coastal states are likely to incur large economic and environmental costs as a consequence of Outer Continental Shelf oil and natural gas production; and

Whereas, the major existing federal coastal state Outer Continental Shelf impact assistance program is inadequate for meeting coastal state responsibilities associated with such Outer Continental Shelf development; and

Whereas, the continued preemption of financial resources by the federal government has dramatically shifted the balance of power in the federal system of the United States to the impairment of the ability of state governments to meet emerging needs.

Now, therefore, be it resolved by the Senate that the members of this body endorse the concept of equitable coastal state government sharing of revenues derived by the federal government from Outer Continental Shelf oil and natural gas development and urge the President and Congress to enact a program establishing a fund for dispersing fifty percent of federal Outer Continental Shelf revenues to coastal state governments and to incorporate an equitable formula for the allocation of such revenues which entitles any coastal state within a given federal fiscal year to a minimum of two percent and a maximum of ten percent of such revenues and which is based upon the percentage of adjacent Outer Continental Shelf oil and natural gas acreage leased, the percentage of the volume of adjacent Outer Continental Shelf oil and natural gas production and the percentage of oil and natural gas first landed in such coastal state in a given federal fiscal year.●

HEALTH PLANNING FOR RURAL AREAS

● Mr. CLARK. Mr. President, Congress is currently deliberating on health planning legislation that would amend the National Health Planning and Resources Development Act of 1975 (Public Law 93–641).

Because of my deep concern for the needs of small town and rural Americans, I have introduced a bill, S. 2487—the Rural Health Needs Planning Act of 1978, that specifically addresses the health care problems facing these people. The bill would make health planning more relevant to the interests of rural people by increasing their input into the planning process.

In developing the provisions of S. 2487, we have worked with many groups seeking to protect the interests of rural people. We are pleased that at a recent conference of one of these groups, the National Rural Electric Cooperative Association (NRECA), the concepts embodied in S. 2487 were endorsed.

In a resolution on health legislation adopted at their meeting, NRECA states that—

The results of the law indicate that Health System Agencies . . . have been insensitive to the needs of rural areas which are often quite different from urban.

We agree. It is this insensitivity to the distinctions between rural and urban concerns that we seek to redress through the pasage of S. 2487.

Specifically, the NRECA resolution urges the following changes in existing law: Strengthening the voice of rural areas in developing State and local health plans; providing more flexibility in planning guidelines so as not to handicap or reduce health services in rural areas; providing resources to medically underserved areas for construction of needed facilities; and requiring the establishment and funding of subarea councils in health service areas to insure more effective input by rural communities. S. 2487 is designed to promote exactly these changes.

The bill contains six provisions that focus on the national health planning guidelines, adequate representation of rural interests within the health planning process, and financial support for health planning in medically underserved areas.

S. 2487 calls for the following modifications in the present law. First, special attention to the needs and concerns of rural people would be incorporated into the national health planning guidelines. The Secretary of HEW would be mandated to include special guidelines for rural communities when he deemed it appropriate to do so.

Second, representation of rural people on the National Council on Health Planning, the body that consults with the Secretary of HEW, would be required.

Third, representation of rural people on statewide health coordinating councils, which advise State health planning agencies would be required.

Fourth, the development of subarea councils would be encouraged by authorizing the Secretary of HEW to make grants to health system agencies (HSA's) for this purpose.

Fifth, the existing mechanism for HSA grants would be modified to include extra assistance for planning in medically underserved areas.

Finally, centers for health planning would be required to develop consumer education materials that emphasize the needs of the medically underserved.

The passage of this bill is critical if we are to insure that the health planning system serves all Americans—rural and urban alike—equitably. I urge my colleages to support this bill, and I encourage their cosponsorship.

I ask unanimous consent that the NRECA resolution be printed in the RECORD.

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

RESOLUTION ADOPTED AT NRECA'S 36TH ANNUAL MEETING—FEBRUARY, 1978

RURAL HEALTH LEGISLATION

In the National Health Planning and Resources Development Act of 1975 (P.L. 93–641), the Congress stated as the first priority for consideration in the formulation of national health planning goals and in the development and operation of Federal, State, and area health planning and resources development programs:

"The provision of primary card services for medically underserved populations, especially those which are located in rural or economically depressed areas."

Unfortunately, the results of the law indicate that Health System Agencies, empowered with the task of developing health plans for their areas ranging in population from 500,000 to 3-million—as well as the Department of Health, Education and Welfare, responsible for administering the Act and developing the guidelines and regulations, have been insensitive to the needs of rural areas which are often quite different from urban.

For example, under the original HEW-proposed national health planning guidelines, many small rural hospitals would have been forced to close, thus adding to the shortage of health practitioners and decreasing the accessibility to primary health care by rural people.

Congress is now considering renewal of P.L. 93–641. We would urge that this law be amended: to strengthen the voice of rural areas in developing state and local health plans; to provide for more flexibility in planning guidelines so as not to handicap or reduce health services in rural areas; to provide resources to medically underserved areas for construction of needed facilities; and to require the establishment and funding of subarea councils in Health Service Areas to insure more effective input by rural communities.

We urge these amendments and others which will achieve the statutory priority in P.L. 93–641: "The provision of primary care services for medically underserved populations, especially those which are located in rural or economically depressed areas."●

ILLEGAL ALIENS

● Mr. TALMADGE. Mr. President, the Georgia General Assembly, now in session in Atlanta, has adopted a resolution which, for myself and my colleague, Senator NUNN, I bring to the attention of the Senate, and ask unanimous consent that it be printed in the RECORD.

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

RESOLUTION

Urging the Congress of the United States to enact legislation to reduce the flow of illegal aliens into this country; and for other purposes.

Whereas, there are approximately eight and one-half million illegal aliens presently residing in the United States; and

Whereas, an estimated twenty-five thousand illegal aliens reside in the State of Georgia; and

Whereas, illegal aliens annually cost the national economy an estimated thirteen billion dollars, evade paying an estimated one hundred fifteen million dollars in taxes and send an estimated three billion dollars out of the United States each year to the detriment of our balance of payments; and

Whereas, it appears that the best solution to reduce the number of aliens attempting to enter the United States in violation of law is to restrict employment opportunities and improve border operations.

Now, therefore, be it resolved by the General Assembly of Georgia that the members

of this body do hereby urge the Congress of the United States to enact legislation (1) to remove the incentive for aliens to illegally enter and remain in the United States by prohibiting the employment of illegal aliens by American employers and imposing substantial civil and criminal penalties upon violators and (2) imposing more stringent safeguards against the unlawful migration of aliens into this country.

Be it further resolved that the Clerk of the House of Representatives is hereby authorized and directed to transmit suitable copies of this Resolution to the President of the United States, the Attorney General of the United States, the Immigration and Naturalization Service and each Senator and Representative from Georgia in the Congress of the United States.●

AIR TRANSPORTATION REGULATORY REFORM ACT OF 1977

● Mr. CANNON. Mr. President, in February of 1977 Senator KENNEDY and I introduced S. 689, the Air Transportation Regulatory Reform Act of 1977. Earlier in January of 1977, Senator PEARSON introduced a similar piece of legislation, S. 292, the Commercial Aviation Regulatory Reform Act of 1977. During the months of March, April, and May of 1977, 14 days of hearings were held on these two bills, and over 186 witnesses appeared before the committee. Then beginning on June 21, the full Commerce Committee began its consideration of these bills in executive markup sessions. After an exhaustive 20 full committee meetings and 4 staff working drafts of the bill, on October 27 the committee ordered the bill reported.

On Monday, February 6, of this year S. 2493, the Air Transportation Regulatory Reform Act of 1978, and the report accompanying it were introduced on the floor of the Senate. S. 2493 represents the diligent and dedicated efforts of the members of the committee and the staffs to produce a comprehensive and well-seasoned program for reducing the regulatory constraints in the air transportation industry. The purpose of this legislation is to attain a more competitive market-oriented environment for the benefit of carriers and stimulate innovative service options and lower fares for the benefit of the public. The bill reported by the committee achieves these goals by phasing in provisions for pricing and entry flexibility, and by mandating the CAB to streamline its administrative procedures.

While some air carriers and labor groups remain opposed to reform, the list of supporters includes the following: President Jimmy Carter, former President Gerald Ford, Department of Transportation Secretary Brock Adams, former DOT Secretary William Coleman, Civil Aeronautics Board Chairman Alfred Kahn, former CAB Chairman John Robson, Treasury Secretary Michael Blumenthal and former Secretary William Simon, Council of Economic Advisers Chairman Charles Schultze and others at the Federal level. Among the groups in support of the bill are: The National Association of Counties, the National Association of State Aviation Officials, the Airport Operators Council International, United Airlines, Pan American Airlines, Alaska Airlines, Hughes Airwest, and Frontier Airlines among the certificated Federal carriers; the American Conservative Union, Common Cause, the National Taxpayers Union, Congress Watch, the American Association of Retired Persons, the National Association of Manufacturers, and the Aviation Consumer Action Project and others as members of the ad hoc Committee for Airline Regulatory Reform and the list goes on.

While not a member of the Commerce Committee and therefore not a participant in the committee's executive session to markup this legislation, Senator KENNEDY has been instrumental in his efforts to bring about reform in the air transportation industry beginning with his CAB oversight hearings before the Administrative Practice and Procedure Subcommittee in 1975. Senator KENNEDY continues to lend his strong support to reform and has asked to be listed as a cosponsor of this legislation, S. 2493. In addition and also a strong supporter of reform, my distinguished colleague, Senator PERCY also wishes to be listed as a consponsor. I would also like, at this time, to list as cosponsors of the bill the following members of the Commerce Committee all of whom worked diligently during the committee markups to report this legislation to the Senate floor: Senators STEVENSON, FORD, RIEGLE, PEARSON, STEVENS, and SCHMITT.

I hope all my colleagues in the Senate will study the committee report and support this important legislation.●

CONGREGATE HOUSING FOR THE ELDERLY

● Mr. BIDEN. Mr. President, in 1970 Congress enacted the Housing and Urban Development Act. A vital part of this legislation was the congregate public housing program. Unfortunately, insufficient Federal financial help has prevented our meeting the challenge of this innovative idea. The congregate housing program encourages the development of residential settings for older people, as well as handicapped and displaced persons who need some supportive social services to allow independent living, but not enough to require institution supervision and care.

Mr. President, I rise today in support of my colleague's Senator WILLIAMS' proposal, the Congregate Services Act of 1978. Too many older Americans are unnecessarily being forced into institutions, because they are in need of simple supportive services which are not available to them in their present residence. The Congregate Housing Services Act would authorize HUD to enter into 3- to 5-year contracts with local public housing agencies to provide funds for social services, either directly or through arrangements which local service provides, to elderly and nonelderly residents who need a congregate living environment.

Mr. President, I ask unanimous consent to have printed in the RECORD part of an article, "An Assessment of the Availability and Application of Federal Resources," by George Thomas Beall, that first appeared in an HEW Administration on Aging publication. I believe Mr. Beall's analysis of the problem clearly demonstrates the need for this legislation and perhaps even a more comprehensive commitment as he suggests in his conclusion.

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

LIMITS OF SOCIAL SERVICE PROGRAMS IN PUBLIC HOUSING TODAY

The need to improve upon the current situation if Federal program resources are to be applied to the provision of services in the manner required in congregate housing is substantiated in the experiences of public housing for the independent elderly. As elderly occupants of such housing have grown older, many have undergone changes in health and social circumstances that have dictated a need for one or more of a variety of services to enable them to continue to maintain independence and autonomy. Local housing authorities and managers in many communities have responded by trying to arrange for the provision of services in behalf of tenants able to benefit from them. For the most part, reliance has been placed on service programs administered by the Department of Health, Education, and Welfare and operated by existing public and private community service agencies. Principal sources of funds have been Titles III and VII of the Older Americans Act and various social services Titles of the Social Security Act. In general, local experiences in utilizing these Federally-supported programs have been of limited success because of the restrictions and complexities previously examined in this paper.

The coverage of these HEW service programs in public housing projects is spotty. The Administration on Aging reports that over 400 housing authorities have provided 708 sites for nutrition projects under the Title VII National Nutrition Program. Yet there are approximately 1,704 public housing projects which are exclusively for the elderly. By the same token, recent HUD data reveal that 298 public housing authorities with 200 or more units under management (both elderly and family units) utilize social service funds under Title III of the Older Americans Act, and 77 such authorities have executed contracts for social services under appropriate Titles of the Social Security Act. Yet there are approximately 2,700 local housing authorities in place across the nation, over 750 of which have 200 or more units under management. HEW programs are present in some places and not in others, in spite of expressed Federal policy to improve the quality and quantity of social and other services necessary to maintain the well-being of tenants in all HUD-assisted housing, primarily through HEW-administered programs.

M. Powell Lawton's examination of 104 public housing sites provides additional evidence indicative of the limited success experienced in coordinating shelter and services under existing authorities. In spite of the need for services expressed by housing administrators and tenants alike, Lawton's findings revealed the presence of a limited meals program (typically a hot lunch, five days a week) in only 16 of the sites studied. Social services, mainly tenant relations, were delivered by a staff worker in 24 percent of the sites. Staff-provided homemaker services were offered in only 10 percent of the sites, although 81 percent of the tenants interviewed expressed need for personal care services (e.g., defined in his study to include assistance in such tasks as cooking and housekeeping) not now available. Periodic transportation to various types of facilities, including doctors, banks, and stores, was available through 23 percent of the study sites, although the latter tended to be isolated from the facilities of everyday living.

Are services adequate where they exist? Wilma Donahue's survey of 182 public hous-

ing authorities strongly suggests they are not. Although nearly all housing authorities in the survey reported that they provided or arranged for some services to tenants, most reported that the services available were not adequate to meet tenant needs. From her findings, Dr. Donahue concluded:

"Although on the surface the reported service package may appear to provide the tenants with the assistance needed to maintain independent living, in reality the extent and availability of services provided in each site is limited. For example, although 80 percent of the projects reported having a transportation service, most pointed out that the service is generally no more than occasionally available and is not provided by the project itself. The meal service is generally limited to one meal, 3 to 5 days a week, provided on and off the housing site through a Title VII Older Americans Act Nutrition program. The housekeeping service is often only available to tenants receiving SSI benefits while other tenants, equally in need but whose incomes are derived from a different source, are not eligible for the service and few projects provide the service themselves.

"However, it is not enough since most still have tenants who need more services than can be provided in this rather hit-and-miss manner. In fact, 68 percent of the housing projects studied reported that, in their judgment, additional services are necessary to meet the existing needs of their tenant population. . . ."

The fact is that a way has not been found to ensure the availability of services in the amount, frequency, and duration required in existing housing programs. This is so in spite of acknowledged need, in spite of the willingness of housing authorities to respond, and in spite of the expectation in public policy that such need be met. Why is it so? A primary reason has been that competition for limited social service funds makes it impossible to guarantee their availability in the amounts necessary to support comprehensive service programs. Furthermore, even where financial support has been made available, the provisions of existing social service programs have fostered the development of a minimal range of services, delivered irregularly, with no long-term guarantees of their continuation. The expressed purposes of congregate housing make unacceptable such a hit-and-miss approach to services provision and financing.

IMPROVING THE CURRENT SITUATION

Are there ways to more effectively ensure the availability of Federal assistance in financing services in the manner required in congregate housing? The current situation, as has been shown, provides some hope, but no certainty, that Federal resources can be effectively brought to bear. This paper concludes with a discussion of four options to consider in improving the current situation. The merits of each option and of the feasibility and appropriateness of combining several options, however, are largely left to future resolution.

OPTION A: CREATE A CATEGORICAL PROGRAM OF SUPPORT FOR CONGREGATE HOUSING, INCLUDING THE SERVICE PACKAGE

Congress might be encouraged to enact a congregate housing program which would include authorization and appropriations for the service elements. Under such an option, housing sponsors might contract for the services or develop service capabilities through an in-house management plan.

In such a categorical program, the necessary service subsidy might be designed to assist tenants on the basis of a sliding scale of fees. That is, the amount of service subsidy required would vary among tenants, according to their need and ability to pay. The service subsidy might also be further controlled by requiring that, to the degree possible, those services which exist in the community, and for which tenants are eligible, should first be utilized on their behalf.

A critical factor to be considered, however, relates to the strong, separate identity attached to HEW service programs and HUD shelter programs. Although the availability of community development block grant funds for the operation of service programs under certain conditions, as well as Model Cities program experiences, establish precedents for service funds in housing and community development programs, the question remains: Should a program of congregate housing, including the shelter and service elements, be a HUD program? Or should it be an HEW program? Can it be both?

OPTION B: IMPROVE THE INCOME OF OLDER PERSONS

The clear suggestion here is that the benefit levels of Federal income security and assistance programs be increased to the extent that elderly tenants of congregate housing, even those with the lowest income, have the ability to pay for the services they require. This would mean either that direct income benefits be raised or that a program of subsidy be instituted. It has been suggested that the structure of such a subsidy program might require:

1) Establishment of a Federally-supported voucher system which would enable older persons to purchase those services necessary to enable them to avoid hospitalization or institutionalization and to remain in their own homes, congregate housing, or other places of independent residence.

2) Liberalization and extension of the home-health care provisions of Medicare to support, outside health care institutions, those services needed to prevent unnecessary institutionalization.

The first proposal calls for a completely new national program available to all older persons in need, without regard to the State or community in which they reside. The second proposal, recognizing the almost universal applicability of Medicare provisions to the older population, suggests that the institutional care bias present in Medicare can be overcome and that a national program of home services can be secured by building upon existing legislative and financial structures. Of course, both alternatives presuppose the availability of services to which new or expanded financing mechanisms can be applied. In the current situation, the availability of such services throughout the nation is not guaranteed.

OPTION C: INCREASE THE FUNDS AVAILABLE IN EXISTING SOCIAL SERVICE PROGRAMS

Implicit in this option is acceptance of the current split responsibility between HUD and HEW, a split that originates in the heart of the legislative process wherein separate Congressional committees independently consider housing and welfare-related programs and funding levels. Can HUD and HEW ensure the availability of shelter and service funds in the mix necessary to foster the development of congregate housing, when both agencies work through separate program objectives and structures and through separate State, regional, and local counterparts? Even with administrative agreements to coordinate HUD and HEW resources in this regard, will increased funds alone overcome the legislative, regulative, and administrative provisions that restrict the application of existing categorical programs to congregate housing?

OPTION D: EARMARK A PROPORTION OF HEW SERVICE FUNDS FOR SUPPORT OF SERVICES OF CONGREGATE HOUSING

In considering this option, Marie McGuire Thompson emphasizes the problem of scheduling in the light of annual appropriations. In her analysis, she recognizes that "it requires about 18 months to acquire land, design and construct housing. While service agencies may make a moral commitment for the services component, they would not be able to guarantee either the availability of funds in a second year of appropriations, nor could they guarantee their continuation."

This limitation applies equally well to existing Federal program dependence on administrative agreements to coordinate shelter and service resources, executed without specific dollar commitments and funding schedules, have not been effective in assuring the availability of service funds in subsidized housing. As a case in point, consider the initial Federal efforts in congregate housing, undertaken in the mid-1960's. These efforts were preceded by a formal cooperative agreement between the HEW Commissioner of Welfare and the Commissioner of the Public Housing Administration. However, in the absence of earmarked funds and specific statutory authority, these early efforts resulted only in the initiation of pilot projects at four sites where State and local support for such housing was already present.●

CRITICAL PLIGHT OF FARMERS

● Mr. TALMADGE. Mr. President, the Georgia Senate on February 21 adopted a resolution that, for myself and my colleague, Senator NUNN, I bring to the attention of the Senate and ask unanimous consent that it be printed in the RECORD.

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

RESOLUTION

Whereas, the problems besetting Georgia farmers are already at a crisis level; and low marketing prices, rising production costs, the winter freeze and the summer drought, the alfatoxin mold, and the army worm have combined to place Georgia agriculture in a perilous position which affects all Georgia citizens; and

Whereas, while federal assistance is necessary to save agriculture, the Food and Agriculture Act of 1977 as presently implemented is not adequate; and

Whereas, the five-point supplemental agricultural program proposed in January by Senator Herman E. Talmadge is the best solution currently available; and

Whereas, the members of the Agriculture and Consumer Affairs Committee of the Georgia House of Representatives and the members of the Agriculture Committee of the Georgia Senate met in a joint session on January 26, 1978, together with farmers, agricultural leaders, and other concerned citizens, to discuss the plight of Georgia agriculture; and

Whereas, that group sent a letter to President Carter requesting implementation of the Talmadge plan.

Now, therefore, be it resolved by the Senate that President Carter and Secretary Bergland are urged to immediately approve the Talmadge plan and implement its provisions in the 1978 crop year.

Be it further resolved that the Secretary of the Senate is hereby authorized and directed to transmit appropriate copies of this resolution to President Jimmy Carter, Secretary of Agriculture Bob Bergland, Senator Herman E. Talmadge, Congressman Thomas S. Foley, Honorable James T. McIntyre, Jr., and the members of the Georgia Congressional Delegation.

The resolution deals with the critical economic plight that farmers in Georgia and throughout the Nation find themselves in today.

I am pleased that the Georgia Senate has endorsed the five-point emergency plan that I have proposed to President Carter and Agriculture Secretary Bergland. The resolution is an eloquent ex-

pression of the urgent need for swift and decisive action to aid American agriculture.

I hope this aid will be forthcoming in the immediate future from the administration and from the Congress.●

DANGEROUSLY PASSIONATE CERTAINTIES

● Mr. BAYH. Mr. President, last Wednesday my good friend and colleague, Senator THOMAS MCINTYRE from New Hampshire, made a speech here in the Senate announcing his decision to support the Panama Canal treaties. His statement was immediately acclaimed by Senators on both sides of the aisle and the issue for its clarity, character, and courage. At the same time, he denounced an ominous trend fostered by what one commentator has described as "dangerously passionate certainties" which mark the growing attitude of certain political groups. I would like to associate myself not only with the praise which his remarks prompted but also the purpose of his message.

The Panama Canal treaties have stirred feelings of deep patriotism in all of us. Unfortunately, many have attempted to equate a Senator's position on these agreements with patriotism itself. Regrettably, a few who oppose these treaties tend to be so absolutely certain of the correctness of their own position that they appear to feel their vote should be counted "more equal" than the votes of those who support the treaties or of the many Americans who do not feel quite so passionately about this issue.

This attitude is not at all in keeping with the spirit of compromise for the common good which continues to characterize the conservative tradition in the United States. Instead, the spokesmen of this radical new right seem to be uttering phrases which are remarkably similar to the core philosophy of Marxism-Leninism which extends only to those who "truly understand the course of history" the right to rule. This new "vanguard" lives by the same code as its counterpart on the left who, as Senator Hubert Humphrey once said:

> Live by the strict rule that whatever they think is right is necessarily right. They will compromise on nothing. They insist that everyone follow their thinking.

Mr. President, the people of New Hampshire have insisted upon moral fortitude on the part of their representatives here in the Senate and a determination to do what is right for this country. Those requirements have been more than met by their senior Senator. His March 1 statement on the Panama Canal treaties and the danger of extremism in contemporary political life demonstrated beyond a shadow of a doubt the magnificant energy and competence he brings to this commitment.

The task of decision with regard to the Panama Canal treaties has not been easy for any Senator. Some are still not finally resolved whether to vote in favor or against these proposed agreements. In view of the 1978 Senate race in New Hampshire, conventional political wisdom would argue that a vote against the treaties would be the most expedient course for Senator MCINTYRE. However, conventional political wisdom in this case would be wrong. It would require THOMAS MCINTYRE to sacrifice his own good judgment to the opinions of those who claim theirs is the only true path to political salvation, and this is something TOM MCINTYRE will never do.

Mr. President, despite the fact that some of the most distinguished conservative spokesmen in this country, including William F. Buckley, have made impeccably logical cases for the canal treaties, the radical right continues to cast aspersions on everything from the economic motives of treaty proponents to their religious beliefs. It is encouraging to know that we have men in the U.S. Senate like TOM MCINTYRE who possess the fortitude to speak out forcefully and effectively against those so cruelly possessed by their own illusion of self-righteousness.

Mr. President, at this time I ask unanimous consent that a copy of excerpts from Senator MCINTYRE's speech as they appeared in the Washington Post of March 3 be placed in the RECORD.

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

THE CANAL TREATIES AND THE NEW RIGHT

(By THOMAS J. MCINTYRE)

I believe the techniques used to exploit the issue of the Panama canal treaties are the most compelling evidence to date that an ominous change is taking place in the very character and direction of American politics.

In his farewell broadcast several months ago, Eric Sevareid warned of the paradoxical rise of "dangerously passionate certainties" in a time of no easy answers. One could speculate endlessly about the root cause of this development; a generation of disillusion and disenchantment with the lack of integrity and the misuse of power of leaders and institutions; the humbling experience in Vietnam; the unrelenting pressure of unfocused anxieties about national direction and purpose; and the all-too-human inclination to turn in frustration to the slogans and nostrums of a simpler time. But whatever the cause, I see abundant evidence that these "dangerously passionate certainties" are being cynically fomented, manipulated and targeted in ways that threaten amity, unity and the purposeful course of government in order to advance a radical ideology that is alien to mainstream political thought.

Already we have seen the vigor of the two-party system sapped by this phenomenon. More and more Americans appear unwilling to abide by the essential ethic of the party system—that willingness to tolerate differing views within the party, and to accept the party platform, however unpalatable some of its provisions, in order to advance a general political philosophy. As a result, the traditional role of the parties is slowly being usurped by a thousand and one passionately committed special-interest, splinter-faction and single-issue constituencies. . . .

I believe in firm and outspoken commitment to principles and convictions. I would readily agree, as someone once said, that there are times when compromise offers little more than an "easy refuge for the irresolute spirit." But I would make a distinction between commitment that is rooted in reality—commitment, for example, that recognizes the linkage between problems and the consequences of ignoring that linkage when applying solutions—and commitment that denies reality and is, in truth, but the blind and obsessive pursuit of illusion.

Extremists who deny reality in the pursuit of illusion deny something else, something of fundamental importance in our republic of free men and women. They deny the differences that distinguish one human being from another. They deny the indisputable fact that each of us is the result of a unique combination of genes and chromosomes, of influence and impressions, of training and of faith. and of the milieu from which we sprang. In short, they deny everything that science and simple observation tell us about human nature and individual capacities and limitations.

By proceeding from the flawed premise that all of us are alike, it is easy for ideologues to conclude that we must see every issue as they see it—unless there is something sinister in our motivation. And they proceed from that premise with an arrogance born of the conviction that they and they alone have a corner on patriotism, mortality and God's own truths, that their values and standards and viewpoints are so unassailable they justify any means, however coarse and brutish, of imposing them on others.

I want to be fair about this. In the particular instance of the canal treaties, I'm talking about the kind of politics practiced by what has come to be known as the New Right. But I want to note that the record of extremists on the ideological left bears a remarkable, and regrettable, similarity. . . .

There have been times when some of us have felt the wrath of the purist left. And now—today—many of us are feeling the wrath of the New Right because we will not bow to their threats and vote against ratification of the canal treaties.

Indeed, one element of the New Right—the Conservative Caucus—did not wait for me to announce how I would vote on the treaties. They launched their attack months ago.

Last summer the national director of the Conservative Caucus, Howard Phillips, said conservatives should make "a political sitting duck" of Tom McIntyre over the canal treaties, and the Conservative Caucus could "make it a political impossibility for McIntyre to vote for that treaty."

On Dec. 4, 1977, the Conservative Caucus of New Hampshire passed a resolution of censure and served it on me like a subpoena. I was "censured" for a speech I made last September, a speech in which I took neither side on the treaty issue . . . but merely spelled out the pro and con arguments I would have to consider when I made my decision on how to vote. . . . Not only did the resolution censure me, it "required" me to appear before the Caucus in Wolfeboro, N.H., on Feb. 12, to justify why I should not vote against ratification and/or refute said censure. . . . Well, I did not go before the Caucus, so I have to assume I was tried in absentia and found guilty of a decision I had not yet made. . . .

Hear the revealing words of Howard Phillips on other occasions: "We organize discontent . . ." he said. "We must prove our ability to get revenge on people who go against us. . . . We'll be after them, if they vote the wrong way. We're not going to stop after the vote's past."

And hear the words of another spokesman for the New Right, Paul Weyrich, director of the Committee for the Survival of a Free Congress: "We are different from previous generations of conservatives. We are no longer working to preserve the status quo. We are radicals, working to overturn the present power structure of this country."

These people are different from traditional conservatives. I know the traditional conservatives of my own state. I have competed with them in the political arena. I have worked with them in behalf of our state. They are people of honor, civility and decency.

The New Right cannot comprehend how people of opposing view-points can find common ground and work together. For them, there is no common ground. And this, in my judgment, is the best indication of what they truly are—radicals whose aim is not to compete with honor and decency, not to compromise when necessary to advance the common good, but to annihilate those they see as "enemies."

And if "conservative" in the title "Conservative Caucus" is an ironic misuse of the word, it is doubly ironic that destiny would link the national chairman of the Conservative Caucus—the governor of New Hampshire—with William Loeb, the publisher of New Hampshire's largest newspaper and the master practitioner of the politics of threat and vengeance. . . . In all of this nation, there may not be two more recklessly belligerent public figures than Meldrim Thomson and William Loeb. . . . I am certainly not sanguine about such powerful and ruthless opposition, but after 16 years of weathering the sustained attacks of Mr. Loeb and his ilk neither am I anguishing over the outcome. . .

[But] my political fate is not my concern here today. My concern is the desperate need for people of conscience and good will to stand up and face down the bully boys of the radical New Right before the politics of intimidation does to America what it has tried to do to New Hampshire.

So I say to my colleagues:

If you want to see the reputations of decent people sullied, stand aside and be silent.

If you want to see people of dignity, integrity and self-respect refuse to seek public office for fear of what might be conjured or dredged up to attack them or their families, stand aside and be silent.

If you want to see confidential files rifled informants solicited, universities harassed, "enemy hit lists" drawn up, stand aside and be silent.

. . . On two occasions in the past several years, we witness dramatic evidence that the American people desperately want to put acrimony and division aside, to heal the wounds, and to come together again as a people.

The first was the brief and shining moment on Independence Day of our Bicentennial celebration, a moment when all at once we were again united in the pride of our heritage, our esteem and affection for one another, our confidence in the future.

The second occurred but a few short weeks ago when the entire nation paused to pay its final respects to that most beloved of Americans, Hubert Humphrey. . . .

In the long run I am confident that the forces of decency and civility will prevail over the politics of threat and intimidation, just as I am confident that reason and commitment rooted in reality will prevail over extremism in the pursuit of illusion.

But if that does not occur in time to save the treaties—or those of us who support them—then I, for one, will go home to Laconia, N.H., sad to leave this office, but content in heart that I voted in what I truly believed were the best interests of my country.●

DEFINING FOREIGN AGENTS

● Mr. McGOVERN. Mr. President, in the International Operations Subcommittee of the Foreign Relations Committee we are presently working on legislation to refine and update the Foreign Agents Registration Act. Therefore, I thought it was most timely that the Brookings Daily Register of Brookings, S. Dak., published an editorial on March 1, highlighting a very serious problem which has emerged because of the lack of consistent and satisfactory definition of the term, "foreign agent."

Because of its relevance to legislation we hope to report to the Senate floor in the near future, I ask unanimous consent that this editorial, entitled "Define That 'Foreign Agent,' " be printed in the RECORD.

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

DEFINE THAT "FOREIGN AGENT"

Can the Central Intelligence Agency conduct surreptitious searches of the homes and offices of artists, writers and account executives working for New York advertising agencies?

Can the National Security Agency use its sophisticated electronic surveillance equipment to secretly intercept and monitor the telephone conversations of Washington lawyers, Los Angeles film producers and Chicago public relations agents?

According to White House officials, an executive order signed earlier this year by President Carter will terminate the discredited practice of intelligence agencies violating—in the name of "national security"—the constitutionally protected rights of the nation's citizens.

David L. Aaron, Carter's second-ranking advisor on national security affairs, speaks lyrically of the executive order's role in "safeguarding the system of government which provides the kind of constitutional rights that we all admire and support and love."

But the White House order drafted by Aaron and signed by Carter has a gaping loophole large enough to cause thousands of law-abiding Americans to fear that the protection they purportedly are guaranteed by the Bill of Rights still can be unilaterally suspended.

The widely ballyhooed presidential order requires that intelligence agents secure a federal judge's approval of a warrant before engaging in many of the activities that led to blatant abuses of the law in past decades.

Included in that category are telephone taps, "bugging" and other forms of electronic surveillance; mail opening and mail "covers;" television monitoring; and physical searches of individuals, property, homes and offices.

But the order contains an exemption; no warrant is required in cases where the attorney general "has both approved the particular activity and determined that there is probable cause to believe that (the subject) is an agent of a foreign power."

That last phrase, used throughout the executive order to justify numerous exceptions to the newly framed guidelines, holds the potential for massive abuses of the intelligence agencies' authority in the future.

Although more than a dozen other terms used in the executive order are specifically defined at the end of the document, there is no explanation of who or what might be "an agent of a foreign power."

The U.S. Code does, however, contain a definition of an "agent of a foreign principal." It includes anyone who engages in political activities, public relations or publicity work, fund-raising or representation before a federal agency on behalf of a foreign government, organization or citizen.

Almost all major New York advertising agencies (and scores of their employees) are included because their clients include foreign tourist agencies seeking to attract American visitors.

Others performing legitimate work for foreign clients including Clark Clifford, a senior policy advisor to several past presidents who now practices law in Washington; William P. Rogers, a former secretary of state now practicing law in New York; and Patrick Caddell, Carter's political pollster.

There are thousands of others covered by the Foreign Agents Registration Act who easily could be construed to be "agents of a foreign power" for purposes of warrantless wiretaps, searches and surveillance.

What if this country should again become involved in an unpopular war, and a group of young protestors begins organizing peaceful anti-war demonstrations? Will an antagonistic attorney general find "probable cause to believe" they are "agents of a foreign power"?

When Carter signed the executive order in late January he admitted that he earlier had "sent it back three or four times to be redrafted so I could understand it." He should have rejected it one more time, insisting upon a definition of an "agent of a foreign power."●

THE DEDICATION OF ANTIOCH BAPTIST CHURCH, COLUMBIA, S.C.

● Mr. THURMOND. Mr. President, on Sunday, February 19, I had the pleasure of attending dedication of a beautiful new church building in Columbia, S.C. I say a beautiful new building, for the church itself is quite old—old, well known, and highly respected. The Antioch Baptist Church, founded in 1914, has rendered three generations of exemplary service to God and man in the Columbia area. The splendid facilities dedicated 10 days ago will enable the church to play an even larger role in the community in the years ahead.

I wish to commend all who participated in the planning, funding, design, and construction of the new church building. That includes the whole congregation, but particular credit must go to the present pastor, Dr. James G. Neal, a humane and eloquent man who has headed the church for 34 years. Under his leadership, the church has experienced its greatest growth, an ongoing process of which the new building is only the latest and most visible sign.

A brief history of Antioch Baptist Church was prepared for the dedication ceremonies. A story of faith, sacrifice, and achievement, it makes interesting and instructive reading which I commend to my colleagues. In order that they may have it readily available to them, I ask unanimous consent that it be printed in the RECORD, along with the program for the day, and a brief biographical sketch of Dr. Neal.

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

OUR PASTOR

Our pastor, the Reverend Doctor James P. Neal, the illustrious son of Rev. Jesse W. and Mrs. Minnie Holley Neal, was born at Hopkins, South Carolina, in Richland County. At present, he resides at 2311 Laurel Street, Columbia, South Carolina.

Our pastor, Doctor Neal, a dedicated religious, civic, and educational worker, is also a person of high ideals and outstanding business accomplishments. He is respected by the public, and is held in exalted esteem by his members, friends and acquaintances.

It is with distinction that he has served the Antioch Baptist Church as its pastor for more than thirty-three (33) years. Under his leadership, our church has made tremendous progress. His academic and religious training were obtained at Morris College, Fisk Uni-

versity, and South Carolina State College. He did advance study in the field of Theology at the College of Divine Metaphysics, Indianapolis, Indiana, where he was awarded Bachelor, and also the Doctor of Divinity (D.D.) Degrees.

He is past moderator of the Mt. Moriah Baptist Association, past president of the Lancaster County Teachers Association, also past president of the Wateree Baptist Sunday School Convention (U.D.).

Our pastor has devoted 37 years to the educational field, where he served as teacher and principal in the public schools of South Carolina until his retirement from teaching in June, 1968. He is also a 32nd Degree Mason.

Our pastor preaches a True Gospel, simple and plain, but full of power, and with the spirit of Jesus Christ.

In addition to his pastoral duties at Antioch Baptist Church, he also serves as a member of the Trustee Board of Directors of Morris College, Pastor of the City-Wide Usher Board Union of Columbia, and Moderator of the Wateree Baptist Association (Upper Division).

Before his coming to us at Antioch in 1944, our pastor served as minister of First Kershaw Baptist and 2nd Calvary Baptist Church in Kershaw, S.C. for ten years. He also served as pastor of Sutton Branch Baptist Church, Lugoff, S.C. for 16 years where, under his leadership a new edifice was built.

He is married to Mrs. Geneva Outten Neal, and they are the parents of three (3) sons, namely: James P. Neal, Jr., Albert Aiken Neal, and J'von (deceased).

THE HISTORY OF ANTIOCH BAPTIST CHURCH

The Antioch Baptist Church was founded by the late Rev. Howard Robinson in the year of 1914. The establishment of the church began in a room of a house located in the rear of the address known as 1722 Rice Street. Shortly afterwards, the Sunday School was started by Sister Eveline Fogle and Brother Dallas Robinson.

Some of the first members of the establishment were: Mrs. Affie Brown, Mrs. Jeanette White, Mrs. Sylvia Cannon Dawkins, Mrs. Hannah Kinsler, Mrs. Estelle Powell, Mrs. Ethel Dennis, Mrs. Rosa Pickens, and Mrs. Laura Richardson.

Some of the first pupils in our Sunday School were: Mrs. Early West, Mrs. Annie Pickens Darby, Mrs. Rosa Epps Washington, Mrs. Annie Weston Morgan, Mrs. Earnestine Powell Guess, Mrs. Amy Richardson Youngblood and M. Charles Etheride. It is also said that Mrs. Fannie Cole was one of the first teachers of our Sunday School. Her two sons, Albert and Charles Cole were the first to be baptized in the outdoor pool of the church.

Some of the first Deacons of the church were: Deacon McFadden (also known as the oldest deacon of the church), Charlie and Samuel Brown, Marcellus Etheridge, Robert Weston, West Alston and Deacon Simuel.

Four years later, in the year 1918, the late Rev. James Chandler became pastor of Antioch, moving and building the church at its present location. Under the administration of Reverend Chandler, his wife, Sister Clara Chandler, organized the first auxiliary of the church, known today as the Senior Missionary Society, recording its first president as Mrs. Mamie Scott.

In 1919, the first Jubilee Choir was organized by the late Deacon Charlie Brown, who was also recorded as being the first president.

The Deacon Board, remaining active, increased its membership with three additions: Deacons Turner Trezevant, Wilson Smith and Willie Brice.

The late Deacon Robert Haynes was appointed as the first clerk of the church under the pastorialship of Rev. Chandler.

As the years went by, Antioch continued to move on, bringing about her change in pastorialship. The late Rev. T. C. Crumpton became successor to the Rev. Chandler. During his pastorialship days, Rev. Crumpton was known to have worked faithfully in all phases of the church and its auxiliaries, advocating along the way that "Olde Time Religion." In 1920, the first Senior Usher Board was organized by Brother Morris and Nathan Martin. The first Superintendent of the Sunday School also came into existence, known as the late Deacon Marcellus Etheridge.

The Deacon Board is again increased in membership with two more additional Deacons Elliott and Jake Taylor.

In 1930 for the first time, Antioch truly received her blessings when she neatly tucked under her wings the fourth (4th) pastor of Antioch, respectfully known as the late Rev. J. W. Neal; it was then that Antioch began to experience her leading years ever in history. Under the dynamic administration of Rev. J. W. Neal, the church cultivated in tremendous growth and progress. The church was remodeled and the old mortgage paid off and burned. Still under the pastorialship of the Rev. J. W. Neal, and in the year 1935, the first Senior Musical Choir was organized by Mrs. Lena LaBrew, recording the late Deacon Fred Scott as its first president.

The first Trustee Board came into existence, recording its first members to be Brother Joe Douglas, Brother Will Ryan, and the late Brothers Fletcher Tucker and Elliott Lowman.

Deacons known to have served with the Rev. J. W. Neal were: James Singley, Henry Reese, the late Deacons Johnnie McKnight, Robert Haynes, Henry Lyles, Fred Scott, Marcellus Etheridge, Willie Edmunds, West Alston, and Tom Davis. The Rev. J. W. Neal's association with Antioch came to an end when he departed this life in July, 1943, leaving behind him "Footprints on the sands of time."

Today, we look upon Antioch as she still stands, still reaping in blessings, while she is fortunate to have as her present pastor, the Rev. J. P. Neal, Sr., the son of the late Rev. J. W. Neal, who came to us in the year of 1944. Rev. Neal came to us in the image of his father, following in his footsteps, he continues the leading years of Antioch, experiencing even a greater growth and progress.

In 1949, the Junior Missionary Society was organized by the late Sister Hattie Edwards, recording Sister Edwards, Sister Kizzie Haynes, and Sister Fannie Roof as the first advisors, and Miss Frankie Jones as the first president. The first Junior Musical Choir was organized by the late Sister Minnie Sharper, who also was its first president.

In 1951, the church was remodeled and again the mortgage was paid off. The furnace and pews were installed also. During those times Antioch was really growing with Rev. Neal's leadership paying off in all ways.

In 1957, through the combined interest of Sister J. P. Neal and Sister Laura Singley, the Pulpit Aid Club was organized. Charter officers were: Sister J. P. Neal, President; Sister Laura Singley, Vice President; Sister Elmer Davis, Secretary; and Sister Dorneatha Johnson, Treasurer.

In 1958, with the foresight and advice of our pastor's wife, Mrs. J. P. Neal, the Young Women Auxiliary was organized by the late Sister Hattie Edwards, recording Mrs. Neal as its first advisor and Sister Edwards as its first president.

In 1962, the first Junior Usher Board was organized, recording as its first president to be Sister Josephine Anderson.

In 1963, with the foresight of Deacon Eddie Guess, Boy Scout Troop No. 197 was conceived and chartered with Antioch as its representing institution. Brother Wilbur Tucker was appointed Scoutmaster. The troop has grown steadily, giving the community's boys a new means of enjoyment and learning.

In 1964, with the advice of our pastor, Rev. J. P. Neal, Deacon Eddie Guess and Brother J. P. Neal, Jr., the Antioch Brotherhood Club was organized. This organization was installed in January, 1965.

The Brotherhood Club was re-organized in 1970, recording Brother Harold Lewis as president. The Club took on a project of air conditioners for the church as its first major endeavor.

On Sunday, August 25, 1968, Brother Aiken Neal, son of our pastor, delivered his trial sermon. The church's impression is that this Brother will be successful in his desire to further God's kingdom among men.

The Program Committee was appointed by the pastor in 1964, with Brother Fred Miller as Chairman. This committee spearheaded all programs with making a better Antioch as its unending goal. Through the foresight of Brother Miller, the church purchased two (2) acres of land near the Greenview section of Columbia.

A Planning Committee was approved in 1972 by the church for the purpose of formulating concrete plans for the design of the new edifice.

Deacons now serving under the administration of Rev. J. P. Neal, Sr., are as follows: Deacons Alvin Oree, William Miller, Dorsey Floyd, Eddie Guess, Richard Hunter, Jerry Wilson, and Wilbur Tucker. Deacon James Singley has been on the sick list for some time.

Since our last anniversary, fifteen members have joined us by way of Baptism, Restoration, and Christian Experience.

The church honored the following graduates in June of this year:

Audrey Augustus, Leroy Floyd, Frances Foster, Alvin Oree, Geraland Oree, Samuel Oree, Wilbur Tucker, Jr., Nelson Wilson, Jr., and Janice Reese.

Presently serving as Superintendent of the Sunday School is Deacon Alvin Oree. Presently serving as Treasurer and Clerk of the church are Deacons Alvin Oree and Eddie Guess, respectively.

Ground breaking services were held April of this year; construction began in June.

Our prayer for this year is that the membership continue to maintain the FAITH that is needed in these trying times. The road has been rough and the avenues to our dreams seem to be closed, but Jesus has promised that we would reap if we faint not.

The Deaconess Board of this church presented a Woman's Day Program in July of this year, which was highly successful. Mrs. Rosa O. Jakcsaon was outstanding as the main speaker for the occasion.

And I heard a great voice out of heaven, saying behold, the tabernacle of God is with men, and He will dwell with them, and they shall be His people, and God Himself shall be with them, and be their God.—Revelations: 21: 3.

DEDICATION SERVICES OF THE ANTIOCH BAPTIST CHURCH

SUNDAY AFTERNOON, FEBRUARY 19, 2 P.M.

Prelude, Miss Rhodessa Smith, Organist.

Call to Worship: "O come, let us worship and bow down; let us kneel before the Lord our maker. For He is our God; and we are the people of His pasture, and the sheep of His hand." (Ps. 95: 6-7), Rev. L. M. Bellamy, Pastor, St. Mark & Fort Clark Baptist Churches.

Processional Hymn No. 308, "We're Marching to Zion, the beautiful city of God."

Invocation (the Chant-Choirs and Congregation), Rev. John R. Wilson, Pastor Union Baptist Church No. 2.

Welcome, Mrs. Rosa O. Jackson.

Music (Choir), "Onward, Christian Soldiers" or "We've Come This Far by Faith."

Brief Memorial for Saints of the Past Years, A moment of silence and prayer, "Sweet Hour of Prayer," Organist.

Selections (the Choirs), "In the Sweet By and By" or "God Be With You 'til We Meet Again."

Old Testament, I Kings 8: 22-30, Rev. J. P. Harris, Pastor, Trinity Baptist Church.

New Testament, St. Matthew 16: 13-20, Rev. Blakeley Scott, Pastor, Mill Creek Baptist Church.

Musical Selection, Metropolitan Gospel Music Workshop Choir, Mayor John T. Campbell.

Greetings, Mrs. Nann Robinson, President, Women Auxiliary, Gethsemane Association; the Honorable Strom Thurmond, U.S. Senator from S.C.; Mr. B. A. Hall, Security Federal Savings & Loan; the Honorable Fritz Hollings, U.S. Senator from S.C.; the Honorable Hyman Rubin, State Senator from Richland County; the Honorable W. Brantley Harvey, Jr., Lieutenant Governor, State of South Carolina; Dr. James B. Holderman, President, University of South Carolina; Dr. John R. Stevenson, Richland School District No. 1; Dr. Earnest A. Mehaffey, South Carolina Baptist State Convention.

Presenting of Key, Mr. James Langley, General Contractor.

Acceptance of Key, the Pastor, accompanied by the Building Committee and Trustees.

Dedication Offering.

Selection (Musical Choir), "Praise Ye the Lord."

Presenting the Guest Minister, Pastor J. P. Neal.

Hymn 520, "I Love Thy Kingdom Lord."

Dedication Sermon, Dr. W. H. Neal, Pastor, First Nazareth (Columbia), St. John, Beulah, and Mt. Moriah Baptist Churches (Hopkins, S.C.).

Hymn of Consecration, "Amazing Grace," Choirs and Congregation.

Litany of Dedication, Dr. M. D. Bogan, retired pastor and teacher or Rev. L. H. Robinson.

Prayer of Dedication, Rev. John C. Williams, Pastor, Mt. Nebo and Beauty Hill Baptist Churches.

Closing and Benediction.●

A THANKLESS JOB

● Mr. McGOVERN. Mr. President, few of us in Washington are unaware of the present unrest in the agricultural community. Few of us also are unaware of the presence in the congressional buildings of members of the American Agricultural Movement.

Probably an unwarranted share of the heat resulting from this activity has come down on the shoulders of Secretary of Agriculture Bob Bergland. Bob Bergland inherited an impossible situation of boom and bust agriculture philosophy generated by his predecessor, Earl Butz. Though Earl Butz had the good fortune of being around for some of the "boom" years, it was left for Bob Bergland to take on the "bust" cycle as well as the wrath of American farmers.

Though I am one of those who has been critical of many policies of the Department of Agriculture and though I reserve the right to further speak out on issues where I think the Department is wrong, I do want to point out the seemingly impossible job Bob Bergland has and the boundless energy he has displayed in getting out among farmers to defend the administration's position in circumstances that were often hostile.

Recently Secretary Bergland and his staff visited Sioux Falls, S. Dak. The visit was not without incident and out of respect to the Secretary, I ask unanimous consent that a well-reasoned editorial from the February 24, 1978, edition of the Sioux Falls Argus Leader complimenting the Secretary and entitled "A Thankless Job" be printed in the RECORD.

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

A THANKLESS JOB

Secretary of Agriculture Bob Bergland, a former member of Congress from Minnesota, probably has the most thankless job in the federal government.

He was heckled by a few South Dakota striking farmers during his Sioux Falls arrival Wednesday, and rejected in his efforts to shake hands with several of them. Sprinkling nails under his car and jamming the door locks with wood were unfriendly acts and juvenile behavior by the strikers. The same comment applies to the egg tossing and snowballing to which Bergland was subjected in Amarillo, Tex.

This is shabby treatment of a cabinet officer who is trying to help agriculture. It hurts the strikers' cause. The American Agriculture Movement should cool it.

Bergland has been in office slightly more than a year. The new farm bill, which he helped to write, has been in effect about seven weeks. Like other secretaries before him, he's dealing with problems caused by an accumulation of record or near record grain crops and depressed livestock prices. He has expressed sympathy for the American Agriculture Movement strikers in their quest for parity. We think Bergland is sincere in wanting to do more to help the farmer. He's a farmer himself. His qualifications for doing something about the problem are topnotch.

The higher prices envisioned in the new farm act call for corresponding acreage cuts by farmers who participate. The grain and livestock markets are subject to wide fluctuation. Demand and good prices for U.S. grain depend to a great extent on overseas requirements, which are boosted when someone else has a drought. Grain prices also depend on farmer participation in acreage allotments; this participation has not been very effective. Livestock prices have started to come back—and for the first time in several years the outlook is better for cattle producers.

We believe Bergland will do what he can to assist the nation's farmers. But barring a miracle, neither he nor any other secretary could guarantee 100 percent parity prices without drastic curbs on production. The American farmer's ingenuity and productivity would bankrupt the government. There is room, however, to effect some improvements by better handling of imports and exports and by getting President Jimmy Carter's attention. We think Bergland has helped in that respect.

A recent Harris poll showed Americans would accept higher farm prices to give farmers better and fair prices. The problem is how to get that return to the farmers. We think Carter, Bergland & Co. should work on it, so that the farmer is not subsidizing the public with cheap food.

If the former Minnesota representative longs for simpler days when he was in the House, don't blame him. He's going through some of the travail encountered by other secretaries before him: Earl Butz, Orville Freeman and Ezra Taft Benson, to name only three.

Bergland will get a lot of brickbats and very few bouquets in this thankless job. We salute him for coming to South Dakota—and suggest that the striking farmers mark him down as a friend whose hand is worth shaking.●

EFREN HERRERA AND TEXAS YOUTH

● Mr. TOWER. Mr. President, Efren Herrera is being honored in Dallas, Tex., for his dedicated efforts and personal contributions on behalf of Texas youth, particularly youth of the Mexican-American community.

Efren Herrera perhaps is better known as the premier kicking specialist in the NFL with the recent world champion Dallas Cowboys, winners of Super Bowl XII this past January.

Efren attended public schools in California after moving there at age 15 from Guadalajara, Mexico. He was awarded a football scholarship to UCLA, where he played both football and soccer with distinction and success.

In 1974, Efren was signed as a free agent by the Dallas Cowboys after graduation from UCLA. Selected to the NFL all-pro rookie team in his first year, he missed the next year due to injuries. In 1976, he was selected second team all-pro, and in 1977 was NFL all-pro.

Efren Herrera, like many of his teammates and fellow professional athletes, works directly with youth groups and other organizations involved in worthwhile and beneficial youth activities. To the youth of Texas, Efren represents a very select group of athletes who as professionals have won the highest honor their profession and peers can accord them—the Super Bowl.

It is this special standing with the youth of our State that Efren Herrera has put to the best use possible. He has traveled from one end of Texas to the other to appear before youth gatherings and in support of various youth activities. Successful in his own personal life and successful in his professional world, Efren is providing new inspiration and dreams of new goals for countless numbers of Texas youth—many of whom may someday look back and remember that this particular professional athlete cared enough about their futures to take time to work with them.

The Spanish-Speaking Program Coordinators Council has sponsored an appreciation banquet for Efren Herrera, who wears football jersey No. 1, because he is truly No. 1 for his work on behalf of Texas youth. I know all Texans join with me in commending him for a job well done.●

AVIATION FINANCING

● Mr. McGOVERN. Mr. President, on February 24, Mr. Frederick W. Bradley, Jr., vice president of Citibank of New York addressed the National Aviation Club here in Washington on some of the problems he saw ahead in the area of aviation financing.

As Mr. Bradley correctly points out—the long-term economic stability of the Nation's airlines is a vital, if not critical ingredient to their ability to secure the necessary capital for new equipment.

This is a matter that will be part of the upcoming debate on the Air Transportation Regulatory Reform Act of 1973 (S. 2493).

I ask unanimous consent that Mr.

Bradley's remarks be printed in the RECORD.

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

REMARKS OF MR. BRADLEY

It is certainly a great pleasure for me to be here at the National Aviation Club. I am impressed by your courage in inviting a New York Banker to address you at a time when both Bankers and New York City appear to be under a cloud here in Washington. I have been asked to discuss with you a lenders view of the airline industry at present and our thoughts about the future.

In a departure from usual practice I would like to look first at the long term outlook for the airline industy and then discuss in some detail, from a financial point of view, where we have been, where we are today, and the pitfalls we see in the way of the industry's ability to prosper in the environment anticipated for tomorrow.

At the outset let me emphasize that we, in the financial community feel it is vital for the long run future of the airline industry, and in the interest of the traveling public, that the air carriers have sufficient capital available to them to modernize and expand their fleets. As we look into the future we see no relief from continuing increases in fuel costs which, as you all know represent the major portion of total operating costs. Although we are confident that air carrier managements will be doing all in their power to reduce costs, increase productivity, and maximize the efficiency of airline operations in those areas they can impact, the continued steep increase in the cost curves seems to us a forgone conclusion.

The large increases in fuel and labor costs have already made some of the earlier versions of the Caravelle, BAC–111, and Trident obsolete and every day are eating away at the profit margins of the earlier Boeing 707's, DC–8's and even some of the first deliveries of Boing 727's and DC–9's.

This unsettling outlook for costs is coming at a time when there is considerable governmental and consumer pressure for lower fares. In order to attract the capital required to acquire new aircraft and realize the productivity gains of a modern fleet in the 1980's and beyond, the airlines must be able to earn a realistic return on their investment during the next few years. This means that the price of tickets must keep pace with anticipated cost increases within the confines of traffic growth.

Should the capital not be available for fleet modernization then the airline industry will have to change its concept of service as inflation erodes the economies of existing fleets, with no new, substantially more efficient aircraft available. They will be forced to move towards denser seating and higher load factors, which is already happening, to offset cost increases not matched by fare increases or productivity improvement. After these avenues have been exhausted and the cost increases continue to march forward the end result will then be a very sharp increase in fares or substantial airline losses either of which would limit industry growth and lead to eventual stagnation. Clearly we do not feel that this eventuality would be in the public interest. Cheap tickets today may mean terribly expensive tickets or higher taxes tomorrow.

If we are to have a viable industry and if the traveling public are going to be able to travel in the future at a reasonable cost, the airlines must have the financial strength to acquire modern aircraft incorporating sufficient technological breakthroughs to realize a new round of productivity gains. If this modernization is not accomplished then the industry could face a period of no growth or even declining growth as the productivity of the existing generation of aircraft is eroded by increasing fuel and labor costs and traffic falls off as the cost of air travel becomes prohibitive. Clearly we must not let this happen.

To avoid such a situation presents a challenge to the aircraft manufacturers as well as the airlines. Although we all recognize that productivity gains of the magnitude experienced during the transition from piston and turbo prop aircraft to jet aircraft are not in the cards, future technological improvements and resultant productivity gains must be sufficient to overcome, by a significant margin, the capital cost of acquiring the new types of aircraft. Clearly, if these productivity gains are not possible our ultimate aims cannot be achieved.

On the other side of the coin if the manufacturer is not confident that the airlines can pay for the new generation of aircraft at delivery he will not be willing to make the huge investment in development and production of a new vehicle.

There have been various estimates of the amount required by the industry to modernize and expand its fleet in the 1980's. IATA recently came up with $100 billion for the next 10 years and U.S. requirements range from $38 to $44 billion. My own feeling is that the amount required will be somewhat less and extend over a longer period. The significant thing is that, during the past 20 years, 75 percent of the industry's requirements has been financed from internally generated sources. It is apparent, based upon recent airline performance, that a much larger percent of future airline requirements will have to be raised externally than in the past. In consequence the availability of such outside capital for the airline industry, against competing requirements of other industries, becomes vital.

As a background to this discussion, I would like to review briefly the history of airline equipment financings. In the fourteen years from 1960 through 1973 the airline industry experienced an unprecedented growth which included huge expenditures associated with the purchase of the first and second generations of commercial jet aircraft. This huge asset growth was based on three factors: (1) real economic growth, (2) moderate inflation and (3) a constantly improving air transportation product. The dynamics of this growth were as follows: the favorable economic growth, particularly the growth in real personal income, generated a high demand for air travel.

Concurrently, the advent of commercial jet aircraft with its improved speed, comfort, and operating economics made air travel more comfortable, convenient and less expensive. The operating efficiencies of jet aircraft were particularly important as these efficiencies, coupled with the generally moderate rates of inflation, allowed the carriers to absorb cost increases without raising fares. The effective reduction in air fares further stimulated the demand for air traffic services. As the carriers moved to meet this new demand, flight schedules were expanded and new markets tapped which promoted further increases in traffic growth. As a result, world air traffic grew at a rate in excess of 16 percent a year throughout the 1960's and the U.S. about 13.6 percent.

With regard to international aviation, a favorable result of the strong economic environment was the ability of governments to follow basically dissimilar policies without seriously confronting each other or fatally harming the airlines involved. More specifically, the U.S. Government was able to pursue a policy of promoting an international air transportation system based on low fares and mass travel which included the expansion of the number of carriers serving various world routes, particularly the North Atlantic, and the promotion of charter services. Due to the persuasive efficiencies of the new generation of jet aircraft and the high levels of traffic growth the carriers were generally able to absorb the major yield erosion implicit in these actions and still maintain their profitability.

In those markets shared with U.S. carriers foreign governments did not actively resist the U.S. policy as their carriers remained healthy and the incremental traffic promoted by the low fares aided their domestic tourist industries. However, in the other world markets the foreign governments tended to follow a more restrictive policy of capacity control and Pooling Agreements.

For the airlines the large traffic growth produced an unprecedented prosperity and enormous equipment needs. As indicated, 75 percent of the requirements were financed internally and the carriers were able to tap commercial banks, institutional lenders, and the equity market for the balance.

Loans from commercial banks were usually in the form of Revolving Credits which were available for 2 or 3 years, during the aircraft delivery period, and then funded over 4 or 5 years for a total term of 7 or 8 years. Because the life of jet aircraft are considerably longer than the normal bank term, the support of the insurance companies, who were willing to lend for 15 to 20 years, was a key ingredient in raising the funds required in order to match debt repayment to Cash Flow.

To limit leverage, i.e. the ratio of debt to equity the carriers raised equity and subordinated debt in the public market. During the latter part of the period, when it became apparent that many airlines could not use all of the tax benefits available to them, the tax credit lease became an important part of the capital structure of many carriers. These were usually 15 to 16 years in length with banks taking the equity and passing on a portion of the tax benefits to the airline in the form of a lower equivalent interest cost. The long term debt portion of the lease was held largely by insurance companies. In short the carriers had little difficulty raising the capital to modernize and expand their fleet during this period.

Starting in 1969 the favorable economic environment under which the industry had been operating began to deteriorate producing lower traffic growth rates and increased operating costs. In addition, the full dilutionary effects of the U.S. Government's expansionary policies were beginning to be felt as the carrier's average yields fell. Economic growth began to falter and inflation rates increased. As a result, the full extent of the traffic growth anticipated when the carriers placed their orders for wide bodied equipment failed to materialize leaving the airlines with a high level of overcapacity. This overcapacity in conjunction with the increased inflation rates and the high interest costs associated with the carriers' equipment financings eroded profit margins. In November 1973 the world entered the "oil crisis" and the plight of the air carriers became critical. The effects of the "oil crisis" need not be discussed here. Suffice it to say that the sharp rise in the price of fuel not only sharply increased the carrier's fuel costs but also engendered a sharp acceleration in the inflation rate, greatly increasing the carriers' non-fuel related costs. Finally, the world recession and inflation which accompanied the "oil crisis" seriously impacted both the public's desire and ability to travel. The combination of poor traffic growth and sharp cost increases seriously eroded the airlines' profitability.

In this environment capital became more difficult to obtain and was more expensive. Because of the overcapacity situation which developed the aircraft requirements were reduced and in many cases future aircraft orders were cancelled or stretched out and aircraft options were not exercised which to some extent eased the capital problem. During this period the equity and long term institutional markets were closed to the industry except for a few isolated cases. How-

ever, the commercial banks were able to meet most of the necessary borrowing requirements during the period.

Nevertheless, a number of large banks withdrew their support from the industry. Some leasing was done due to the secured nature of such transactions but even on this basis the interest in taking a lessor's equity participation or lending long term senior funds was severely limited.

Fortunately that is all behind us now. Even with the less than dramatic recovery of the world economy, traffic growth has returned although far more modest than in the past. Yields have improved due to fuel related fare increases and most of the benefits of the cost cutting efforts of the difficult years have stayed with us. As a result 1976 was a much better year than 1975 and 1977 was a reasonably good year for most carriers.

With the improvement in 1976 some gains, although limited, were made in attracting the long term lenders back to the industry. Except for a few recent examples involving some of the strongest carriers all of these financings have been on a secured basis, i.e. either in the form of a lease or equipment trust. Actually the initial "post oil crises" 15 year institutional loan to the industry was made not against the credit of the airline involved but against a bank Letter of Credit. As airline earnings improved insurance companies were willing to lend 15 year money against the security of selected aircraft types with equity ranging from 20 to 40 percent in the lease or equipment trust. The key to this type of financing is the direct access to the aircraft in event of default or bankruptcy under present and contemplated legislation. The recent examples of a small amount of unsecured long term lending to the more profitable airlines is encouraging.

In order to raise the capital required for the modernization and expansion we feel is so vital for the future, the availability of long term funds provided by this segment of the financial community will be essential. Most carriers cannot finance flight equipment with a useful life in excess of 15 years over a bank term of 7 or 8 years.

Another encouraging sign has been a few offerings of equipment trust certificates, subordinated debt, and Preferred Stock in the public market. However, the amounts have been small and the cost quite high. Again it is vital for the future that the airlines industry be able to compete in the public market on an equal footing with other industries. Carriers with top heavy debt are very susceptible to the ups and downs of the economic cycle so a solid base of equity or equity type capital is an important ingredient if fleet modernization and expansion is to be assured.

However, the experience of the past will have an impact on the attitude of the financial community toward the industry, and therefore, could have a marked impact on the ability of the airlines to attract the large amounts of capital required to acquire more modern aircraft and realize the productivity gains that we see so vital for the future. More specifically the future is not what it used to be. The generally favorable economic and political environment that characterized the "Pre Oil Crisis" era is gone forever. As indicated previously we feel that fuel prices will continue to increase and that nonfuel related costs such as labor rates will also continue to increase. At the same time we will be living with a lower rate of economic growth which translates into far more modest traffic growth than we experienced during previous periods of large scale equipment replacements. In order to retain the confidence of the financial community and have access to the capital markets the airlines must avoid a repetition of the losses of the early 1970's and realize some years of stable earnings. They must be able to operate in a political and economic environment that permits them to earn a realistic and consistent return on their investment.

As we see it the key to accomplishing this, in light of the scenario of moderate traffic growth and escalating costs, is the maintenance of realistic yields and adequate load factors. And it is here that what appears to be a changing political environment is very disconcerting. There appears to be a prevailing philosophy in government that more competition and lower fares on scheduled service leads to increased profitability. I am sorry to say that the leading proponent of this philosophy appears to be the present administration here in Washington. We in the financial community do not pretend to have the expertise of airline management as to how to achieve a proper balance of capacity and yield to achieve profitability in light of traffic estimates, but we do know that our experience with excess competition resulting in excess capacity and sharp deterioration in yields has been bad. In our view this concept of encouraging excess competition and sharply lower fares on scheduled routes while politically appealing in the short run, will ultimately spell economic disaster for the airlines in the long run.

We don't mean to imply that low fares do not stimulate new traffic because they clearly do, as witness the dramatic growth of charter business in recent years. Nor do we find fault with the various APEX and Budget fares on scheduled routes as long as they are structured in such a way that they fill seats that would otherwise go empty or that the advantage of new revenues stimulated are not more than offset by a shift of higher paying passengers to the lower fare.

However, we are concerned that the political pressures may result in a carrier being forced to provide additional capacity for low fare passengers which could lead to a substantial deterioration in yields and result in substantial losses for some carriers.

Indeed the CAB has offered the plum of route awards to carriers willing to cut fares to the most ridiculous extreme. If an airline President stood up today and made the point that further discount fares were bad for the industry, he could be sure that the next route award would go to a competitor.

Likewise we are concerned that in the rush to provide competitive capacity to stimulate lower fares we could again have an overcapacity situation on some routes resulting in lower load factors and losses for all concerned.

In our view, political pressures for more competition and lower fares coupled with the economic environment relative to costs and traffic that we foresee, and its negative impact upon earnings, is the most serious obstacle standing in the way of the industry's ability to raise the capital for fleet modernization and expansion in the 1980's.

I am sometimes asked by government officials why profits are necessary which is somewhat disconcerting to a Banker. Clearly, the greater the earnings of the industry over the next few years the greater the percentage of capital requirements that can be financed from internal sources. In addition steady earnings assure a lender of adequate cash flow to service debt. From the point of view of the balance sheet, earnings impact leverage, i.e. the ratio of debt to equity, in several ways. First, of course, leverage is reduced by increasing equity. Secondly, a record of earnings enhances the ability of a carrier to raise additional equity and thereby minimizes the amount of senior debt required and reduces leverage. The relationship of Debt to Equity is of keen interest to the lender because a company with a lower debt equity ratio and a lesser amount of fixed financing charges, as was pointed out earlier, is a lot less vulnerable to the ups and downs of the economic cycle.

If the present philosophy of more competition and low fares continues unabated we are concerned that the recent gains in bringing the long term institutional lenders and equity investors back into the fold will falter.

In particular we are concerned that the weaker carriers that are highly leveraged will have increasing difficulties in accessing the capital markets even on a secured basis. Clearly they are more vulnerable to the uncertain economic and regulatory environment.

In the past because of the protected nature of the airline industry in terms of fares and routes the financial community permitted a higher degree of leverage. For example, in most industries we like to see a debt equity relationship below 1:1 while in the airline industry a ratio of 1.25 to 1.50:1 was not considered unusual. Some of the carriers have been well in excess of 2:1. Clearly in the regulatory environment that would prevail after passage of the current legislation before the Congress or even if it isn't and the present philosophy on routes and yields is carried to the extreme by the CAB only carriers with a leverage ratio under 1:1 will have access to the capital markets. Even the funds available to the stronger carriers could be limited in such an environment. Long term lenders and equity investors do not thrive on uncertainty, particularly when they have places other than the airline industry to put their funds.

As is usually the case the more highly leveraged carriers have the more difficult equipment replacement problem facing them. But these carriers have made great progress the last two years and given a realistic regulatory environment and stable earnings over the next few years they should be able to fix their balance sheets and posture themselves for ready access to the capital markets in the 1980's.

However, should we have a situation where only the strong carriers have access to capital for fleet modernization and expansion and the weaker carriers do not, the imbalance in financial strength will accelerate as cost increases continue to erode the productivity of the aging fleet of the financially weaker airlines. The end result of course would be bankruptcy or mergers for some carriers. People will differ on the impact of such an eventuality but I am concerned that the traveling public would end up with less and more expensive service. In addition such an occurrence would not have much of a stimulative effect on the attitude of long term lenders and equity investors toward the industry.

Another item to keep in mind here is the effect of inflation on the capital needs of airlines. A new aircraft ordered today may cost twice as much as the same aircraft in the fleet purchased 8 or 10 years ago. What was an adequate return on the aircraft investment made 8 or 10 years ago must now be doubled in order to attract capital for today's investment.

A steady level of profits can mean disaster in an inflationary environment. If earnings do not grow with inflation, capital will not be available. Unfortunately, the CAB does not take this into account when considering fare increases.

On the international side the present change in attitude here in Washington comes at a time when most governments, in a departure from past practice in many cases, are insisting that their carriers become self-sufficient and not rely as much upon government support. We expect this trend to continue as the foreign carriers move toward raising the large amounts of capital for fleet replacement. The governments recognize that large subsidies and guarantees for their airlines will be at the expense of other governmental requirements and programs. As a result the attitude of most governments on competition and fares has become more realistic than our own. However, if we in the U.S. continue to pursue our present policy the governments will come to the support of their airlines and cover the re-

sultant loss and provide the capital needed for fleet modernization. As you are all aware, the U.S. international carriers have no such recourse. In consequence, U.S. international carriers without access to the private capital markets would be placed at a distinct competitive disadvantage and could disappear all together. We do not feel that such an eventuality would be in the long term interest of the U.S. or its traveling citizens.

In summary, the prospect of the adverse impact on earnings of the present political climate as it affects fares and capacity could be a serious obstacle in the way of raising the capital required to finance the acquisition of more productive aircraft and thereby restrain air transport growth.

We in the financial community have been accused of arguing against changes in airline regulation to protect our existing loans. Nothing could be further from the facts. It is a matter of record that outstanding bank loans to the industry are at an all time low and long term loans to institutions are reducing rapidly. It appears very unlikely that lenders would not be repaid those funds that were advanced during the last equipment cycle, even under the most difficult circumstances.

Our concern is that if the airlines are not able to operate in a regulatory environment that permits adequate and consistent profits then the institutional lenders and equity investors that must play such a vital role in future financing will not be there. They will put their funds where the long term prospects are more certain and stable rather than in the airline industry where short term political considerations may impact long term viability.

In conclusion, unlike many bankers, we are optimists and are convinced that in the end logic and good judgment will prevail. We are convinced that the airline industry must be placed in a financial posture to modernize and expand their aircraft fleets in order to realize the productivity gains that are vital if the traveling public is to be well served in light of the economic environment we anticipate. We hope that short term political considerations relative to competition and fare policy are discarded in favor of the long term financial health of the air carriers and the long term best interests of the traveling public.●

ENVIRONMENTAL BALANCE

● Mr. GARN. Mr. President, the current coal strike has made the American people more sensitive than usual to the need for a balance between environmental protection and resource development. Clearly the Nation is in a more vulnerable position today than it would have been if backup systems of energy provision had been brought on line before the crisis. Those areas of the country where energy is provided by a balance between coal, oil, gas, and nuclear, are better able to weather the storms of winter and union politics.

With that in mind, let me call to the attention of Members of the Senate to an up-coming conference on energy, environmental, and economic matters, being held by the National Environmental Development Association. In fact, this will be the fifth annual conference of the association, and will include presentations by many of those who have been involved in making decisions about the balancing of resource development and conservation. For instance. Mr. John Quarles, former Deputy Administrator of the Environmental Protection Agency, will speak on the impact of the 1977 Clean Air Act Amendments. As one who was involved in the development of that legislation, I await with interest Mr. Quarles' presentation. I note that he has already been quoted as saying that the 1977 act is "like a loose cannon on a pitching deck," and that "it probably will prevent any expansion after 1979 of the petroleum and petrochemical industries in southern California, and it may have similar effects along the gulf coast in Texas and the east coast from Virginia to Maine * * *."

In addition to Mr. Quarles, there will be representatives of the Government participating in the conference. I do not know that the Department of Energy will be represented, but I hope so, because I can easily foresee some real conflicts between the Clean Air Act and the need for increased energy production in the United States. Mr. James Speyer, formerly with EPA but now at the Department of Energy, apparently agrees with me.

He was recently quoted as saying that while the act has enough flexibility in it to permit attainment of energy goals, EPA will have to interpret the act flexibly. In fact, he said flatly that "There are going to have to be compromises in implementing the law."

I do not mean to give the impression that the conference will deal only with the Clean Air Act. In fact, virtually all critical issues will be addressed. There will be sessions on the effect of the Federal Water Pollution Control Act, water policy reform, the impact of energy and economic policy on minorities, endangered species, and others. The luncheon speaker the first day will be Mr. Lou Harris, the pollster, who will no doubt enlighten us on public attitudes. That should be a most interesting session itself.

Mr. President, it is essential that all Senators and their staffs inform themselves on these important issues. I hope there will be participation from congressional offices as well as the industry, executive, private organizations which can be expected to be involved. For that reason, I ask unanimous consent that a press release issued by NEDA and a copy of the agenda for the 2-day conference be printed in the RECORD.

There being no objection, the press release and agenda were ordered to be printed in the RECORD, as follows:

PRESS RELEASE

WASHINGTON, D.C.—Balancing the environmental, economic and energy needs of all Americans will be the focus of the fifth "National Conference on EEE Issues" to be held at the National Press Club here, March 14–15.

Spokespersons for minorities, women, and the elderly will join with representatives of industry, labor, agriculture, and government to discuss costs and benefits in environmental decisions, impact of government regulations on jobs and prices, and energy versus environmental laws and regulations.

Featured speaker will be Lou Harris, whose Harris Poll measures public opinion and awareness on a wide variety of concerns. He will examine current attitudes in America towards environmental and energy issues, based upon his most recent samplings from across the nation.

Other congressional and administration speakers will present their views on the future of environmentalism, amendments to the Clean Air Act, results of the recent Water Resources Policy Study, and the effects of 1977 amendments to the Federal Water Pollution Control Act on industry, construction, energy facilities, jobs and agriculture.

The purpose of the Conference is "to examine the effect of current environmental and energy policies on not only business and labor interests, but all segments of the population, including minorities, women, and senior citizens," said Chairman Riley S. Miles. "Very often we overlook the special problems and needs of these groups. It's time we learned more about their concerns," he said.

CONFERENCE AGENDA

TUESDAY, MARCH 14

9:00 am to 12 noon:

Opening the Door on Troubling Issues—remarks by Riley S. Miles, NEDA Chairman; Executive Director, Florida Water Users Association.

Where Is Environmentalism Taking Us Now?—Fred Smith, Associate of Laurance S. Rockefeller.

The Loose Cannon: Clean Air Act Amendments—John R. Quarles, Jr., Attorney; Former Acting Administrator, Environmental Protection Agency.

Clean Air Regulations: A Look Ahead—A panel from business, labor, EPA, and Capitol Hill discuss effects of new law on energy, construction, production, jobs, agriculture.

Carter Administration Water Policy—Dr. Leo M. Eisel, Director, U.S. Water Resources Council.

Reacting to Water Policy Reform—A panel discussion featuring Pat O'Meara, National Water Resources Association; Jack Odgaard, assistant to Sen. Carl T. Curtis; and Dr. Leo M. Eisel, Water Resources Council.

Noon to evening:

Luncheon in Grand Ballroom, National Press Club. Introduction of Featured Speaker, Neal O. Wade, Jr., Group Vice President, Pennzoil Company.

Featured Speaker—Louis Harris.

A Fresh Look at the Energy Issue—Jayne Baker Spain, Senior Vice President, Gulf Oil Company.[1]

Afternoon Activities—Time made available for workshops, committee meetings, visits to Capitol Hill.

Congressional Reception—From 6 to 8 p.m., cocktails for NEDA members and Conference registrants, with invited Senators and Representatives, on Capitol Hill; details are furnished to paid registrants, who may then invite Congressional guests.

WEDNESDAY, MARCH 15

9 am to noon:

Legislative Prospects in EEE Issues—Members of Congress and others give NEDA Conference members a current, inside look at legislative issues during this important program segment.

Water Pollution: Regs & Congressional Intent—A panel from business, labor, EPA and Capitol Hill examine effects of '77 amendments on industry, construction, energy facilities, jobs, agriculture.

Older Americans: New Challenges in EEE Issues—William R. Hutton, Executive Director, National Council of Senior Citizens, an organization of three million members.

Minorities in the Mainstream—An evaluation of EEE issues by a noted spokesperson representing minority group interests, to be introduced by Herschel C. Loveless, Former Governor of Iowa.

Endangered Species: What You Can Expect—Donald Simpson, Pacific Legal Foundation.

Noon:

Luncheon.

Introduction of Speaker: J. C. Turner, General President, International Union of Operating Engineers.

[1] Other speakers to be announced.

Featured Speaker to be announced.

Afternoon Activity: NEDA Meeting—Conference adjourns after lunch, to be followed at 2 PM by 5th Annual Meeting of NEDA. Registrants and press invited.

Special Guest Speaker.

A Congressional view of a current EEE topic will be provided by a special guest speaker, to be announced.●

SENATOR CULVER TESTIFIES ON RSVP PROGRAMS

● Mr. EAGLETON. Mr. President, as chairman of the Senate Subcommittee on Aging, and as a member of the Senate Appropriations Subcommittee on Labor-HEW, I am troubled by the administration's proposed 25-percent budget reduction for the retired senior volunteer program.

In my own State of Missouri, RSVP volunteers work with over 400 nonprofit community agencies, organizations, clubs, and departments, including 49 nutrition sites, 36 hospitals, and 97 libraries, day-care centers, and Head Start centers.

The Federal cost associated with this program is almost entirely administrative. RSVP volunteers do not receive stipends, but it is estimated that the services the volunteers provide represent over $118 million, based on the cost of their services at minimum wage.

My colleague, Senator CULVER of Iowa, recently presented persuasive testimony before the Labor-HEW Appropriations Subcommittee regarding the administration's proposed $4.7 million funding reduction for RSVP.

Senator CULVER has a particular interest in this program, and others affecting the elderly, in that he represents a State with the third highest proportion of senior citizens among the 50 States. The RSVP program is also quite active in Iowa, and Senator CULVER has received quite a bit of correspondence expressing deep concern about this proposed funding cut. In his statement Senator CULVER outlines some of the many benefits the RSVP program has to offer, from the perspective of both the senior volunteers and the recipients of their many services. He also submitted a sampling of his mail on this issue of concern and asked that they be made part of the subcommittee's official record.

I ask unanimous consent that Senator CULVER's statement along with the correspondence be printed in the RECORD.

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

STATEMENT OF SENATOR JOHN C. CULVER

Mr. Chairman, I understand that many others have communicated to the Committee the concern I wish to raise—the proposed reduction in funding for the ACTION agency's Retired Senior Volunteer Program (RSVP). As you are well aware, the fiscal year 1979 budget recently submitted to Congress proposes a 24-percent reduction in funding for RVSP, from a level of $20.1 million this year to $15.4 million next year.

Reportedly, this budget cut was made by the Office of Management and Budget, because the Washington ACTION headquarters did not have adequate information on how these RSVP funds were being used in all cases. Apparently some local RSVP programs have not focused their services in areas of "critical human needs" and there have been isolated reports of little construction activities in a few RSVP centers. But above all, this cut seems to have been based on inadequate information and a lack of sufficiently clear-cut federal guidelines.

Mr. Chairman, rather than being a justification for a reduction in funds, that would appear to be a reason for enhancing the ACTION headquarter's information resources and guidelines for channeling the local services to areas of basic human needs. The lack of a data base or a basis for evaluation is no reason for penalizing the tens of thousands of RSVP volunteers who stand to be displaced by any such action.

If anything, Mr. Chairman, RSVP is a program whose funding should be increased. This truly unique program requires a comparatively small amount of federal funds, encourages senior citizens to lend a helping hand in community affairs, and gets more in services for the dollar than nearly any other federal program. This is because of the unique nature of the RSVP program which relies entirely on senior volunteers, reimbursing them only for meals and transportation. RSVP also involves a significant 30 percent local match which assures local commitment and grassroots support.

Not spending this $4.7 million would reduce the number of RSVP centers, displace tens of thousands of senior volunteers, and jeopardize the good will and valuable services realized through the RSVP program. Mr. Chairman, I believe in close scrutiny of federal budgets, and the elimination of waste, but saving $4.7 million at such a cost in lost good will and volunteered services is false economy.

The value of RSVP to the senior volunteer participants cannot be overstated. For many senior citizens it is a chance to become reinvolved in community affairs, a chance to contribute their talents and time, and a chance to help where it is most needed.

Among the beneficiaries of these volunteered services are low-income and disadvantaged youth, orphans, the mentally and physically handicapped, homebound elderly who receive lunches from the Meals-on-Wheels program, and many other elderly and disabled persons residing in nursing homes.

Mr. Chairman, I have received many letters recently expressing dismay over this proposed budget cut. These letters were very helpful to me in assessing the role of RSVP in my state of Iowa, a state with the third highest proportion of elderly in the nation. I ask that some of these letters be made part of the record, and I urge the Committee to restore the funds cut by OMB.

VOLUNTARY ACTION CENTER OF ROCK ISLAND AND SCOTT COUNTIES,
Rock Island, Ill., February 2, 1978.

Senator JOHN CULVER,
Federal Building,
Davenport, Iowa.

DEAR JOHN: I don't know if you are aware of Sam Brown's list of priorities for ACTION'S fiscal year of 78–79. He has proposed a cut of 23.3 percent for ACTION'S Retired Senior Volunteer Program (RSVP). I have been told that his focus is to community oriented programs for the needy and the minorities. Needless to say John, I am confused with the RSVP cut and the large proposed addition to Peace Corps funding. For what community focus does the Peace Corps have?

Our RSVP Program focuses on the needs of the elderly—bringing them back to the mainstream of community through voluntarism. It has been and continues to be a viable and important program for the elderly in our bi-state area. The seniors are active and an important giving mechanism to the community.

John, refer to House bill 843 and Senate bill 1327 for further information. Senator Alan Cranston will be chairing the ACTION budget hearing on February 9, 1978. Your interest and the interest of your colleagues would be greatly appreciated.

Thank you John, the representation you are giving our state is commendable.

Sincerely,

BARBARA HAMMERMAN BRODY,
Executive Director.

DAVENPORT GOOD SAMARITAN NURSING CENTER,
Davenport, Iowa, January 25, 1978.

Senator JOHN CULVER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CULVER: This letter is in opposition to the budget cut of 4.7 million dollars to RSVP Volunteer Services, House Bill 843 and Senate Bill 1327. Your reason being that RSVP has not focused its services sufficiently toward those of the "lower income segment."

We are a Nursing Home of 211 Residents. Of these 211, 104 are on the Title 19 Program, which is known as Medicaid. The RSVP Volunteers in January gave us 182 hours of needed help. The Medicaid re-imbursement rate is such that if we had to hire people to fill these added hours of help we could not begin to pay them. It is unfair for us to have to raise the rates of our private pay residents again. We already increased Private Residents $3.00 a day beginning December 1, 1977.

We are asking to please reconsider your budget. The RSVP carries on a vital service to our Center.

Sincerely,

KAREN K. GRIGGS,
Administrator.

RETIRED SENIOR VOLUNTEER PROGRAM,
Story City, Iowa, January 24, 1978.

JOHN CULVER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR CULVER: I am writing this letter as a result of recent correspondence from the National and State Directors Association for the Retired Senior Volunteer Program. It seems that President Carter is cutting the National RSVP budget for the FY 1979 by $4.7 million. If this cutback goes through it would mean eliminating 138 programs nationwide and cutback other programs. In addition, it has been suggested to Congress by the Action Director that there be a considerable RSVP budgetary reduction in succeeding years with the hope that RSVP will eventually phase out. The reason for this action has been given as "lack of focus." I do not know what they mean by lack of focus. We have focused upon the needs of people over 60 years of age and the needs of their communities. We feel that many problems that exist within our own communities can be tackled right at home, human and social problems like education, mental illness, delinquency and family deterioration through the organization of voluntary effort. Nothing can melt such human and social problems faster than the willingness of one individual to involve himself voluntarily in helping another individual overcome his problems.

Needs for human services are increasing at an alarming rate and resources to meet those needs are decreasing as cities, states and the federal government tighten their fiscal belts.

Previously in our society when a person retired any knowledge or ability that was once worthwhile was no longer worth contributing. Only recently has any effort been made to change this attitude or provide out-

lets for our Senior Citizens to prove their skills, abilities and continued capacity for productivity. One such effort has been the development of the Retired Senior Volunteer Program. The sole purpose of this program is to develop a recognized role in the community and a meaningful life in retirement through volunteer service. As you are aware, often time retirement deprives an individual of their identity and selfworth, which results in depression, isolation, and lonliness, which leads to physical and mental illness. RSVP feels this is a very negative part of retirement and we are trying to do something about it by helping senior volunteers identifying with the community, keep his self-esteem and personal growth and at the same time render their valuable talents and skills.

RSVP assists Story County agencies in the development and co-ordination of programs for the elderly so they might be more effective. We give information and referral of all elderly services and agencies. We try to inform the elderly of all the alternative services available to keep them in their homes as long as possible. RSVP initiates new programs throughout the county. RSVP started the Community Representative Program for Story County so that each area of the county would have a representative to go to if they are in need of assistance. We started the first luncheon programs and applied for grants to get the new program kitchen equipment. RSVP helped write the By-laws for the Council on Aging appointed by the Story County Board of Supervisors. RSVP publishes a monthly newsletter county-wide to keep Senior Citizens aware of activities and programs for the elderly.

In the last 9 months our 347 RSVP Volunteers gave 34,000 hours of service to Story County. If we were to multiply these voluntary hours of service by the minimum wage of $2.75 per hour we would have a tax savings of $77,875.00 to Story County. Our present cost per hour is $.86. There is a real side benefit to each community that has RSVP volunteers, tax savings. Our RSVP volunteers give their time to non-profit agencies, these non-profit agencies are usually tax supported. So when an RSVP volunteer is placed with one of these agencies, they are saving money by not having to hire the work done and the money they save is tax money.

We were very pleased with our last Sponsor's Quarterly Report covering Oct. 1, 1977 to December 31, 1977. You might be interested in these Statistics:

OBJECTIVE

Recruit 25 new volunteers.
Maintain 330 volunteers.
Generate 7,400 hours of Vol. Service.
Maintain 20 active stations.

ACTUAL ACCOMPLISHMENT

Recruited 31 new volunteers.
Maintained 347 volunteers.
Generated 9,687 hours of volunteer service.
Maintained 30 active stations.

Under Action guidelines, RSVP has a 70–30 percent match with the Federal government. We will receive $23,000.00 this fiscal year (April 1, 1978–March 30, 1979). This year we have to raise $10,157.00 locally for volunteer support costs. We have requested $6,500.00 from the Story County Board of Supervisors in revenue sharing money this year. The rest of the local match will come from fund raisers, city governments, service clubs, businesses, United funds and private donors. Every year it becomes more and more difficult to raise our local match. I feel locally that we could not come up with anymore than 30 percent of the match. Even this is difficult to raise. So often the government sets up programs, starts them out and then when they really become effective and meet the needs of the people the government pulls the rug out from under them. I feel this is the case with RSVP now.

In December our Advisory Committee did a program evaluation for the Story County RSVP. I am enclosing it for your examination. We were pleased with our findings. We feel that we have an excellent program in Story County and that we are meeting the needs of our people over 60 years of age and the communities that they live in. I am also enclosing our budget for your review.

I hope in some way you will be able to help us reverse the action of Congress and restore the $4.7 million cutback in our budget. We also hope that you can stop any action to reduce our budget in succeeding years or to phase out the RSVP. If you have any further question do not hesitate to notify me. Your may reach me at 733–4917.

Sincerely yours,

CONNIE CLARK,
Program Director,
Story County RSVP.

FEBRUARY 2, 1978.

Re ACTION budget proposal FY 78–79, House bill 843, Senate bill 1327.

To: Senator John Culver.

From: Sue Sieben, Director, Retired Senior Volunteer Program of Rock Island and Scott Counties.

The six hundred Retired Senior Volunteers of Rock Island and Scott Counties are confused and concerned at ACTION National Director Sam Brown's proposed budget cut to Retired Senior Volunteer Programs nationwide. The 4.7 million dollar cut constitutes 23.3% of the federal budget and will severely restrict our program's scope and effectiveness.

This is an unexpected and disappointing response to RSVP's shining success in offering senior citizens a positive alternative to the often debilitating effects of retirement. RSVP contributes to the psychological well-being of our senior community by allowing them to select meaningful volunteer jobs based on their individual skills and preferences. Self-determination and independent action is a crucial factor for this fast-growing segment of our population who are constantly battling old stereotypes that question their usefulness and impact in today's community. RSVP has been extremely valuable in demonstrating how older Quad-Citians contribute to those around them. The enclosed fact sheet is a synopsis of this contribution and how it's accomplished.

Above all, RSVP enables all persons 60 and over to actively serve the community, regardless of their financial condition. RSVP provides all registered volunteers accident, personal liability and, for those who drive to their volunteer jobs, excess auto insurance. Based upon the expressed need of the volunteer RSVP offers them the following:

Transportation to and from their volunteer jobs via the RSVP taxi;

Reimbursement for meals eaten while volunteering at the agencies they serve;

Reimbursement for transportation expenses when the RSVP taxi is not used.

Our close ties with these local human service agencies and programs is beneficial in many ways. One, we can provide quick response to their need for help; two, we avoid duplication of services; and three, we are aware of what's happening in the community and can keep our seniors informed through our enclosed newsletter, in addition to serving as a senior advocate. Enclosed also is the proposed memorandum of agreement between Rock Island's Community Action Program, Project NOW and RSVP. It defines the areas of cooperation, some of which are in operation, and some that are planned.

The non-profit agencies whom our seniors serve are diversified and far-reaching. Through these agencies our senior volunteers provide sensitive care to:

The elderly and the lonely in many nursing homes in both counties;

The low-income youth in Headstart, and at Martin Luther King Center in Rock Island and Friendly House in Davenport;

Children in the public and non-profit schools and day-care centers throughout the Quad-Cities;

Youngsters who are without families at Bethany Home in Moline or whose family environments require the support of volunteers working with Youth Services Bureau of Rock Island County, Illinois Department of Children and Family Services, or the Davenport Youth Commission;

Homebound elderly who receive the hot lunches and companionship of Meals on Wheels through Community Nursing services in Rock Island County and Meals Service of Scott County, Inc.;

Families who need emergency food or housing from the Illowa National American Red Cross, FISH of Moline or Starfish of Rock Island County.

The mentally ill at Rock Island Counties Activities Recreation Program, the Community Mental Health Center of Scott County, and East Moline Mental Health Center.

The mentally and physically handicapped at the Opportunity Center.

The sick at St. Anthony's, Lutheran, Illini, Franciscan and St. Luke's Hospitals;

The physically disabled at Rock Island County's Foundation for Crippled Children and Adults.

There are numerous libraries, museums, cultural centers, recreation programs, adult learning centers, senior centers and charitable organizations that are also served by senior volunteers.

The absence of "senior power" in the Quad-Cities would be a significant loss to people throughout the area. Their 75,000 hours of yearly service, computed at the modest denomination of $2.65 per hour, would mean a loss of $198,750 worth of quality service if this local program were eliminated from ACTION's budget entirely. Your endorsement of and your support for the Retired Senior Volunteer Program of Rock Island and Scott Counties would be instrumental in keeping this excellent program alive. Thank you for your interest and concern.

IOWA LAKES
AREA AGENCY ON AGING,
Spencer, Iowa, January 20, 1978.

Senator JOHN CULVER,
Dirksen Office Building,
Washington, D.C.

DEAR SENATOR CULVER: I have just been informed by the Director of the Retired Senior Volunteer Program (R.S.V.P.) in Spencer, Iowa, that President Carter is proposing a 25 percent cutback, or a 4.7 million dollar reduction, to the R.S.V.P budget for FY '79. The letter I received from the R.S.V.P. Director stated that this cutback would amount to the elimination of 138 R.S.V.P. programs nationwide.

Since the Spencer R.S.V.P. program is one of the newest in the State of Iowa, I can only assume that, if such a cutback occurred, our project would be one of the first to be eliminated. Although a relatively young project, the R.S.V.P. program in this area has made substantial strides in involving retired persons in community activities. If the senior citizens of this country are truly to achieve independence, we must do everything possible to insure that these individuals are not isolated from day to day community activities. Their continued involvement in activities, such as the R.S.V.P. program, will

facilitate a continued understanding of governmental operations and community activities.

If any efforts will be made to restore this cutback, I would encourage you to support such a restoration. Your continued support of aging programs throughout the United States is greatly appreciated.

Very truly yours,

G. RICHARD AMBROSIUS,
Executive Director.

BIPT RETIRED SENIOR VOLUNTEER PROGRAM,
Belle Plaine, Iowa, January 17, 1978.

Senator JOHN C. CULVER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CULVER: There is a rumor President Carter is going to propose in his State of the Union message a 25 percent cutback or $4.7 million in the RSVP budget. If this cutback becomes a reality it would mean eliminating 138 RSVP Programs nationwide and substantial cutbacks for existing RSVP's.

Governor Ray in his State of the State message proposes additional funding for RSVP.

I would urge you to support Governor Ray's proposal and do everything you can to eliminate a cutback. The hours of donated service to organizations by senior volunteers is almost unbelievable.

My particular program covers a very rural four county area. 275 enrolled volunteers are giving over 2,000 hours a month to Congregate and Mobile Meal programs, Community and Senior Centers, Head Start and public schools, County Care Facilities, nursing homes, hospitals, needy individuals and many more places. At minimum wage scale their services amount to more than $5,000 each month. That is a very good return on the $1,400 a month our program costs the Federal Government.

Hoping for your support.

Sincerely,

DONNA FORD,
RSVP Director.●

UPGRADING RAILWAYS

● Mr. McGOVERN. Mr. President, between February 23 and February 26 our Nation experienced three separate major rail derailments. Two of these derailments resulted in death and destruction of property. Eleven persons were killed in the first disaster in Waverly, Tenn., when a train derailed and a tank containing 20,000 gallons of volatile propane exploded. Within the next 48 hours a freight train derailed near Youngstown, Fla., rupturing a tank car containing chlorine gas. In this tragedy the death toll has reached 8 persons with 67 others hospitalized. Again on the same day, in Cades, Tenn., a tank car carrying noxious sodium hydroxide derailed and sprang a leak. It is most fortunate that no one was killed or seriously injured in this accident, however, 150 persons were evacuated from their homes.

While the cause of the derailment in Waverly has not yet been determined, the accident in Youngstown already has been attributed to the poor condition of the track bed.

Derailments are not an unusual occurrence in today's rail industry. Since the implementation of the Federal Rail Safety Act, derailments have increased. In parts of my State it is not unusual to note growing numbers of rail cars lying destroyed next to a given rail bed. The majority of all derailments we experience in South Dakota are due to the poor condition of the rail bed. As indicated by these recent disasters other States share our problem. The real problem, however, concerns the fact that many of our rail beds were constructed 100 or more years ago and many have not seen substantial improvements or repairs since that time.

In recent years, the Federal Government has enacted a series of major legislative proposals to upgrade rail transportation. It is now obvious to many that this legislation has not provided the most needed assistance. The deteriorating quality of the rail beds is a significant contributor to the major problems currently facing the railroads and the Nation. The derailments in and of themselves are not the problem; the dilemma lies in the resulting inefficient service, damaged goods, unreliability and shipper distrust.

In light of the recent derailments in the Southeast, Secretary Adams has called for an increase in rail safety inspectors. While I understand the good intent of the Secretary's statement, I would like to know what will be accomplished by simply inspecting the rail beds and perhaps certifying many of them as unsafe. Perhaps those lines will be closed down. The cost of repairing many of those lines may well bankrupt some rail carriers.

It is essential that we achieve an efficient, effective means of assistance to railroads to upgrade their lines. Mere inspection is not going to create better rail beds on most lines. A significant portion of railway legislation to date, while developed with the admirable intentions of increasing service and safety, has proven ineffective. We must begin to look against the rail dilemma and tailor future legislation to these specific needs and problems in order to maintain and improve what should be our most efficient means of surface transportation.

It is unfortunate that tragedies such as those in the past several days must occur before we give much notice to these very real problems. It is a tragedy in itself that we have allowed our potentially most efficient transportation mode to deteriorate in this manner.

I ask unanimous consent that the transcript from an excellent NBC network news editorial regarding rail safety, aired on February 26, be printed in the RECORD.

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

DERAIL REACT

BAIN. Last year, there were between 6 and 7 thousand train derailments in this country. According to the National Transportation Safety Board, the problem is not in the trains but in the tracks they ride on. Many railroad tracks and beds were constructed nearly a hundred years ago. They were designed for much lighter loads and now they are deteriorating. Government officials are also worried about the increased traffic of explosive and toxic materials on those rails . . . traffic which has doubled in the last ten years. One member of the National Transportation Safety Board says the government has waited too long to correct the problem. Now, he says, it is a national disgrace.

Captain PHILLIP HOGUE, Transportation Safety Board Member. The problem is not only that these terrible accidents occur in isolated areas . . . the big problem is going to be ultimately that we are going to have a major accident in a highly populated area. It's just a question of what day it's going to take place.

BAIN. The National Transportation Safety Board is expected to announce this week that it will begin hearings on derailments of hazardous materials as a national major problem . . . instead of taking these accidents on a case by case basis. The move could lead to new and stronger regulatory action. Jackson Bain, NBC News, Washington.●

MINORITY RIGHTS ON COMMITTEES

● Mr. MARK O. HATFIELD. Mr. President, the strength of the Senate as a representative legislature depends upon the effective development and presentation of minority positions. Nowhere is this need greater than in committees where much of the substantive work of the Senate is done.

On February 4, 1977, the Senate approved Senate Resolution 4, the Committee System Reorganization Amendments of 1977. Under title VII, section 703(E) of this resolution, reference is made to the minority position on Senate committees. I feel Senate Resolution 4 takes a significant move toward meeting this need of equity in the allocation of committee staff resources.

The minority staff of the Rules Committee has surveyed the minority staffing situation on all Senate committees which offered budget resolutions for the Rules Committee's authorization. The following data table reflects the findings currently gathered through this survey.

These statistics include the partisan staff ratios for the 1977 and 1978 budgets, as well as the minority staffing percentages in the 1977 budget submission, in an actual operational setting in September 1977 and in the 1978 budget request. The 1978 percentage figures are based on the dollar ratio of funds available to the minority and those allocated to the majority for staffing purposes.

Mr. President, the Senate has now acted upon the 1978 committee budget authorization resolutions. At issue now is what impact the cuts in these budgets, effected by the Rules Committee and the Senate, will have on the various minority staff allocations. I plan to monitor carefully how these budget cuts affect the minority staff of each committee to insure that the minority does not suffer disproportionately from these reductions.

A number of committees are approaching or have already achieved the one-third minority staff allocation. I am encouraged by this progress. However, I would identify for my colleagues an emerging problem which is the excessive designation of staff on certain committees as "nonpartisan."

According to Senate Resolution 4, nonpartisan and administrative costs are excluded from the amount against which the minority staffing allocation is cal-

culated. The minority, instead, is entitled to one-third of those funds available for partisan-designated staff. An overloading of the nonpartisan category has the effect of diluting minority staff representation because it reduces the base against which the minority percentage shall be measured. In my judgment, Mr. President, the definition of what constitutes a nonpartisan staffer must be carefully circumscribed.

Under Senate Resolution 4, the chairman and ranking minority member of a committee shall agree on which staff slots shall be deemed nonpartisan. On many committees, however, the minority's right to participate in designating positions as nonpartisan amounts to acquiescing to a prepared budget which is put before the ranking minority member for signature. In other cases, the minority is allowed reasonable preconsultation before a final budget is worked up. In no case, except for the intelligence committee, does the minority have any say in who fills the nonpartisan vacancies.

Mr. President, I believe that the minority must be permitted a right of refusal (veto power) over nonpartisan appointments. The principle is this: Within the framework of the budget, the committees' majority should have the untrammeled right to appoint majority staff free from interference by the minority. Similarly, the minority should have an identical right to make its own appointments free from any questioning by the majority. In fairness and in the spirit of nonpartisanship, both the minority and the majority should have a role in the appointment of nondesignated staff.

Theoretically, it would seem acceptable for such personnel to work under the basic direction of the majority's staff director and also for the majority to take the lead in proposing appointments to fill nonpartisan vacancies. However, I firmly believe that if those slots are truly to be considered nonpartisan, the minority must have a right of consultation and refusal before such vacancies are filled.

Section 703(E) of Senate Resolution 4 also asserts that the minority staff shall be allocated proportional room space within the committees. On several committees, the minority has complained that it is unfairly cramped in space. Of course, it is understood that when the entire committee is overcrowded the minority will have to suffer its proportional share of the burden. There is a need to insure, however, that the minority staff is not being disproportionately disadvantaged. At my request, Chairman PELL of the Rules Committee, has authorized a space survey to ascertain whether or not the minority is being treated fairly in this regard.

Yet another provision of Senate Resolution 4 states that one-third of the committees' personnel funds shall be allocated to committees for compensation of minority staff as the minority members may decide. It has been learned that in some committees the chairman and the majority staff director actively determine salary levels for the minority staff. This active role violates the letter and the spirit of Senate Resolution 4. Where such a policy exists, it must be changed.

Mr. President, section 706 of Senate Resolution 4 mandates the Rules Committee to take an active role in effectuating the rights granted to the minority under section 703(E). Due to that mandate and to my genuine concern that these minority rights be given strength, I shall actively follow these issues so long as I am a member of that committee. A failure to pursue such matters could well lead to a dilution of minority rights. I am fully determined that will not be the case, and I will address the Senate on this topic from time to time as the need and circumstances so warrant.

Mr. President, I ask unanimous consent that the budget survey to which I refer above be printed in the RECORD.

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

SURVEY OF MINORITY STAFFING ON SENATE COMMITTEES, 1978

Political designation of staff	Committee on— Agriculture		Armed Services		Banking		Budget		Commerce		Energy		Environment and Public Works		Finance	
	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978
INVESTIGATIVE																
Professional:																
Majority			9	9	13		29	30	30	14	15	16	18			
Minority	2	3	3	3	7		12	16	17	4	5	8	7	3	3	
Nondesignated	6	8	0	0	1		5	1	1			1	1	6	6	
Clerical:																
Majority			0	0	9		14	26	28	16	17	10	10	5	5	
Minority	1	3 (2)	0	0	6		7	6	5	2	4	3	3	2	2	
Nondesignated	8	7 (8)	9	9			12	7	10			1	1	2	1	
PERMANENT																
Professional:																
Majority			3	3	4	4	3	5	4	5	5	4	6			
Minority	3	3	2	2	2	2	2	1	0	1	1	2	2	1	1	
Nondesignated	5	5	1	1	1		1						1	11	11	
Clerical:																
Majority			0	0	2	2	4	4	4	5	5	4	2			
Minority	1		1	1	1		1	2	2	1	1	1	1	1	1	
Nondesignated	3	4	6	6	2	4	1					1		11	11	
PERCENTAGE OF PARTISAN-DESIGNATED FUNDS ALLOCABLE TO MINORITY																
April 1977 budget	30.0		29		31		31.0		29		28		33.0		(1)	
September 1977 staffing percentage	26.7		29		31		31.1		32		25		31.7			
1978 budget	36.0		36		33		31.0		29		25		33.0		25	

Political designation of staff	Committee on— Foreign Relations		Governmental Affairs		Judiciary [2]		Human Resources		Veterans' Affairs		Small Business		Intelligence		Aging		Indian Affairs	
	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978
INVESTIGATIVE																		
Professional:																		
Majority			(3)	53			21	31	2	3		3		11	7	7		10
Minority				24			10	11	1	1		1		10				4
Nondesignated	16	16		19			2	2				1		9				6
Clerical:																		
Majority				48			34	39	5	5		3		1	7	6		2
Minority				21			12	21	2	2		1		2		1		2
Nondesignated	29	29		22			3	2				1		20				2

Footnotes at end of table.

SURVEY OF MINORITY STAFFING ON SENATE COMMITTEES, 1978—Continued

	Committee on—																	
	Foreign Relations		Governmental Affairs		Judiciary [2]		Human Resources		Veterans' Affairs		Small Business		Intelligence		Aging		Indian Affairs	
	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978	April 1977	January 1978
PERMANENT																		
Professional:																		
Majority			4				12	9	2	2	4½				4			
Minority	2	2	3				3	6	2	2	1				2			
Nondesignated	8	8	4				2	2	3	3	½							
Clerical:																		
Majority			2				10	9	4	4	2				5			
Minority			1				3	4	1	1	1				1			
Nondesignated	8	8									3							
PERCENTAGE OF PARTISAN-DESIGNATED FUNDS ALLOCABLE TO MINORITY																		
April 1977 budget	(1)		34				31.0		25		(1)		48		26.0			
September 1977 staffing percentage			33				27.6		27		32		48		32.2		23.7	
1978 budget	(4)		32				32.1		36		[5]23		45		33.2		32.0	

[1] No response.
[2] Judiciary Committee did not provide to Rules Committee data which could be used within the framework of this table. Provided instead are estimate minority staffing percentages for the Judiciary Committee subcommittee structure:

	Total salaries of minority staff in 1978 budget
Administrative Practices and Procedures Subcommttee	25 percent.
Antitrust and Monopoly Subcommittee	28 percent.
Citizens and Shareholders Rights Subcommittee	25 percent.
Constitution Subcommittee	26 percent.
Criminal Laws Subcommittee	19 percent.
Immigration	All staff are deemed to be nonpartisian, so no minority percentage available.
Improvements of Judicial Machinery	Data unavailable.
Juvenile Delinquency	30 percent.
Penitentiaries and Corrections Subcommittee	Data unavailable.
Separation of Powers	31 percent.

[3] Comparable information not available.
[4] See attached.
[5] Pending hiring of additional staff personnel. ●

FINANCIAL FIGURES ON NATO DEFENSE SPENDING

● Mr. CANNON. Mr. President, on February 28, 1978, the Senate Armed Services Committee received testimony from Gen. Alexander Haig and other Defense Department witnesses on the NATO aspects of the proposed fiscal year 1978 defense budget. At that hearing I pointed out that the United States devotes a higher percentage of its national income to its defense spending than do any of the other of our NATO allies, with the possible exception of Greece and Turkey. The countries with a sizable gross domestic product, which is roughly the equivalent income factor to our more familiar GNP, countries such as Great Britain, Germany, and France, spend a much lower percentage on national defense than we do here in the United States.

These countries are right up there on the borderline with the Soviet's Warsaw Pact, up where the immediate threat of the pact's military buildup is greatest. Yet the question I raised with General Haig was why do not these allies of ours seem to take this threat as seriously as we do—at least in the sense that they are willing to divert an equal percentage of their national productivity toward their national defense budgets.

Let me point out that the figures I was referring to were not my own; they were taken directly from data supplied by a delegation representing the "Eurogroup" NATO countries which visited Washington, D.C., in October 1977.

This delegation distributed a document which showed the economic figures that the NATO countries allocate to national defense. It also showed representative examples of the defense production output of the combined Eurogroup countries for some of the more significant categories of weaponry for the calendar year 1977.

Mr. President, I ask unanimous consent that two tables that show these factors be printed in the RECORD at the conclusion of my remarks.

There being no objection, the tables were ordered to be printed in the RECORD.

Mr. CANNON. Mr. President, it is my opinion that these data would show that the United States is making a considerably larger total effort toward defense spending than are our NATO allies which are located right at the edge of the area of potential hostilities. We put a higher percentage of our GNP into defense spending, and we also greatly outproduce those allies collectively in numbers of combat aircraft, tanks, ships, and other types of military hardware. The tables supplied by the Eurogroup delegation bear out these statements.

Mr. President, I offer these data purely for the information of my colleagues. But I do think we should consider question of why these allies located in the place where the military threat would seem to be the most immediate, do not seem to take it as seriously as we do here in this country.

ANNEX B

GROSS DOMESTIC PRODUCT (PURCHASERS' VALUES) AND DEFENSE BUDGETS, 1976 [1]

Country	Gross domestic product		Defense budgets		Defense budgets as percentage of GDP
	Total (million U.S. dollars)	Per head (U.S. dollars)	Total (million U.S. dollars)	Per head (U.S. dollars)	
Belgium	65,804	6,694	2,024	206	3.1
Denmark	38,329	7,530	977	192	2.6
Germany	447,128	7,295	[2]15,129	[2]247	[2]3.4
Greece	21,856	2,407	(3)	(3)	(3)
Italy	169,289	3,009	4,335	77	2.6
Luxembourg	2,415	6,653	23	23	1.0
Netherlands	86,209	6,251	2,863	208	3.3
Norway	31,042	7,693	944	34	3.0
Turkey	40,374	1,005	(3)	(3)	(3)
United Kingdom	232,999	4,149	11,780	210	5.1
Eurogroup	1,135,445	4,434	38,075	184	3.5
France	367,928	6,914	13,897	261	3.8
Portugal [4]	15,147	1,605	636	67	4.2
Iceland	1,398	6,326			
NATO Europe	1,519,918	4,766	52,609	195	3.6
Canada	184,432	7,974	3,641	157	2.0
United States	1,693,253	7,855	99,083	460	5.9
NATO North America	1,877,685	7,867	102,725	430	5.5

NOTES

[1] Because of changes in exchange rates, caution is needed in interpreting figures for 1 particular year in isolation.
[2] In addition to military expenses proper, the German authorities are obliged to incur large expenditure for Berlin, owing to the exceptional situation of this city and the need, in the interest of the defense of the free world, to insure its viability. These Berlin expenditures are not included in "defense budgets," but if they were taken into account, the figures would be 18,618,000,000 U.S. dollars, 304 U.S. dollars, and 4.2 percent, respectively.
[3] For Turkey, figures for 1975 and 1976 are not available. For 1974, the figures (at 1974 prices and exchange rates) were 1,140,000,000 U.S. dollars, 28 U.S. dollars, and 3.2 percent, respectively. For Greece, 1976 figures are not available. For 1975, the figures (at 1975 prices and exchange rates) were 1,363,000,000 U.S. dollars, 151 U.S. dollars, and 6.5 percent, respectively.
[4] Portugal joined the Eurogroup in December 1976.

NEW EQUIPMENT FOR 1977

Looking ahead, Eurogroup countries plan to introduce, inter alia, the following major new equipment in 1977:

Naval capability:		Armour/antiarmour capability:	
Destroyers/escorts	6	Main battle tanks	288
Minelayers/minesweepers	8	Other armoured vehicles	1,371
Fast patrol boats	11	Antiarmour missile systems	439
Support ships	3	Hand-held rocket launchers	5,900
Maritime helicopters	8	Air capability:	
Submarines	3	Combat aircraft	63
		Transport and supply aircraft	20
		Land-based helicopters	40
		Antiaircraft guns	334
		Antiaircraft guided-missile systems	360

RENEWABLE ENERGY

● Mr. McGOVERN. Mr. President, the United States and the world are on the precipice of a major energy transition. Such transitions always bring about fundamental social change. Consequently, any national energy policy, in addition to establishing mechanisms to conserve conventional energy resources and requiring industry adjustments, should also provide the Nation with a vision for the future. Unfortunately, I believe the National Energy Act which may become law within the next few months does not contain this essential vision. An effective, successful National Energy Act must prepare and guide the Nation through this major energy transition and look beyond 1985, look beyond our conventional finite resources to the alternative renewable resources upon which we must depend in a postpetroleum world.

It is unfortunate that the National Energy Act does not provide us with this vision, but it is a serious mistake to allow less than 5 percent of all expenditures for the development of renewable resources as is proposed in the current Department of Energy budget. The budget for solar energy, after adjustments for inflation, is $40 million less than it was last year. Obviously, our policies of energy education and awareness are sorely lacking.

Mr. President, I ask unanimous consent that an excellent article by Dennis Hayes, of the Worldwatch Institute, which appeared on February 26, 1978 in the Washington Post, be printed in the RECORD.

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

WE CAN USE SOLAR ENERGY NOW—THE TECHNOLOGY IS HERE; WHAT IS NEEDED IS GOVERNMENT SUPPORT

(By Denis Hayes)

(NOTE.—Hayes, a senior researcher at Washington's nonprofit Worldwatch Institute, is the author of "Rays of Hope: The Transition to a Post-Petroleum World." He was national coordinator of Earth Day in 1970 and is board chairman of the organizers of Sun Day.)

We all live in solar homes. We think we heat our houses with oil, natural gas or electricity, but 95 percent of their warmth comes from sun-beams. In a sunless world, our dwellings would be 400 degrees Fahrenheit below zero when we turned on our furnaces. The houses of solar pioneers simply squeeze a few more degrees from the sun than do the conventional homes of their neighbors.

Twenty years ago, virtually all Americans hung up their weekly wash on "solar clothes driers." Today, few do. If I hang my wash on a line and you put yours into an electric drier, the solar energy I use will be ignored by statisticians while the electricity you use will be tabulated in next year's almanacs.

We ignore the sun for the same reasons that fish ignore water: It is abundant, free and dependable.

The solar influx is so large that it defies easy comprehension by students of conventional energy sources. Every day, the world receives 10,000 times more energy from the sun than humankind derives from all conventional fuels combined. But the official 825-page United Nations Survey of World Energy Supplies does not even mention the sun.

We know how to harness this solar influx directly as sunlight and indirectly through wind, green plants and running streams. Every essential technological ingredient for a commercial solar energy system has existed for more than a decade, although most of these devices have not yet benefited from mass production. The issue today is whether we will make the necessary policy decisions to develop these resources, or whether vested interests will coerce our continued reliance on sources that are dangerous, vulnerable to disruption and ultimately unsustainable.

Unlike fossil and fissile fuels, sunlight is a flow and not a stock. Once a gallon of oil is burned, it is gone forever, but the sun will cast its rays earthward billions of years from now, whether sunshine is harnessed for human needs or not. Technical improvements in the use of sunlight could lower prices permanently; similar improvements in the extraction of finite fuels could hasten their exhaustion.

SOLAR HEATING AND COOLING

Heating water with sunlight is simple. The collector is, in essence, a box with a black bottom and a glass top. Glass is transparent to sunlight but not to the radiation of longer wavelengths given off by the hot collector itself. Hence, heat is trapped inside. When water is pumped through the hot collector, its temperature rises. The hot water is then piped to a very well insulated storage tank where it is kept until needed.

Other countries heat their water with sunlight. In tiny Israel, 200,000 homes have solar water heaters, and in Japan the figure is over 2 million. In remote northern Australia, where fuels are expensive, the law requires solar water heaters on all new buildings.

There is some controversy over how rapidly we will catch up. The original goal of the Carter administration's energy plan was 2.5 million solar heaters by 1985. In subsequent congressional testimony, Energy Secretary James Schlesinger trimmed this target to 1.3 million.

Wilson Clark, energy adviser to Gov. Jerry Brown of California, finds the federal figures amusing. "We will, beyond a doubt, have more solar collectors installed in California by 1985 than those guys are forecasting for the whole country," says Clark. The Solar Energy Industries Association, which represents most major solar manufacturers, considers 11 million installations a reasonable 1985 goal.

Sunshine can also be used to heat buildings. "Passive" systems store energy right where sunlight strikes the building's walls and floor. Such systems are designed to shield the structure from unwanted summer heat while capturing and retaining the sun's warmth during the colder months. Passive solar architecture is, beyond doubt, the most efficient and cost-effective way to heat and cool new buildings. Modest investments will often provide 80 to 100 percent of a building's space conditioning requirements. But passive features cannot easily be added to existing structures.

"Active" solar heating systems are more expensive but they can be bolted onto the roofs or southern walls of existing buildings as a substitute for—or supplement to—conventional furnaces. In active systems, fans or pumps move supplement to—conventional furnaces. In active systems, fans or pumps move solar-heated air or liquid from collectors to storage areas, from which heat is withdrawn as needed. Solar self-sufficiently will usually dictate a combination of active and passive features in all but the southern rim of the United States.

Buildings can be cooled as well as heated by sunlight. Again, passive solar design is the most important first step, but active solar air conditioners are also now being marketed. Absorption solar air conditioners, which operate on the same principle as gas refrigerators, reach peak cooling capacity when the sun burns brightest, which is when they are most needed. They therefore could reduce peak demands on many electrical power grids. As solar air conditioners penetrate the housing market, the overall economics of active solar heating systems will improve, because solar collectors will begin providing a year-round benefit.

Solar technologies have industrial applications as well. A study of the Australian food processing industry, for example, found that heat comprised 90 per cent of the industry's energy needs. Almost all this heat was at under 150 degrees Centigrade and 80 per cent was below the boiling point of water. Such low-temperature heat can be easily produced and stored using simple solar devices. In the United States, solar heating is now being applied to a soup-canning plant in California, a fabric-drying facility in Alabama and a concerte block factory in Pennsylvania. Solar-powered laundries and car washes are now operating in California, and a St. Louis brewery has turned to solar pasteurization.

SOLAR CELLS

The most exciting solar electric prospect is the photovoltaic cell—now the principal power source of space satellites and the main element in photographic light meters. Such cells generate electricity directly when sunlight falls on them. They have no moving parts, consume no fuel, produce no pollution, operate at environmental temperatures, have long lifetimes, require little maintenance and can be fashioned from silicon, the second most abundant element in the earth's crust.

Photovoltaic cells are modular by nature, and little is to be gained by grouping large masses of cells at a single collection site. On the contrary, the technology is most sensibly applied in a decentralized fashion—perhaps incorporated in the roofs of buildings—to

minimize transmission and storage problems. With decentralized use, solar cells can be combined with compatible technologies to use waste heat for space heating and cooling, water heating, and refrigeration. Last summer a photovoltaic array in Mead, Neb., irraged 80 acres of corn at a thousand gallons per minute.

The manufacture of photovoltaic cells is currently a low-volume business—only 750 kilowatts of photovoltaic capacity were produced in 1977—and the products are consequently rather expensive. But a recent U.N. report concluded that solar cells would become cheaper than nuclear power if they received a total investment of $1 billion—less than the cost of just one large nuclear power plant.

STORING SUNLIGHT

Solar energy is too diffuse, intermittent and seasonally variable to harness directly to serve some human needs. Interruptions plague all energy systems, however. Electrical power lines snap, gas and oil pipelines crack, dams run low during droughts and nuclear power plants frequently need repairs, refueling and maintenance.

Sometimes the intermittent nature of an energy source causes no problems. For example, solar electric facilities with no storage capacity can be used to meet peak demands, since virtually all areas have their highest electrical demands during daylight hours.

Low-temperature heat can be temporarily stored in such substances as water or gravel; in fact, substantial short-term heat storage capacity can be economically designed into the structural mass of new buildings. The larger the storage container, the less surface area (through which heat can leak) it has per unit of volume. Large storage tanks serving clusters of houses can be designed to have such low leakage rates that seasonal storage becomes economically possible. Princeton physicist Theodore Taylor advocates solar "ponds serving as many as 100 houses—collecting heat in July for use in February, and producing ice in February for air conditioning in July.

Eutectic salts, which melt at about 90 degrees Fahrenheit, provide a much more compact storage medium than water. These cheap, plentiful salts can hold prodigious amounts of heat. In the past, salt caked on the interior walls of the storage container, interfering with efficient heat transfer. General Electric has overcome this problem by rotating the storage cylinder at 3 revolutions per minute.

Electricity can be stored directly in batteries. Existing batteries are expensive, but new types may soon enter the market. For example, the "iron redox" batteries that will store 2,200 kilowatt hours of photovoltaic-generated electricity for an Arkansas community college are expected to cost less than one-fifth as much as standard lead-acid batteries when mass produced.

But nuclear reactors and large coal plants also require energy storage. These facilities cannot be geared up and down to follow the peaks and valleys of electrical demand; they produce power at a steady rate, and surplus power from non-peak hours must be stored for the periods of heaviest demand. Because more energy is used during the day than at night, the overall storage requirements for a society based on renewable energy sources may prove no greater than those of an all-nuclear society.

SOLAR COSTS

Conventional wisdom holds that while solar energy has many attractive characteristics, it is too expensive today to see widespread application. As is so often the case with conventional wisdom, yesterday's truth has become today's misapprehension.

Five years ago, solar energy could not compete economically with low-priced fuels. Most solar homes used materials that were handcrafted in small workshops. But since 1973, the cost of solar equipment has dropped steadily while the costs of all competing energy sources have skyrocketed. Today, with factory production, a typical solar collector costs about $25 a square foot; by 1981, mass production could bring average costs under $10. Solar technologies already can provide energy for many purposes at no higher cost than conventional energy sources.

Take, for example, solar heating. Throughout the lower 48 United States, solar house heating now makes economic sense at the margin. That is to say, if the energy is to come from a new solar unit or a new nuclear power plant, the solar investment will be cheapest. The homeowner, of course, will not be buying electricity just from the expensive new power plant; the utility will average the expensive new energy in with cheap energy from existing sources, so that the true cost of new power is hidden from the individual consumer (and borne, through rising utility bills, by all consumers). But for society as a whole, the new energy could be most cheaply harnessed with solar equipment.

Even where the homeowner must compare the marginal costs of new solar equipment with the average cost of competing energy sources, solar investments will generally make sense over the lifetime of the building. The most important first step is to incorporate passive solar design into the building's blueprints. Often this costs little or nothing. For example, it costs no more to place most windows in the southern wall than to place them facing north, but southern windows capture the sun's warmth while northern windows merely leak the building's internal heat. Roof overhangs, masonry floors and working shutters are not expensive. Yet, combined with tight construction and good insulation, they can lower the heating load of the building by 75 per cent and more. In Arkansas, 200 well-designed houses constructed under a grant from HUD cost no more than neighboring houses built using conventional construction standards, but their fuel bills are only one-fourth as high.

More elaborate designs can lead to greater savings. In the relatively mild climate of Atascadero, Calif., Harold Hay's passive solar house was constructed with bags of water incorporated in its roof. These act like "thermal flywheels," capturing energy on winter days and storing it to meet nighttime heating requirements. In the summer, the system collects heat from the interior during the day and radiates it outward at night. The cost of the solar features was about $5,000. The solar system has provided 100 per cent of the home's heating and cooling needs for several years.

In climates where passive solar design will not provide 100 per cent of heating requirements, back-up fuels or active solar systems are needed. In Princeton, N.J., architect Douglas Kelbaugh's passive solar home captures energy through a huge southern window wall during the day and stores it in a concrete interior wall to meet nighttime heating requirements. Like other passive solar homes, the Kelbaugh residence employs no pumps or fans—just careful design. The solar features cost around $9,000, and they provide virtually all of the home's requirements. In the unusually cold winter of 1976–77, the year's heating bill was just $75. Financed with a conventional home mortgage, Kelbaugh's solar energy system would require $1,800 cash at construction with monthly payments of $60—far less than his neighbors' fuel bills.

Many different solar collectors, pumps, fans and storage systems are now on the market. Prices frequently fluctuate several-fold. For example, solar collectors can be built and installed for a materials cost of about $2 per square foot. Prices of professionally installed solar collectors can range from under $10 per square foot to more than $70. The prices of thermal storage containers range from about $10 per cubic meter for hand-built systems to as much as $35 per cubic meter for commercial products. Hand-built solar systems can hold marked advantages over all competing energy sources. At the lower end of the price range, commercial solar systems also make economic sense.

Skeptics often point to the high-cost solar equipment used in some federal solar demonstration projects and claim that the buildings could have been heated with oil for a fraction of the cost. But such buildings incorporate no cheap passive solar features and they generally employ the most expensive solar hardware on the market. Moreover, the price of oil is an average price—not the price of new oil—and even this average price is kept artificially low through oil depletion allowances, intangible drilling cost write-offs, foreign tax credits, unsafe tankers built for accelerated depreciation, polluting refineries in the Caribbean and direct governmental price controls. Even in this loaded contest, solar energy compares fairly well.

THE COST OF SOLAR CELLS

Even photovoltaic cells—the most expensive technology now being used to harness solar energy—are much less expensive than is commonly believed. For example, a panel of distinguished scientists assembled by the Ford Foundation incorrectly reported in 1977 that "current [photovoltaic] collector costs are about $200,000 per kilowatt of peak electrical capacity."

The most charitable thing to be said for this figure is that it is 20 years out of date. Solar cells did cost about $200,000 a peak kilowatt in the late 1950s, but by early 1975, the costs had dropped to $31,000. By September, 1976—eight months before the Ford report was issued—the costs had dropped to $15,500.

Within months of the Ford report's release, the cost of solar cells fell to $11,750 a peak watt. And last December, the Department of Energy awarded a grant for a solar cell array that "tracks" the sun across the sky and concentrates its rays into comparatively small photovoltaic cells. This system, which will be installed at the Arkansas community college, will generate 362 kilowatts at a total installed cost of $6,000 per peak kilowatt.

Making allowances for the average availability of sunshine versus the average capacity factors of large nuclear power plants and considering demand patterns, transmission and storage, solar cells are now probably about 10 times as expensive as nuclear power in the most favorable regions of the United States. Solar cells now cost about one-tenth what they cost 5 years ago; nuclear power now costs about twice as much as it cost 5 years ago.

The United States now has about 48,000 megawatts of nuclear capacity and less than 1 megawatt of terrestial photovoltaic capacity. With mass production, solar cell costs are expected to continue falling dramatically. A 1977 report by the Federal Energy Administration contends that a $240 million purchase of 150 megawatts of solar cells, staggered over three years, would lead to a cost of just $500 per kilowatt for the 70 megawatts produced the third year.

Both solar-electric and wind-electric devices produce direct current—not the alternating current we are used to. Hence, one occasionally hears the comment that the cost of a solar society should include the cost of replacing all our appliances with devices that run on direct current (as do appliances in many motor homes today). Ignoring the possible merits of converting to direct current, the issue is trifling. Many things—from incandescent light bulbs to stoves—can perform well on direct current. Devices to convert direct current into alternating current are on the market for $180 per kilowatt for home-size units. For large orders, the price can fall to $50 per kilowatt.

WHAT NEXT?

After four years of fumbling, the federal government appears to be on the verge of passing a National Energy Act. This legislative "cornerstone" of the Carter administration is—in essence—an attempt to squeak through 1985 without having to grant Saudi Arabia the mineral rights to Ft. Knox. What it lacks is what America most desperately wants: a vision of where we are going.

The transition to a sustainable, post-petroleum world will require some decades to complete. The National Energy Act—almost totally dependent on the expansion of conventional, centralized energy sources—is not even a step in the right direction. If solar energy is to play an important role in the future, several actions must be taken immediately.

First, there is no substitute for money. While competing energy sources have financially benefited from the diligent efforts of scores of high-paid lobbyists, solar energy has not. Since 1952, when the Paley Commission recommended to President Truman that solar energy be aggressively developed, solar technology has received less than 1 five-hundredth of federal energy funding. Although solar funding increased rapidly after the Arab oil embargo of 1973, it has now remained stalled for two years with less than 4 per cent of the federal energy budget.

For solar enthusiasts, the new Carter budget is a great disappointment. Solar, wind and biological energy sources combined will receive less than one-fifth as much as is directly spent on nuclear fission. Renewable energy resources will receive $200 million less than breeeder reactors alone. In fact after adjusting for inflation, the federal solar budget is $40 million lower this year than it was last year.

The current state of solar technology would justify a budget in the $1 billion range. There would be little public opposition to this $5 per capita investment in our most promising energy source. If our current energy crisis requires "the moral equivalent of war," surely the solar, wind and biological answers to that crisis deserve at least the financial equivalent of one small weapons system.

Of course, no one wants to see tax dollars shoveled out stupidly. A good solar program will require clear-eyed managers and sufficent staff to handle the load. The current solar effort is deficient in both respects. Consequently, research has emphasized small numbers of huge projects. It is far easier for an understaffed office to manage a few big projects than many small ones.

In addition to performing research and development, the federal government should actively encourage the commercialization of solar technologies. Such proposals always stick in the craw of people who would prefer to see commercialization handled in the free marketplace. Alas, the free marketplace for energy disappeared long ago, when mineral depletion allowances, investment tax credits, accelerated depreciation schedules, federal assumption of nuclear liability, federal ownership and subsidization of uranium enrichment facilities, federal underwirting of synthetic fuel development, oil and gas price controls, the rural electrification program, and dozens of other financial and regulatory actions were instituted. Without exception, these discriminnated against decentralized technologies. Today's need is for policies that will put solar energy on an even footing with its competitors.

HELPING THE BUYER

Because the initial investment is the principal cost for solar technology, prospective consumers must have access to up-front money. Different residential solar tax credits have now passed both houses of Congress; the likeliest compromise will provide a credit of 30 per cent on the first $2,500 investment and 20 per cent on the next $7,500. Businesses that install solar equipment will receive a 10 per cent credit above the existing investment tax credit.

Unfortunately, this will not begin to counterbalance the higher tax credit allowed for investments in nuclear and synthetic fuels facilities in the Senate version of the National Energy Act. Moreover, tax credits are of limited usefulness for millions on fixed incomes who are being ravaged by rising fuel prices. Poor people will require somethink like a Treasury rebate as a down payment before they will be able to afford solar investments.

A financing authority should be established to give the homeowner and small businessman access to investment capital on terms at least as attractive as those available to utilities to invest in centralized energy sources. This might take the form of the national Solar Development Bank proposed by Rep. Stephen Neal (D-N.C.), making 30-year loans at very low interest. States could supplement such a federal effort with state institutions funded with revenues from tax-free bonds; several such proposals are now before the California legislature.

Many homeowners are reluctant to purchase solar equipment because such merchandise often carries an inadequate warranty. Warranties are considered important because the initial cost of solar technologies is generally high. Solar investments make economic sense only because they have no fuel costs and low maintenance costs in future years. But if the performance of the equipment is not guaranteed for several years, the economics of solar technologies become more questionable.

However, a warranty systen can discriminate against small manufacturers. In a nascent industry, warranties are meaningful only if they are backed by performance bonds. Otherwise, businesses can simply disappear, leaving the consumer holding the bag. But setting aside scarce capital to guarantee the performance of equipment for a decade can pose an unbearable burden on small entrepreneurs.

California Energy Commissioner Ronald Doctor has suggested a solar warranty fund, analogous to the oil spill liability fund. All solar manufacturers meeting certain standards would be allowed to contribute to the fund; if anyone's equipment proved faulty, the fund would guarantee remuneration. The state would be the warrantor of last resort.

The construction of a house or other building involves a 30-to-50-year commitment to energy usage levels. By 1981, it would be reasonable to require at least passive solar design features in all new buildings. At the very least, new buildings should be required to meet vigorous regional weatherization standards, and to be built and oriented in ways that facilitate eventual retrofitting with solar equipment.

A more direct role can be played by the federal government—the largest single purchaser of almost everything in the American economy—through its procurement policies. If, for example, the Defense Department were to make a concerted effort to provide solar heat where possible to its existing residences, a market in excess of 50 million square feet would open up. The total U.S. market for solar collectors in 1977 was about 5 million square feet.

If Defense were to purchase 150 megawatts of photovoltaic capacity for $450 million (incuding storage batteries and power conditioning equipment), it would save $1.5 billion net over the next 25 years in fuel and maintenance costs for displaced gasoline generators. A 1977 FEA report found that such a Pentagon purchase would reduce the cost of commercial photovoltaics to $500 a kilowatt—a price that is competitive for many purposes with conventionally generated electricity.

HELPING THE THIRD WORLD

One of the most dramatic solar efforts the federal government could undertake would be in the realm of foreign assistance. Solar energy makes even more sense today in the Third World than it does domestically. Developing countries tend to be richly endowed with sunlight. Their population patterns lend themselves to decentralized energy sources: half the people in Latin America, 70 percent in South Asia and 85 percent in Africa still live in rural areas. And in remote Third World villages, the current high cost of conventional energy, especially electricity, makes virtually all solar options economically competitive today.

Last May, President Carter eloquently proclaimed our national interest in improving the prospects of the world's poor. Energy is vital to economic development. Since Carter if understandably cautious about the proliferation of nuclear power around the world, solar energy poses an obvious answer.

What would it cost to provide a minimum decent supply of energy to each of the world's 1 million rural villages before the end of the century? Quite a bit. If the United States were to shoulder the entire burden, it might amount to one-half of 1 percent of our gross national product annually.

That would be a very substantial pledge, but it must be placed in perspective. American aid to Europe under the post-World War II Marshall Plan amounted to 2.8 percent of GNP. By comparison, 0.5 percent for solar assistance is a pittance. Next year, it would amount to over $5 billion—a large figure, but not too intimidating when compared to annual Third World arms receipts of nearly $28 billion.

Much of this foreign assistance would be spent here at home. As American manufacturers begin to mass produce photovoltaic arrays, small wind turbines, etc., the domestic prices of these items should plummet. This would be a boon to U.S. consumers, and it would help America solar companies in the world solar market. As a way to incorporate his concern for poverty, human rights and nuclear proliferation in one package, a "Carter Plan" to bring solar technology to the poor villages of the world may represent the President's most attractive opportunity.

A final area where federal assistance should aggressively harness renewable energy sources is on the farm. U.S. farmers are upset with the low prices their crops are now bringing. U.S. consumers are unwilling to see their food bills rise. One answer would be a major national effort to make America's firms independent of high-priced fuels—thus separating food prices from fuel-induced inflation. Solar, wind and biological sources can be easily tapped to meet the energy demands of American agriculture. A solar equivalent of President Roosevelt's rural electrification program, which provided subsidized loans at 2 percent interest to extend the nation's electrical lines to the farm, could lead to energy self-sufficiency for the nation's farms by 1990.

THE SOLAR SOCIETY

Energy transitions always bring fundamental social change. In the 18th century, the substitution of coal for wood and for draft animals made possible the Industrial Revolution. The later shift to petroleum made possible the jet plane and the automobile, shrinking the world and reshaping its cities. The coming energy transition, whatever direction we take, will bring similarly far-reaching changes.

Tapping some energy sources demands ever-increasing centralization; solar resources are best used at dispersed locations. Some dangerous sources can be permitted widespread growth only under authoritarian regimes; solar energy can lead to nothing more

dangerous than a leaky roof. Some energy sources invite profiteering cartels; solar sources would tend to narrow the gap between rich and poor—both within and among countries. Some energy sources will tend to reduce the size of the workforce; solar sources promise large numbers of new jobs. Some energy sources involve technologies that baffle all but a few specialists; solar energy can be harnessed by individual homeowners with simple devices built of local materials.

Of the possible futures we might choose, a solar-powered one appears most inviting. But the transition will not be smooth and painless. Competing energy sources will be vigorously championed by powerful vested interests. Bureaucratic inertia, political timidity, conflicting corporate designs and the simple, understandable reluctance of people to face up to far-reaching change will all discourage a solar tansition from occurring spontaneously.

If the solar transition is to be speedily undertaken, the federal government will have to play a strongly promotional role. But thus far the influence of national policy makers has probably been negative. For two years they have caused homeowners to delay solar purchases by promising eventual tax credits—and then failed to press the necessary legislation. They have invested the lion's share of federal solar research in elephantine technologies to the detriment of small-scale, decentralized options best suited to solar equipment. They have spared no pains to involve electric and gas utilities in solar applications, ignoring the fact that solar energy is a textbook case of an anti-monopolistic resource.

While still hoping for leadership from Washington, many Americans are no longer waiting for it. With the sure instincts displayed by innumerable inventors, tinkerers and entrepreneurs throughout our history, these citizens are in the vanguard of a nation that, in the years ahead, must increasingly turn toward the sun.

SECONDHAND SOLAR ENERGY—WIND, WATER AND PLANTS TRANSMIT SUN'S POWER

(By Denis Hayes)

Solar energy drives the earth's wind currents and water cycle and is stored in vegetation. Progress is being made in harnessing each of these indirect sources of solar energy.

WIND POWER

The air that envelopes the earth functions as a vast storage battery for solar energy. Winds are generated by the uneven heating of our spinning planet's land and water, plains and mountains, equatorial regions and poles.

The windmill played an important role in American history, especially in the Great Plains where it was used to pump water. More than 6 million windmills were built in the United States over the last century, and about 150,000 still spin productively. Prior to the large-scale federal commitment to rural electrification in the 1930s and 1940s, windmills supplied much of rural America with its only source of electricity.

Judging from the experience of the federal wind energy effort, one might be misled into thinking that harnessing the wind is an outrageously expensive proposition. A 100-kilowatt wind turbine at Plumbrook, Ohio, cost $4 million—$40,000 per kilowatt of capacity. A 2,000-kilowatt turbine being built by General Electric in Boone, N.C., on a cost-plus contract is currently expected to cost $16 million—or $8,000 per kilowatt. But these early efforts were highly instrumented, and their construction was riddled with errors. "We're getting smarter as we get older, I hope," says Lou Divone, head of the federal wind research effort.

Some parts of the private sector are already fairly smart. A privately funded, 200-kilowatt wind turbine on Cuttyhunk Island off the Massachusetts coast was built for just $280,000—or $1,400 per kilowatt of capacity. It produced 400,000 kilowatt hours of electricity last year at an average cost of 5.3 cents per kilowatt hour. A Northwest firm sells 275-kilowatt and 600-kilowatt wind turbines for $400 to $480 per kilowatt (uninstalled). And Tvind, a college community in Denmark, has designed and built a massive 2,000-kilowatt wind turbine for $660,000—just $330 per kilowatt including installation. (Local laborers worked for living expenses rather than salaries, while specialized outside laborers were paid regular rates.) This is roughly 2 per cent of the cost per kilowatt of the 2,000-kilowatt GE wind turbine in North Carolina. At the Tvind price, wind-generated electricity is cheaper than just the cost of fuel for an oil-fired power plant.

FALLING WATER

In the United States, hydroelectric development has for four decades focused upon huge projects. We now have 12 dams with capacities of a million kilowatts or more. Small facilities of the sort employed extensively by Japan, Switzerland, Sweden and China have remained largely undeveloped in America. Of the nearly 50,000 existing dams over 25 feet in this country (built mostly for recreational, agricultural and flood control purposes), only 800 are licensed to produce power. An Army Corps of Engineers report last year estimated that 54 million kilowatts—more power than we now get from nuclear power—could be harnessed simply by installing turbines at dams that already exist. This may be the cheapest undeveloped source of electricity in America today.

PLANT POWER

All fossil fuels were once green plants. Existing technology can harvest "energy crops" directly, without waiting hundreds of millions of years for nature to convert them into oil, gas and coal. Dry cellulose contains about 60 per cent as much energy as coal—and the hydrocarbons produced by some plants actually contain more.

In addition to being burned directly, biomass can be transformed into useful fuels in many ways. Some of these were developed by the Germans to cope with the petroleum shortages of World War II. Today, several of these technologies are being pursued much more vigorously abroad than in the United States.

Last December, President Carter examined a biogas plant in India. Observing that this simple, cheap technology converted sewage, animal dung and agricultural wastes into methane, the President joked that it might not be too late to include such devices in the energy bill now deadlocked in Congress. It's no joke. In the last three years, China has built 4.3 million biogas plants. The United States, by comparison, has fewer than 100.

Biomass can also be converted into alcohol. Brazil recently embarked upon a $400 million program to produce ethanol from such "energy crops" as sugar cane and cassava—a starchy South American staple. The Brazilians hope to substitute home-grown ethanol for all imported gasoline before the year 2000. Brazil is thus the only country in the world that is consciously building a transportation system for the post-petroleum era.

In the United States, alcohol produced from agricultural wastes is now comparable in price to gasoline, and "gasahol" (gasoline mixed with alcohol) is now being sold commercially in several Midwestern states.

Biological energy sources are of many kinds, and their prices vary accordingly. The wastes of the forest products industries are their cheapest potential energy sources. Many other industrial processes also have large waste streams that could be tapped. An Ohio factory that makes truck axles has installed a pyrolitic incinerator to burn paper and other organic wastes. Enough energy is recaptured to meet the total heating and cooling needs of the 290,000-square-foot facility.

Converted to such liquid or gaseous forms, organic fuels can be readily substituted for those fossil fuels—oil and natural gas—that are in shortest supply. The potential biomass harvest in this country could yield more energy than is now derived from imported oil.●

CRONYISM IN JUDICIAL SELECTION

● Mr. WALLOP. Mr. President, because of the recent Benjamin Civiletti hearings held before the Senate Judiciary Committee and their direct relationship to the system of merit selection of political appointees, I would like to submit for the RECORD a copy of an article recently published in the Chicago Tribune, authored by Senator RICHARD LUGAR of Indiana. The distinguished Senator from Indiana is the sponsor of Senate Resolution 353, a bill now before the Senate Judiciary Committee dealing with merit selection of Federal judges and U.S. marshals and attorneys.

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:

CRONYISM IN JUDICIAL SELECTION

By now, most Americans are familiar with David Marston's name, and with his firing as United States Attorney in Philadelphia under circumstances which have seriously embarrassed the Carter Administration and caught the President himself in some public untruths. The dismissal of this successful corruption-fighter in the midst of a sensitive probe—at the insistence of Democratic Congressmen who were known to be under investigation by Marston—has aroused public opinion and sparked demands for appointment of a special prosecutor and a Watergate-styled investigation.

Fewer citizens are aware of the archaic process through which U.S. attorneys, along with federal judges and marshals, are selected in this country. Although the Constitution specifically grants to the President the power to appoint federal judicial officials, the practice of permitting Senators and Congressmen of the President's party to control these selections politically has prevailed for decades.

Past reforms have assured merit selection virtually throughout the federal government, but the most sensitive positions of the judiciary, in which impartiality and non-partisanship are of maximum importance, are still being filled by backroom maneuvering.

In one of the most exhilarating and oftenmade promises of the 1976 campaign, President Carter proclaimed:

"All federal judges and prosecutors should be appointed strictly on the basis of merit without any consideration of poitical aspects or influence."

Rhetoric and performance soon parted company. In March, Attorney General Bell defined the real Administration policy: "We had an election last November, and the Democrats won." Accordingly the appointment process regularly centered on closed-door discussions with a state's Democratic Senators, or, if both were Republicans—as in Pennsylvania—with Democratic Congressmen and state officials. By late 1977, President Carter had nominated 87 federal judges and U.S. attorneys—86 were avowed Democrats.

The patronage distribution of these vitally important jobs, and the President's straight-

faced violation of an explicit campaign pledge, constitute a continuing national scandal which demands attention and reform. Given the threat to habit and to entrenched authority posed by reform, change in the system may be impossible. Nevertheless, it is critically important to try, and to try in 1978.

The Congress is likely to approve later this year the creation of more than 140 new federal judgeships, 30% of the current total and the largest expansion of the federal judiciary in history. If 140 new judges are suddenly appointed to lifetime tenures on the basis of political partisanship, any hopes for an independent, merit judiciary will be eliminated in effect for the balance of the century.

Despite the President's professed commitment to merit selection, despite the outspoken advocacy of Common Cause, the American Bar Association, the American Judicature Society, and a host of editorial commentators, in only four states have Senators created commissions and initiated selection plans which meet what I would term minimum standards for merit selection.

What are these minimum standards? In my judgment, they are:

First, no Senator should be permitted to originate the names of candidates, thus limiting the commission's options.

Second, no Senator should be able to control, through appointment, the commission decision. For example, no Senator should name more than half the commission members.

Third, no Senator should have the authority to decide the name or names to be presented to the President. Commission judgment should be final.

While Senators have a Constitutional role to play in advising the President on judicial nominations, and consenting to his choices, they ought not control the process. Americans who share a commitment to reform should not be misled by so-called "merit systems" which fail to meet these minimum standards and involve committees which merely rubber-stamp Senatorial choices.

When it became clear that President Carter did not intend to carry out his campaign pledge, I drafted legislation, which I have introduced as Senate Resolution 353, to require each state's Senators to implement a merit selection process which meets the minimum standards above.

Any hopes that the Senate will take this issue seriously depend entirely on the strength of public sentiment against political cronyism in judicial appointments. Ironically, President Carter, in his dismissal of an effective Republican public servant, may have precipitated enough public pressure to bring about the reform he promised but failed to deliver.●

S. 2164 AND UNIT COAL TRAINS

● Mr. ZORINSKY. Mr. President, on March 16, 1978, I will be testifying before the Subcommittee on Transportation of the Senate Committee on Public Works and Environment. I will be testifying on behalf of myself and my fellow cosponsors, Senators ANDERSON, HART, and HASKELL. With the advent of the Nation's coal strike, more coal trains than ever are rolling. No end is in sight to the growth of coal train traffic. To attempt to reduce as much as possible the destruction of community cohesiveness and human life itself I have introduced S. 2164. The legislation and "Dear Colleague" letter follow, I ask unanimous consent that they be printed in the RECORD.

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

WASHINGTON, D.C.,
March 3, 1978.

DEAR COLLEAGUE: We seek your co-sponsorship of S. 2164. This legislation is designed to help ensure that coal can play an essential role in our efforts to strive for energy independence while still providing for the public health and safety.

Unit coal trains have become a primary delivery mechanism to provide this source of energy from mine to consuming public. However, wherever these unit coal trains run there will be certain problems which arise at the junctures of unseparated rail and highway crossings. Because of these unit coal trains, communities not only become segregrated, and lose cohesiveness, but emergency vehicles of all types are prevented from providing their public services. Additionally, waiting vehicles consume petroleum.

Presently money is provided from the Highway Trust Fund for highway and rail crossings but these funds are predominately spent for signaling devices. S. 2164 will provide funds to separate/relocate energy impacted grade crossings by prioritizing these crossings within the fund.

S. 2164 will authorize three hundred million dollars a year from the Highway Trust Fund for three years from the date of enactment. This money will be spent to separate these energy impacted highway and rail crossings. In situations where it is economically and socially more desirable to relocate small portions of track, S. 2164 is also intended to provide such relief.

We view this legislation as a means to initiate dialogue on this issue. We are cognizant of the responsibility of the railroads to share financial responsibility.

We therefore ask your support and cosponsorship for initiating this dialogue by calling Chip Terrill at 4–6551, Sam Stern at 4–5641, Mike Huffaker at 4–5852, or Marty Zeller at 4–5941.

Sincerely,

EDWARD ZORINSKY,
WENDELL ANDERSON,
GARY HART,
FLOYD K. HASKELL.

S. 2164

A bill to amend title 23 of the United States Code, relating to highways, to authorize a program to separate rail and highway crossings in certain impacted cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter I of title 23 of the United States Code is amended by inserting at the end thereof a new section as follows:

"§ 157. Energy impacted rail highway crossings

"(a) The Secretary is authorized to apportion funds made available for the purpose of this section for necessary construction to separate rail highway crossings where the rail facilities have incurred a substantial increase in use as a result of coal transportation activities to meet national energy requirements and will continue to incur such use for such purpose resulting in substantial delays in highway travel. Such apportionment shall be without regard to allocations under apportionment formulas otherwise established under this title.

"(b) The Federal share on account of any construction under this section shall be 90 per centum of the cost thereof.

"(c) There is authorized to be appropriated out of the Highway Trust Fund for the purpose of this section not to exceed $300,000,000 for the fiscal year beginning October 1, 1978 and for each of the two succeeding fiscal years."

(b) The analysis of chapter I of title 23 of the United States Code is amended by adding at the end thereof the following:

"157. Energy impacted rail highway crossings.".●

MEETING THE NEEDS OF AMERICA'S CITIES

● Mrs. HUMPHREY. Mr. President, while I am generally pleased with the national economic recovery to date—particularly the reduction in the unemployment rate to 6.3 percent, I am concerned about the areas where recovery has been slow. There are areas in this Nation which have chronic economic problems—net reductions in employment, high rates of unemployment, and outmigrations of middle-class taxpayers. These problems are generally associated with the older central cities of the Northeast; however, every region is confronted by localities which exhibit some or all of these characteristics.

Between 1947 and 1972 in San Francisco, for example, the population decreased by 12.5 percent and total manufacturing employment was down 28.1 percent. In New Orleans, during the same period, the population increased by 3.6 percent, but total manufacturing employment dropped by 17.8 percent. In Minnesota, my own State, Minneapolis suffered terrific losses; a population decrease of 28.4 percent and a 6.5-percent reduction of manufacturing employment. While it is apparent that some regions are worse off than others, it seems clear to me that all regions have reason for concern, even strong growth regions.

The high rate of structural unemployment is another example of the weaknesses of our national recovery. Structural unemployment is largely a minority and youth phenomenon. In 1977, unemployment averaged 38.3 percent for black and other (nonwhite) teenagers, and for black teenagers alone it averaged 41.1 percent. This was an increase over the 1976 unemployment rate of 37.1 percent for nonwhite youth. In 1977, 63 percent of the black civilian labor force resided in central cities.

As many of our cities are plagued by diminishing tax bases and high rates of unemployment, they are also confronted by increasingly deteriorated infrastructures. During 1960–65, capital expenditures by State and local governments averaged about 29 percent of their budgets. That proportion fell to 15 percent in 1976 and was even lower in 1977.

When given the difficult choice of cutting back on operating expenditures for public services or deferring maintenance of public facilities, local officials have often chosen the latter course. Frequently, reductions in capital expenditures have also been accompanied by cuts in public services due to mounting fiscal pressure.

In the short run, deferring capital expenditures is logical and relatively harmless. The severity and longevity of the economic recession, however, has forced a continued reduction in capital expenditures and thus an increas-

ingly severe rate of facility deterioration. What we are witnessing, in fact, is the deterioration of the cities' greatest assets—their inherited stock of public facilities. The deferral of road resurfacing and bridge repainting may seem inconsequential in the short run, but the cumulative effect is of paramount importance to our cities and our Nation.

The financing of capital expenditures very often results from local bond sales. High interest rates drive up the cost of the facility encouraging delays on the sales of bonds and further exacerbating the deterioration of the capital stock. I am aware and indeed pleased that in the aggregate, municipal interest rates are down from their high levels of a few years ago. The average interest rate for the fisrt three quarters of 1977 was 5.62 percent. One must look beyond the deception of averages, however.

Because it is an average, many cities are paying much higher interest rates. Although interest rates are relatively low at the present time, we have no guarantee that they will not take off again—that the interest for Baa rated cities will not soar to the 1975 average of 7.62 percent.

Unfortunately, the fate of our cities is largely determined by speculators who rely upon a rating system of questionable validity. The tax exempt municipal bond system will, in fact, cost the Federal Government about $8.5 billion in lost taxes next year. Surely there must be a more effective way to finance our cities' needs.

Despite the national income account (NIA) estimates of a $30 billion State and local government surplus, I remain convinced that the fiscal problems of our cities are not behind us. We must have NIA data disaggregated on a State-by-State basis if we are to accurately determine the extent of our economy's recovery. Until such information is available, I can only rely on the reports of city officials.

Our Nation's mayors, through the National Conference of Mayors, have made it clear that the President's proposed budget is largely inadequate in meeting their needs. In particular, they note that the proposal appears to weaken the critical role of local government as indicated below:

Comprehensive Employment and Training Act (CETA) programs are reauthorized, but the program level, as expressed in budget authority, remains unchanged.

The Department of Commerce (DDC) proposed a sharp increase in the regular Economic Development Administration (EDA) program, but the request for budget authority of $627.4 million falls far short of the $1.9 million EDA authorization. Moreover, a new program of direct funding of neighborhood groups is proposed, while funds for the Community Services Administration's community economic development programs are reduced.

The important, but fledgling, federal support of mayors playing an effective role in social services planning is sharply curtailed.

The new transportation legislation contains many sound proposals, but the funding level is at least $1 billion below the need.

I feel we in Congress should give careful attention to the conference recommendations. Who should know better than the mayors, the extent of the Nation's urban needs?

Mr. President, there are three additional areas in which congressional attention should be directed in the near future. These are important proposals for improving the economic viability of urban America.

First, the extension of the countercyclical revenue-sharing program. This program can be an effective antirecession device and should be in place to be used whenever economic conditions indicate it is needed. Without such a permanent program, the economic drag of State and local fiscal and spending policies can deepen the impact of recessions on our economy. It is also important that we seriously consider reducing the national unemployment rate trigger for this essential program to 5.5 percent.

Second, economic growth in areas of high unemployment and low levels of economic activity can be substantially improved through creation of a National Domestic Development Bank. As I see it, such a bank must extend long-term low-interest loans to municipal governments for development of public facilities and also to private businesses for economic development purposes.

Third, I believe we must also consider using the investment tax credit to encourage business to invest or expand investment in urban and rural areas with serious economic development problems. I believe Congress should seriously consider a supplemental economic development differential to the existing investment tax credit.

Mr. President, Congress should come to grips with the severe set of social and economic problems that confront America's cities. The Administration will soon unveil its urban development policy. It is vital that Congress give this issue careful, prompt, and comprehensive consideration. In doing so, I believe it is very important that we listen carefully to the proposals of those with the heavy responsibility of leading our cities—the Nation's mayors.

Therefore, Mr. President, I ask unanimous consent that the U.S. Conference of Mayors policy recommendations to President Carter for fiscal year 1979 be printed in the RECORD.

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

U.S. CONFERENCE OF MAYORS POLICY RECOMMENDATIONS TO PRESIDENT CARTER FOR FISCAL YEAR 1979 NATIONAL URBAN POLICY BUDGET AMENDMENT

[In millions of dollars]

	Conference of Mayors recommendations	Fiscal year 1979 request	Difference
HUMAN SERVICES			
Employment:			
Title 1	3,000.0	2,027.0	973.0
Youth (YEDPA)	1,500.0	931.0	569.0
Summer youth	1,140.0	740.0	400.0
Struct. unemployment and PSE	10,000.0	5,955.0	4,045.0
Subtotal	15,640.0	9,653.0	5,987.0
Social services:			
Title XX	2,700.0	2,500.0	200.0
Human services planning	75.0		75.0
Subtotal	2,775.0	2,500.0	275.0
Management assistance	150.0		150.0
Crime:			
LEAA	721.0	641.0	80.0
ATF	150.0	135.0	15.0
Concen. urban enforce	15.0	8.5	6.5
Sutotal	886.0	784.5	101.5
Alcohol and drug abuse:			
NIDA	275.0	275.0	
Alcohol abuse	275.0	174.3	100.7
Subtotal	550.0	449.3	100.7
Aging:			
AOA	190.5	187.0	3.5
Title IX	378.5	190.4	188.1
Subtotal	569.0	377.4	191.6
PHYSICAL DEVELOPMENT			
Economic Development:			
EDA	1,900.0	627.4	1,272.6
Soft public works	1,000.0		1,000.0
Subtotal	2,900.0	627.4	2,272.6
Housing and community development: [1]			
Assisted units	[2] 2,002.4	[2] 1,335.0	[2] 667.4
Additional subsidies	1,000.0	800.0	200.0
Targeted tandem	2,000.0	2,000.0	
Full CD funding	3,750.0	3,750.0	
Policy development/research	150.0	62.5	87.5
Subtotal	8,902.4	7,947.5	954.9
Transportation: Program level	3,856.0	2,856.0	1,000.0
Environment:			
Waste treatment	4,500.0	4,500.0	
Sec. 208	150.0	50.0	100.0
Air pollution control	100.0	75.0	25.0
Traffic control	75.0		75.0
Solid waste management	55.0	12.0	43.0
Subtotal	4,880.0	4,637.0	243.0
Total	41,117.4	29,841.1	11,276.3
Other priority needs:			
Countercyclical fiscal assistance [3]			
Revolving loan fund (Economic Development Administration)			130.0
Revolving loan fund (Department of Housing and Urban Development)			60.0

[1] $1,500,000,000 of community development and urban action grants over currently authorized levels was recommended. In view of the absence of support beyond current levels and an administration request for full funding, this category was deleted from the total.

[2] Figures cited are contract authority; budget authority recommended by the Conference of Mayors is $46,000,000,000 and the amount requested for fiscal year 1979 is $31,000,000,000.

[3] U.S. Conference of Mayors policy calls for a permanent expanded program triggering on and off at Federal as well as local rates of unemployment with amounts of authorizations dependent on the rates of unemployment. The budget contains $1,040,000,000 for the fiscal year 1979 funding.●

SENATE RESOLUTION 411—RESOLUTION RELATING TO DEPOSITS TO MINORITY-OWNED COMMERCIAL BANKS

● Mr. TOWER. Mr. President, I am delighted to join Senator LUGAR in sponsoring this resolution calling on the administration to make every effort to channel Federal funds into minority-owned and operated financial institutions.

Due to a recent change in policy, many minority institutions have experienced

great difficulty in obtaining or retaining deposits from the Federal Government. This policy is a change from that in effect since 1970 under the minority bank deposit program.

Minority owned and operated depository institutions have made a valuable contribution to our Nation's financial system and the communities they serve. But, for many of them, it has been an uphill struggle. They are, of course, subject to the same market pressures as all other financial institutions. But, most of them are quite small, many of them had difficulty in attracting deposits and a relatively large share of their funds have traditionally been accounted for by public deposits. They often operate in an economic environment that is less than ideal, and the problem of maintaining adequate capital and experienced management is acute.

The special condition of minority owned and operated depository institutions was recognized by Congress last year in Public Law 95–147, which changed the Treasury's tax and loan account system. That act was designed to allow the Treasury to earn interest on such accounts. But, great care was taken to prevent the change in the program from adversely affecting minority banks. The report of the Senate Committee on Banking, Housing, and Urban Affairs stated the following:

Implementation of the tax and loan balance authority contained in H.R. 5675 is likely to have an adverse impact on minority banks. To soften the impact on minority banks, the committees intend for the Treasury to phase in the investment authority with respect to tax and loan account funds in such banks over a 5-year period. "Special demand deposit" balances would be opened in such banks, and funds in these special accounts would not be interest bearing. The initial amount deposited in such accounts would be related to the average tax and loan account balance in the banks in a selected base year, presumably the most recent full year. All special demand deposit accounts would be phased out over a 5-year period by reducing them by 20 percent of the initial deposit each year. The committees agree that the Treasury should institute "special demand deposit" accounts to soften the impact of the investment authority contained in H.R. 5675 on minority banks. The phrase "special demand deposit" in regard to minority banks is significant to the Treasury because it signifies that Treasury can withdraw funds from such accounts in 7 days instead of 30 days, as under the time deposit plan.

This resolution that is being introduced today is designed to assure that the cash management programs of the Federal Government are conducted with a similar objective. There is nothing in the resolution requiring the Federal Government to engage in anything less than good cash management techniques. But, it is designed to encourage the administration to recognize the need of minority owned and operated institutions in carrying out the Federal Government's cash management programs.●

S. 270, THE PUBLIC PARTICIPATION IN FEDERAL AGENCY PROCEEDINGS ACT

● Mr. KENNEDY. Mr. President, with the defeat in the House of the proposed Office of Consumer Representation, there is renewed interest in legislation now pending in both Senate and House Judiciary Committees to authorize Federal agencies to provide financial assistance to citizens or citizen groups for their participation in agency proceedings.

S. 270 and H.R. 8798 represent Congress last opportunity to enact at least one component of the President's consumer program—which also included the Consumer Protection Agency, class actions, and broadened standing to sue legislation—before the close of the current session. Simply put; we now have one last chance to fulfill the expressed desire of the American public to become more directly involved in their Government through increased participation in agency hearings and deliberations.

In an effort to facilitate discussion and consideration of these bills, I would like to place in the RECORD several items which bear on the overall issue of citizen participation in the Federal administrative process:

First. The text of S. 270 itself, as reported by the Subcommittee on Administrative Practice and Procedure;

Second. Two chapters from volume III of the Committee on Governmental Affairs' comprehensive study on Federal regulation; entitled "Public Participation in Regulatory Agency Proceedings." Chapters 2 and 7 deal with the extent and cost of participation as well as specific issues in the debate over S.270;

Third. An article on S. 270 I wrote for the June, 1977 issue of Trial magazine; and

Fourth. A short compendium of responses to commonly asked questions about the public participation bill.

I sincerely hope, Mr. President, that Congress will give serious consideration to this legislation during the coming months. I commend these materials to the reading of Members and their staffs and to all others who are interested in this issue, and ask unanimous consent that they be included in the RECORD at this point.

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

S. 270

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act shall be cited as the "Public Participation in Federal Agency Proceedings Act of 1978."

SEC. 2. (a) Subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), is amended by inserting after section 558 of such title the following new section:

"§ 558a. Attorney's fees; fees and costs of experts; participation expenses

"(a)(1) The Congress finds that effective functioning of the administrative process of Government requires Federal agencies to seek the views of all affected citizens. In practice, access to the administrative process is frequently an exclusive function of a person's ability to meet the high costs of participation in Government proceedings.

"(2) The purpose of this section is to promote increased public participation in agency proceedings, thereby insuring more effective functioning of the administrative process by enabling all affected persons to secure the representation in agency proceedings to which such persons are entitled. The Congress intends that each Federal agency shall utilize to the fullest extent the authority and funds provided pursuant to this section.

"(b) For the purpose of this section the term—

"(1) 'person' means any person as defined in section 551(2) of this title and includes a group of individuals with similar interests;

"(2) 'proceeding' means any agency process including rulemaking, ratemaking, licensing, adjudication, or any other agency process in which there may be public participation pursuant to statute, regulation, or agency practice, whether or not such process is subject to the provisions of this subchapter.

"(c)(1) Each agency is authorized, in accordance with the provisions of this section, to award reasonable attorneys' fees, fees and costs of experts, and other costs of participation incurred by eligible persons in all rulemaking, ratemaking, and licensing proceedings, and, in addition, to such other proceedings involving issues which relate directly to health, safety, civil rights, the environment, or the economic well-being of consumers in the marketplace.

"(2)(A) This secion does not authorize funds for merely attending, as opposed to participating in, agency proceedings, nor for proceedings where the cost of participation is minimal.

"(B) This section does not create any new right to participate in any Federal agency proceeding of—

"(d) Any person is eligible to receive an award under this section for participation (whether or not as a party) in an agency proceeding if—

"(1) the person is an effective representative of an interest the representation of which contributes or can reasonably be expected to contribute substantially to a fair determination of the proceeding, taking into account—

"(A) whether the interest is adequately represented by a participant other than the agency itself,

"(B) the number and complexity of the issues presented,

"(C) the importance of public participation, in consideration of the need to encourage participation by representatives of segments of the public who, as individuals, may have little economic incentive to participate, and

"(D) the need for representation of a fair balance of interests; and

"(2)(A) the economic interest of the person in the outcome of the proceeding is small in comparison to the costs of effective participation in the proceeding by that person, or whenever the person is a group or organization, the economic interest of a substantial majority of the individual members of such group or organization is small in comparison to the costs of effective participation in the proceeding, or

"(B) the person does not have sufficient resources available to participate effectively in the proceeding in the absence of an award under this section.

"(e)(1) Any person seeking an award under this section shall submit to the appropriate agency an application which states the basis of such person's eligibility for the

award and the amount sought. Upon receipt of such application, the agency shall make a written determination of the eligibility of the person for an award and the amount and computation of such award, if any, and shall state the reasons therefor. Such determination shall be made promptly, and prior to timely participation in the proceeding by that person unless the agency finds that prior determination cannot practicably be made, and states in writing its reasons for a temporary deferral. The agency shall make determinations required by this paragraph after consideration of the funds available for awards under this section for the proceding and the requests or possible requests for such awards by other eligible participants in the proceeding. For the purpose of this section a determination under this paragraph is a final agency action in accordance with chapter 7 of this title.

"(2) Whenever multiple applications are submitted for participation in a proceeding, the agency may—

"(A) require consolidation of duplicative presentations;

"(B) select one or more effective representatives to participate;

"(C) offer compensation only for certain categories of expenses, or

"(D) jointly compensate persons representing identical or closely related viewpoints.

"(3) Payment of fees and costs under this section shall be made—

"(A) within ninety days after the date on which a final decision or order disposing of the matters involved in the proceeding or phase of the proceeding is made by the agency; or,

"(B) within ninety days after an eligible person submits to the agency a statement of its fees and costs if the agency has deferred making a determination under subsection (e)(1) of this section by the date of such final decision.

"(4) Notwithstanding any other provision of law, an agency shall make advance payments to permit any eligible person to participate or to continue to participate in a proceeding if the person establishes that the ability of such person to participate in the proceeding will be impaired by failure to receive funds prior to the conclusion of such proceeding.

"(5) The amount of reasonable attorneys' fees, fees, and costs of experts, and other costs of participation awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished or to be furnished, except that (A) no expert or consultant shall be compensated at a rate in excess of the highest rate of compensation for experts and consultants paid by the agency involved; and (B) attorneys' fees shall not be awarded in excess of $50 per hour for any such participation unless the agency determines that special factors, such as an increase in the cost of living or limited availability of qualified attorneys for the proceedings involved justify a higher fee.

"(6) No determination under this subsection shall be made by any office, bureau, or other division of an agency having responsibility for the presentation of the case or the initial decision or recommendation in any proceeding to which this section applies, except that agency personnel and hearing examiners in any such proceeding may provide relevant information with respect to such determinations.

"(7) Each agency shall take appropriate action to assure that information concerning the availability of compensation for public participation pursuant to this section is contained in the notices of proceedings to which this section applies and to otherwise publicize the availability of such funds to the general public.

"(f)(1) A person who receives advance payments pursuant to this section or who the agency determines to be eligible to receive a specified award pursuant to this section shall be liable for repayment of part or all of such payments actually received, or for forfeiture of part or all of the specified award for which such person is determined to be eligible, whenever the agency determines that the person clearly has not provided the representation for which the payments or specified award was made.

"(2) In any agency proceeding—

"(A) in which an eligible person acts in a manner demonstrating bad faith toward any other participant, and upon application by such other participant, the agency may rescind part or all of an award under this section to such eligible person, or

"(B) in which any participant (other than an eligible person) acts in a manner demonstrating bad faith toward an eligible person, and upon application by such eligible person, the agency may require such participant to pay to the agency an amount equal to part or all of an award made to such eligible person under this section.

"(g) A person who has applied for an award under this section may bring an action in accordance with chapter 7 of this title for review of a final agency action under this section—

"(1) denying an award, failing to make a determination, or failing to pay an award of fees or costs or both to such persons, or

"(2) granting an amount of fees or costs, or both, which is insufficient to enable such person to participate or to continue to participate effectively in a proceeding, or

"(3) reimbursing an amount of fees or costs, or both, which is insufficient to compensate such person for its participation in such proceeding

in the appropriate court of the United States having jurisdiction of an appeal from the proceeding in which such person participated or sought to participate, except that such appeal shall not be the basis for the court to enter an order to stay such proceeding. No person shall be entitled to intervene in any action brought under this section involving an application for an award by another person.

"(h)(1) Each agency shall, within ninety days after the date of enactment of this section, propose regulations to carry out the provisions of this section. Such regulations shall be adopted by the agency and take effect no later than one hundred and eighty days after the date of enactment of this section.

"(2)(A) The head of each agency to which this section applies shall prepare and transmit to the Congress and to the Office of Management and Budget by such date as the Director of the Office of Management and Budget designates an annual report with respect to the nature and disposition of all proceedings in which awards of fees and costs pursuant to this section were sought. Each report shall include the amounts sought and awarded in each such proceeding, the computation of such amounts, and the identity of each applicant and recipient.

"(B) The Director of the Office of Management and Budget shall allocate the funds appropriated pursuant to section 5(a) of the Public Participation in Federal Agency Proceedings Act of 1977 among agencies to which this section applies. In making such allocations. the Director shall be guided by the indicia of need for funds to promote public participation in each agency's proceedings based on a survey of agency estimates for the initial year and thereafter based upon the report of each agency submitted pursuant to paragraph (A) of this subsection. The Director shall insure that the funds appropriated pursuant to such section 5(a) for each fiscal year are utilized to the fullest extent.

"(C) The Director of the Office of Management and Budget shall submit to Congress on the date of submission of the President's budget a report showing the funds allocated to each agency pursuant to this subsection.".

(b) The analysis of chapter 5 of title 5, United States Code, is amended by inserting immediately after the item relating to section 558 of such title the following new item:

"588a. Attorneys' fees; fees and costs of experts; participation expenses.".

SEC. 3. (a) Chapter 7 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 707. Attorneys' fees; fees and costs of experts; litigation expenses

"(a) For the purpose of this section, the term 'person' means any person defined by section 551(2) of this title and includes a class of individuals and any individual member of such class.

"(b) Notwithstanding any other provision of law, any party or party intervenor in a civil action or other proceeding for judicial review of agency action under this chapter shall be entitled to recover reasonable attorneys' fees, fees and costs of experts, and other reasonable costs of litigation, including taxable costs, from the United States if—

"(1) the court affords such person the relief sought in substantial measure or, after the filing of such action, the agency affords such person the relief sought in substantial measure;

"(2) such action served an important public policy; and

"(3)(A) the economic interest of the person in the outcome of the action is small in comparison to the costs of effective participation in the action by that person, or whenever the person is a group or organization, the economic interest of a substantial majority of the individual members of such group or organization is small in comparison to the costs of effective participation in the action, or

"(B) the person does not have sufficient resources available to participate effectively in the action in the absence of an award under this section.

"(c) Reasonable attorneys' fees, fees and cost of experts, and other costs of litigation awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished.".

(b) The analysis of chapter 7 of title 5, United States Code, is amended by adding immediately after the item relating to section 706 of such title the following new item:

"707. Attorneys' fees; fees and costs of experts; litigation expenses.".

SEC. 4. The Administrative Office of the United States Courts shall, in accordance with such rules as the Judicial Conference of the United States may prescribe, prepare, and transmit to Congress an annual report on awards of attorney's fees and litigation expenses against the United States under section 707 of title 5, United States Code. Such report shall contain a list of all civil actions in which such awards were sought, and shall include the amounts awarded in each such action and the identity of each recipient.

SEC. 5. (a) In addition to the sums authorized under subsection (b), and in addition to any funds otherwise available for supporting public participation in agency proceedings, there are authorized to be appropriated for the purposes of carrying out the provisions of the amendment made by section 2 of this Act the sums of $10,000,000

for the fiscal year 1979, $10,000,000 for the fiscal year 1980, and $10,000,000 for the fiscal year 1981. All funds for any fiscal year which are not expended during such year shall remain available for expenditure in succeeding fiscal years for awards of fees and costs in proceedings commenced during such fiscal year.

(b) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of the amendments made by section 3 of this Act for each fiscal year prior to October 1, 1980, and there are authorized to be appropriated, for the fiscal year 1981 and succeeding fiscal years, such sums as may be necessary to satisfy court awards of fees pursuant to the amendments made by section 3 where the action was brought prior to the end of fiscal year 1980.

SEC. 6. The provisions of this Act shall take effect on the date of its enactment, except that—

(1) the amendment made by section 2 shall take effect one hundred and eighty days after such date, but the provisions of the amendment made by such section shall apply to the proceedings in which regulations are required to be issued under section 558a(h)(1); and

(2) the amendments made by section 3 shall apply to any civil action brought after such date of enactment.

PUBLIC PARTICIPATION IN REGULATORY AGENCY PROCEEDINGS

EXTENT AND COST OF PARTICIPATION

At the outset of this study on public participation, we sought to determine the extent to which the public is currently participating in the regulatory process.

It is not possible, of course, to precisely calculate the extent of such participation. Even to estimate such a figure involves a large number of imponderables. What, for example, constitutes effective or meaningful participation? Can a simple letter from a nonregulated participant constitute effective public participation? Does the number of pages of formal submission make a difference? Does it matter if the presentation is written or oral? Is there a significant difference between participation by an organized public interest group, and participation by individuals that are not organized? Is there a significant difference if the participant is guided by professional counsel?

The answer to these questions is yes, to a degree. Generally, participation by an organized group tends to be more effective. It tends to be more effective when guided by professional counsel. It tends to be more effective when submissions are knowledgeable, relevant, and directed to the issue pending before the agency. And it is certainly more effective when there are adequate funds available.

We surveyed eight of the Federal regulatory agencies in an effort to estimate the extent of public participation in agency proceedings. We also sought to approximate the comparative resources that public participants and regulated industries commit to their participation efforts. Unfortunately, little data of a comprehensive nature is available. Each agency compiles its data differently, and in the case of several agencies, few figures were available at all. With respect to cost data, there are no across-the-board figures at all, and we were compelled to proceed on case-by-case basis.

Nevertheless, while any single set of data which we discuss in the following sections is less comprehensive than we would wish, we believe the sum total of this data provides a clear picture of the current extent of public participation in the regulatory proces, and of the comparative resources which participants are able to commit to participation. On the whole, the data clearly shows that participation by public or nonregulated interests before Federal regulatory agencies is consistently exceeded by the participation of regulated industries, and often constitutes only a tiny fraction of such industry participation. This pattern holds for both rulemaking and adjudication, although the margin is not as great for rulemaking as it is for adjudication. The data also suggests that in all types of proceedings, regulated interests commit far greater resources to participate before regulatory agencies than their public interest counterparts.

EXTENT OF PARTICIPATION

We asked eight regulatory agencies—FCC, FPC, FTC, ICC, CAB, FDA, NRC, and SEC—to identify for us which 10 of the last 30 rulemakings and which 10 of the last 30 adjudicatory proceedings they considered the most significant. We examined the dockets in these cases to determine the extent of participation by regulated and nonregulated interests.

Participating in rulemaking proceedings

At the FPC, the agency cited eight dockets as their most significant rulemaking proceedings. These proceedings involved the enforcement of deliverability of natural gas under certificated arrangements; establishment of criteria for site selection and facility operation criteria for LNG importation and storage terminals; accounting changes for research and development of activities of regulated firms; corporate and financial reports for natural gas companies and electric utilities; establishment of just and reasonable rate of return for natural gas; and new rates for small producers.

We examined the dockets in these eight cases, and found that despite the clear consumer and public impact which these cases involved, there was no organized public participation of any kind in six of the eight proceedings. There was substantial participation, however, by the regulated industry: in one proceeding there were 47 industry participants; in another, there were 35; there were 30 in a third case, and 23 in the fourth.

In the two dockets were public interest participation did take place, the ratio of regulated industry to public participation was large; 12 to 1 in one of the cases, 4 to 1 in the other.*

At the FDA, the rulemaking proceedings cited as most significant by the agency involved: public access to agency information (freedom of information); approval of food for certain dietary uses; establishments of effectiveness standards for certain classes of drugs (bioequivalence); establishment of conduct and conflict of interest standards; and modifications of certain administrative procedures. Again, although these proceedings involved considerable public impact, there was no public interest group participation in more than half of these proceedings. In those instances where we did find such participation, the ratio of industry to public interest representation was overwhelming: 122 participants to 4 in one matter, 29 to 1 in a second, 12 to 5 in a third, and 60 to 12 in a fourth.

At the ICC, we found no evidence of any organized public participation in more than 60 percent of the proceedings. In one rulemaking dealing with charges on lost or destroyed shipments of household goods there was no public interest group participation at all. Nor was there any in a rulemaking that proposed to require motor carriers to furnish performance reports to consumers on transportation of household goods. In those cases where public interest group participation did occur, the ratio of industry to public participants was 23 to 4 in one proceeding, 13 to 5 in another, and 3 to 1 in a third.

At the CAB, we found a somewhat better percentage of public interest group participation. CAB rulemaking proceedings addressed one-stop inclusive tour charter rules; environmental policy act regulations; protection of charter passengers from cancellations; requirements for carriers to publish summaries of various fares for consumers; establishment of new advance booking charters; regulations to implement the Sunshine Act; and restrictions on overbooking and oversales practices. We found public interest groups represented in 70 percent of these dockets. Still, even in these proceedings, participation by the regulated industry heavily predominated. In one proceeding, there were 130 industry participants and 26 public interest group participants; the ratio was 24 and 1 in a second proceeding; 11 and 2 in a third; 8 and 3 in a fourth; 33 and 5 in a fifth; 56 and 3 in a sixth. (In several of these CAB proceedings, however, there was a split within the airline industry, with the scheduled carriers on one side and the supplemental carriers on the other. The views of the supplemental carriers in these cases often correspond to the views of the public interest groups.)

At the FCC, only three rulemakings were cited by the agency as significant. They concerned the need for adequate television service in New Jersey; approval of certain entertainment formats; and approval of emergency hand language messages for the deaf on television. Public interest group participation occurred in all three proceedings, with ratios of industry to public interest groups of 64 to 14, 33 to 4 and 3 to 4.

At the FTC, the recently enacted Magnuson-Moss Warranty–FTC Improvement Act appears to have helped in eliciting consumer comments in rulemaking proceedings, particularly from individuals. We found participation by consumers and consumer groups in all the FTC dockets that we studied. For example, in a trade regulation rule proceeding on the hearing aid industry, there were 843 submissions from industry and 130 submissions from consumer groups.[1] In a proceeding on warranty terms, there were 346 industry submissions, 77 trade association submissions, and 21 consumer group submissions. In a proceeding involving care labeling of textile products, the FTC received 172 industry submissions and 60 public interest group submissions. The Commission also received 545 individual submissions in the hearing aid proceeding, 242 individual submissions in the warranty proceeding, and 1,500 individual submissions in the care labeling proceeding. However, as we noted earlier, FTC staff familiar with these proceedings indicated that the impact of com-

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* It should be noted that in many of the proceedings at the FPC and elsewhere, a number of comments by individuals were received. (At the FPC, for example, individual comments were noted on six of the eight dockets we examined.) For our purposes, however, we did not treat these comments as falling into either the category of regulated or nonregulated interest submissions, since there was simply no way to determine what point of view they represented. Moreover, we were advised by many of the agencies that such individual comments are not usually accorded much weight because they frequently lack specific or technical knowledge. Accordingly, these comments were excluded from the ratios.

We should also note that at the FPC and other agencies, occasional comments or submissions were received from accounting firms, from banks, from other nonregulated businesses, and from State and local governments. These comments are equally difficult to categorize or pigeonhole, and in light of their occasional nature they have also been excluded from our ratios.

[1] In these cases, the data provided by the FTC to the committee was somewhat different from that provided by other agencies. We were supplied with the number of submissions rather than the number of participants.

ments by individuals is often diminished because of their imprecise nature.

There is one category of agency activity in which the pattern outlined in this section does not consistently hold true—petitions for rulemaking. We found that at several of the agencies—the FTC, NRC, and CPSC—petitions for rulemaking submitted by the public approached or actually even exceeded those submitted by the regulated industry (see table 2.1). At the NRC, for example, 55 percent of petitions for rulemaking originated with consumer groups; only 25 percent came from regulated industry. At the FTC, it was a dead heat; 48.5 percent from consumer groups, 48.5 percent from industry. At the CPSC, 62 percent came from regulated industry, but a very sizable 34 percent were submitted by consumer groups.

The explanation may be in the mission of these agencies: The FTC, NRC and CPSC all have basic health and safety missions and a proposed rule by an agency with such a mission is more likely to tighten health and safety requirements rather than loosen them. In contrast, at the classic public utility regulatory agencies, rules are usually proposed in order to confer or expand a benefit for the regulated industry.

This is borne out by a quick check of several of the public utility regulated agencies—ICC, CAB, and FEA. Industry-sponsored rulemaking petitions accounted for 74 percent of all rulemaking petitions at the CAB, 75 percent at the ICC, and 90 percent at the FEA. By contrast, consumer-sponsored rulemaking petitions accounted for only 13 percent of all rulemaking petitions at the CAB, 8 percent at the ICC, and a mere 3 percent at the FEA. Thus, at these public utility regulatory agencies, the usual pattern prevails.

TABLE 2.1.—PETITIONS FOR RULEMAKING RECEIVED

	Total number	Petitioners (percent)			
		Regulated industry [1]	Governments	Consumer groups	Other
CAB	62	74.0	11	13.0	0.2
CPSC	242	62.0	3	34.0	.1
FCC [2]	117	59.0	5	[7] 35.0	1.0
FMC [3]	(4)	(4)	(4)	(4)	(4)
FPC [5]	(4)	(4)	(4)	(4)	(4)
FTC	33	48.5	3	48.5	0
ICC	24	75.0	13	8.0	4.0
NRC	20	25.0	15	55.0	5.0
SEC [6]	(4)	(4)	(4)	(4)	(4)
EPA [4]	(4)	(4)	(4)	(4)	(4)
FDA	68	77.0	3	21.0	0
FEA	29	90.0	3	3.0	3.0
OSHA	92	[8] 79.0	5	15.0	0

[1] Includes trade associations.
[2] Includes amateur radio operators.
[3] No action because of pending case (the only case).
[4] Agency reports it is unable to supply this information.
[5] Gives examples of a few petitions. Explains it is difficult to identify among the volumes of hearing records because there is a substantial number of petitions to amend the rules of the Commission which are filed during the course of adjudicatory proceedings.
[6] Volume of rulemaking petitions received by this Commission has not been large. Just gives examples.
[7] Cannot identify precisely the number of petitions received in the past 2 yr. Estimates less than 15 total.
[8] Includes labor unions.

Participation in adjudicatory proceedings

In general, we found that participation in adjudicatory proceedings by nonregulated interests is even more limited than in rulemaking. This may reflect the fact that nonregulated interests commit their scarce resources more often to across-the-board proceedings where problems can be dealt with on a generic basis. It may also reflect the fact that public participation in adjudicatory proceedings has often been limited by questions of standing (see chapter 3), and by other procedural requirements imposed by the agencies themselves (see chapter 4).

At the FPC, the dockets we examined included several area rate and pipeline rate proceedings and one rate proceeding on the wholesale sale of electricity. Despite the economic impact involved in these cases, there was no intervention by public interest groups in more than half of them. In those cases where such intervention did occur, the ratio of industry to public interest representation was 66 to 1 in one case, 38 to 1 in a second case, and 4 to 1 in a third. It should be noted, however, that there was intervention by State or local governments in these proceedings, and often the positions taken by such intervenors corresponded with those taken by public interest groups. Still, even with these intervenors included, industry participants accounted for more than 80 percent of the total.

Similar patterns prevailed elsewhere. For example—

At the FCC, the Commission indicated to us that public interest parties participated in only 3 of the 30 most recent adjudicatory proceedings (broadcast application proceedings).

At the CAB, public group participation occurred in two-thirds of the cases—cases that dealt with domestic common fares, an airline certification, interstate and intrastate fares for California and Texas, domestic air freight rates, transportation of live animals, and awarding a transatlantic route. However, in the cases where public participation occurred, the ratios of industry to public interest submissions were again very substantial: 122 to 1 in one case, 82 to 6 in a second case, 43 to 13 in a third, and 57 to 9 in a fourth.

At the NRC, public interest group participation took place in approximately 40 percent of the proceedings examined. State and local governments, often through Assistant or Deputy Attorneys General, participated in over 60 percent of the proceedings. The overall number of participants was generally small, and ratios between industry and public interest groups were generally low.

At the FDA, we found public interest group participation in less than 45 percent of the adjudicatory proceedings. These dockets included setting tolerance levels for certain chemicals, approval of a new drug application, permitting the use of certain growth promotants in animal feed, and sanctioning the use of methadone for particular drug treatment programs. The ratios of industry participation to public interest participation, where it did occur, were relatively low: for example, 6 to 5, 8 to 2, and 1 to 1.

In sum, we found that in agency after agency, participation by the regulated industry predominates—often overwhelmingly. Organized public interest representation accounts for a very small percentage of participation before Federal regulatory agencies. In more than half of the proceedings, there is no such participation whatsoever. In those proceedings where participation by public groups does take place, typically, it is a small fraction of the participation by the regulated industry. One-tenth is not uncommon; sometimes it is even less than that. This pattern prevails in both rulemaking proceedings and adjudicatory proceedings, with an even greater imbalance occurring in adjudications than in rulemaking.

EXPENDITURES ON PARTICIPATION

Generally, the same imbalance which we found with respect to the extent of participation holds true for expenditures. If anything, the imbalance is even greater on the expenditure side.

Clearly, several factors are responsible for this imbalance. Problems of standing, covered in chapter 3, account for part of it. Agency procedures are occasionally responsible, particularly if they discriminate against public interest groups; these procedures are discussed in chapter 4. But, the factor which is cited time and again as the chief obstacle to participation is the lack of funds, and the tremendous cost of participation. Repeatedly we heard stories of interventions begun and abandoned. We were told of funds running out. We were told of public interest lawyers billing half of what a private attorney would bill and then being unable to collect their fees. It should be noted here and throughout this volume that small businesses often have the same financial constraints as public interest groups.

An effort was made to determine how much the regulated industry spends to participate in regulatory proceedings, and to compare this with what public interest groups are spending. The problem of collecting cost data was similar to the problem of collecting the data on the extent of public participation. While precise data was not available for all the agencies, it was possible to compile a number of representative samples of the costs of participation. These clearly show that industry spends considerably more than public interest groups. In some cases, the comparisons were dramatic, with ratios of 50 to 1 or more. In all cases, industry spending on participation was many times more than what public interest groups spent on participation.

A number of major public interest groups were contacted and asked to provide specific cost figures for their participation in both rulemaking and adjudicatory proceedings. These provided a number of examples from a diverse group of proceedings. In all, cost data was obtained from 15 public interest groups.

Industry representatives were asked for the same information. Cost data from 14 trade associations and corporations was obtained, and this provided a good cross-section of their expenses for regulatory proceedings.

In addition, a number of agencies maintain records of the costs of industry's participation in agency proceedings. The FCC, ICC and FPC require regulated companies to submit annual reports which contain schedules itemizing regulatory expenses over the subject year. The CAB annual report is compiled somewhat differently, since it lists expenses paid to outside sources but does not require regulatory expenses to be broken out. Therefore, in the case of the CAB, we also contacted the top legal officer at each airline to determine what portion of the airline's outside legal expenses were attributable to CAB proceedings.

We believe the cost figures obtained from these three sources—agencies, industry, and public interest groups—provide a sound basis for estimating comparative costs of participation.

The lion's share of these costs is the cost of legal counsel. Particularly in an adjudicatory proceeding, it is virtually impossible to participate effectively without conusel. For industry, legal expenses result from either in-house counsel or outside law firm billings. For public interest groups, representation is generally by public interest law firms. One Chicago lawyer we spoke to spends 40 percent of his time on public interest law and 60 percent on corporation law. After having spent many years devoting his practice exclusively to public interest law, he had lost so much money through unreimbursed legal fees and out-of-pocket expenses that he was forced to devise the current system, with the corporate law practice effectively paying for his public interest law practice.

The second largest expense of participating in a regulatory proceeding is the cost of technical assistance. This can be substantial. In one FCC proceeding, for example, A.T. & T.

spent over $1,000,000 in 1 year to submit studies to the agency to support its position in an inquiry. Although that figure is certainly at the high end of the spectrum, it is not totally unrepresentative of the resources which industry is willing and able to commit to participate effectively in regulatory proceedings.

Finally, clerical costs imposed by the agencies can occasionally represent a substantial obstacle to effective participation. Costs such as transcript fees and reproduction of required materials, that are easily absorbed by private parties, often pose a real burden on public intervenors.

It is useful to compare these various types of expenditures on an agency-by-agency basis.

At the CAB, we found a tremendous disparity between industry and public interest group spending. CAB Form 41 requires all regulated airlines to file an annual report listing all outside expenses above $20,000, and to identify the name of the person or corporation paid, the amount paid, and the nature of the service rendered ("legal," "accounting," "advertising," or "investment management"). The top legal officer at each of the 11 trunk airlines advised us what portion of the airline's outside legal expenses were attributable to CAB proceedings. The figures that follow are the expenditures by the trunk airlines on outside legal expenses for the calendar year 1976 for proceedings before the Civil Aeronautics Board.

Airline	Amount billed for CAB work	Law firm
American	$200,000	Prather, Seeger & Doolittle.
Braniff	440,000	Arnold & Porter.
Continental	232,000	Hydeman, Mason & Goodell.
Delta	250,000	Hale, Russell & Stentzel.
Eastern	375,000	Wade & Associates.
National	50,000	Kirkland, Ellis & Rowe.
Northwest	240,000	Verner, Liipfert, Bernhard, McPherson & Alexander.
Pan American	650,000	Jones, Day, Reavis & Pogue.
TWA	400,000	Chadbourne, Park, Whiteside & Wolf.
United	14,000	Mayer, Brown & Platt.
Western	0	

The total for the 11 trunk airlines for 1976: $2,851,000. And this figure does not describe the complete story. Many of these airlines also maintain in-house counsel who do CAB work, and such costs are not included in the figure. When these are added in, the figure for legal costs for the major airlines for CAB proceedings last year clearly exceeds $3 million. And this does not include an additional $100,000 which the Air Transport Association incurred in CAB legal expenses in 1976.

Only one of the public interest groups surveyed engages in a substantial amount of CAB work. That organization is the Aviation Consumer Action Group, a firm which is loosely affiliated with Ralph Nader. The group's total budget for calendar year 1976 was $40,000, and only half of that, or $20,000, was spent on CAB matters. Even if this group receives pro bono litigation assistance from allied groups, its budget outlays represent less than 1 percent of the outlay for participation in CAB proceedings by the major trunk airlines.

ACAP was also able to provide an example of the burdens imposed by clerical costs. The example given was how much it costs to file an answer to a petition for reconsideration in what they term a "simple" rulemaking at the CAB. The costs broke down as follows:

Copying charges to reproduce 140 copies for the service list plus copies for the Board	$300
Postage	300
Envelopes	82
Clerical help to stuff evelopes, type labels and take to post office	20
Professional time—26 hours at $15 an hour	390
Senior professional time to review and edit, 2 hours at $75 an hour	150
Total	1,242

Thus, the clerical costs alone, on this one "simple" CAB rulemaking, consumed more than 6 percent of ACAP's total annual budget for all its CAB work.

At the NRC, a comparison of the costs of industry versus public interest groups also revealed a wide disparity. NRC costs of effective participation are particularly high, since Commission proceedings require not only adequate legal counsel, but also substantial reliance upon expert witnesses.

For example, the New England Coalition on Nuclear Pollution, a group based in Vermont, has intervened in the Vermont Yankee and Seabrook licensing proceedings. The Coalition depends entirely on contributions. The Vermont Yankee application for a license to build a nuclear powerplant, begun in 1971, has not yet been completed. To date, the coalition has spent $60,000 in legal fees on the Vermont Yankee proceeding.

Intervention by the coalition in the Seabrook proceeding dates back to 1973, although hearings were not begun until June 1975. To date on the Seabrook proceeding they have spent $58,000 in legal fees and out of pocket expenses. In addition, they have been able to spend only $2,500 on expert witnesses in the Vermont Yankee proceeding and $2,100 in the Seabrook proceedings. In the Seabrook case, the chairman of the economics department at Amherst College offered his services at no cost. But a Chicago economist whom they felt was essential to present a cost benefit analysis could not assist them for less than $4,000 and they could not afford to pay that.

A public interest lawyer described his role in the 1970 Palisades case before the AEC, a case he termed "landmark" since for the first time thermal pollution was recognized as an environmental element in nuclear powerplants. The attorney represented the Sierra Club, a group of fishermen and certain business and professional people. Legal expenses for 1 year of intervention ran $90,000—at an hourly billing rate of $60. None of the $90,000 was recovered.

The Union of Concerned Scientists, a public interest group in Cambridge, Mass., provided cost figures for participation in NRC rulemakings. They estimated for us that their legal fees in the emergency core cooling systems (ECCS) rulemaking ran $50,000 over 2 years. Out-of-pocket expenses for the same period were also $50,000. The Union was part of a coalition of 60 public interest groups organized under the name of the Consolidated National Intervenors. It was, however, the Union that led the effort. The coalition was primarily funded by small contributions, although it did receive some foundation support.

Although concise data for industry spending before the NRC was not available. Testimony presented to the Committee during its consideration of the Energy Reorganization Act provides a gauge of industry expenditures in nuclear licensing proceedings. George Freeman, an attorney who represents utilities in nuclear licensing cases, * * *.

His answer:

"I would imagine the overall cost to the utility in terms of legal fees, in terms of technical staff review, staff backup, fees to consultants, plus the built-in price in the nuclear steam supply system of experts and fees to the architect engineer would run between $500,000 on the low side to $1 million on the high side."

Mr. Freeman's $500,000 to $1 million estimate represents a tenfold to twentyfold increase over the resources an average public interest group can commit if it wishes to contest a nuclear license

It was also the Union of Concerned Scientists that provided the committee with the only example of studies commissioned by a public interest group. One, on energy alternatives, cost them $50,000, and a second came in at $80,000. It is not difficult to understand why public interest groups must put such activities on the back burner. With funds so limited and with legal counsel so crucial for effective participation, there is simply no way to afford the luxury of commissioning a study to support a position.

At the FCC, the two functions of the FCC with which the public is most familiar are the regulation of television broadcasting and the regulation of telephone systems (common carriers). Although we were not able to secure industry cost figures for the broadcast division, we were told by a leading public interest group, Media Access Project, of their expenses in FCC rulemaking proceedings. Media Access Project estimated that their participation in the FCC rulemaking on the fairness doctrine cost $15,000 in attorney's fees and $1,000 for out-of-pocket expenses. On the Commission's Sunshine Act rulemaking, they spent $500 in legal fees and $50 in out-of-pocket expenses. Furthermore, they have never been able to hire technical experts because of lack of funds.

Industry spending data was available for the common carrier division. Most illustrative are the expenditures of A.T. & T., the industry giant. A.T. & T.'s regulatory expenses are reported by the company on an annual basis in the FCC's schedule 39 of its form M.

For the year ending December 31, 1975, A.T. & T. reported over $2,225,000 in FCC expenses. Of this total, $1,800,000 was incurred in just three dockets.

One of these was FCC docket 20003, an inquiry into the "economic implications and interrelationships arising from policies and practices relating to customer interconnection, jurisdictional separations and rate structures." Thus, in docket 20003, the FCC was investigating the effects of competition in the telecommunications industry. A.T. & T. opposed the proposed increase in competition, arguing that if the FCC increased competition in the specialized common carrier and interconnect companies, A.T. & T. would be forced to raise the interstate telephone rates. A.T. & T. spent more than $1,000,000 trying to convince the FCC not to take further action.

The remaining $800,000 was spent on two related dockets, one started in 1970 and the other in 1975 that dealt with A.T. & T.'s request for an increase in its rate of return. As a result of the requests, the FCC began an investigation of the relationship of A.T. & T. with its associated companies: Bell Labs and Western Electric. Rate of return increases were granted—8½ to 9 percent for the first request (9½ percent was requested) and 9½ to 10 percent for the second request (10½ percent was requested). There was a total absence of any public interest representation in these proceedings. Henry Geller, a formal General Counsel of the FCC and presently Chairman of the Board of the Citizens Communication Center, told the Committee that public interest intervention was "stymied totally". He mentioned "gigantic legal costs" and notably prolonged proceedings.

At the FPC, a similar pattern prevailed. The committee was told by a public interest law firm whose clients include municipalities and public interest groups, that for an FPC proceeding expenditures typically run between $50,000 and $60,000, with half of that sum directed toward legal fees and the other half to expert testimony. The American Public Gas Association, in a proceeding that challenged the FPC's manner of setting rates, spent slightly more than $48,000. Their effort ended in the courts in June 1977 with a ruling against them.

Compare this with information reported by the pipeline companies on FPC Schedules 353 and 353A. Schedules 353 and 353A require a listing of "particulars of regulatory commission expenses, relating to formal cases before a regulatory body or cases in which such a body was a party." The statistics contained in these schedules reflect not only the total cost of a proceeding, which typically spans 2 or 3 years, but also the amounts spent on a proceeding for the subject year. The committee obtained copies of the reports for the year ending December 31, 1975, for the 34 major pipeline companies. These reports show that for a single rate proceeding begun in 1971, Northern Natural Gas has spent nearly $600,000 to date. On another proceeding, started in 1974, they have spent $350,000.

The Cities Service Gas Co. has spent almost $220,000 on a single rate proceeding begun in 1974 and over $220,000 on a certificate proceeding begun in 1967.

The United Gas Pipe Line Co., another of the major gas companies spent over $1,300,000 in 1975 alone, although this figure encompasses 16 rate proceedings and 19 certificate proceedings.

Scheduled 353 and 353A are also required of companies selling wholesale electricity. The FPC was asked to identify the 10 largest electric companies filing Schedules 353 and 353A. We found that a very substantial portion of regulatory expenses for these companies was incurred because of State public service commissions and the charges attributable to FPC proceedings were somewhat less than they were for the pipeline companies. For example, the Pacific Gas & Electric Co. spent $75,000, almost entirely on filing fees.

The Duke Power Co. spent over $120,000 and all of it was on two rate proceedings. The Public Service Electric & Gas Co. also spent over $120,000, Detroit Edison over $190,000, and Southern California Edison over $130,000.

In all of the preceding examples, comparing public interest group costs to industry costs is like comparing David to Goliath. Effective participation in a regulatory proceeding does indeed depend on the quality and extent of ones' legal counsel. It also depends upon the quality and extent of expert testimony and technical submissions. It requires ample administrative and clerical resources, costs which are frequently taken for granted. Yet time after time, industry is able to spend 10, or 50, or 100 times as much money on participation as public interest groups. The persistence and ingenuity of the public interest groups in their efforts to participate effectively is laudable, but their lack of resources to insure adequate representation is lamentable.

When these figures are considered alongside the data on extent of participation presented earlier in this chapter, we believe they make a convincing case that corrective steps—both legislative and administrative—are necessary to remedy this imbalance. These remedial steps are considered in the remaining chapter of this volume.

Financial Assistance for Participation

A proposal to facilitate public participation that has been increasingly urged is the direct compensation by the Government for persons participating in regulatory agency proceedings. As noted throughout this report, the proper functioning of regulatory agencies requires that all affected interests have an opportunity to be heard, and the courts and the agencies themselves have expanded the rights of citizens to participate in regulatory proceedings. In practice, however, the actual ability of groups to participate has not kept pace due largely to the great costs of participating formally, and the benefits of greater participation have not been fully realized.

All the public interest groups and consumer groups contacted for this report have cited cost as one of the primary barriers to their participation in the regulatory process. The programs and proposals discussed in this section specifically address that obstacle to participation. These proposals generally provide authority and funding for Federal agencies to award attorneys' fees, experts' fees, and other participation costs to eligible participants in agency proceedings and, in certain instances, in Federal courts proceedings as well. This approach can either be followed on an agency-by-agency basis or under the auspices of a single Federal law.

Because the reimbursement of participants has been demonstrated to be a necessary and useful approach to facilitating public participation, we recommend the enactment of legislation to authorize such a program for Federal regulatory agencies.

The Status of Direct Funding

Status within the agencies

Within the past few years, some regulatory agencies have either considered or experimented with compensating certain intervenors for participation costs. The Federal Trade Commission has been a central focus of activity in this area. In the *American Chinchilla* proceeding[1] it ruled that, upon an adequate showing of financial inability, an indigent respondent in a proceeding before the Commission is entitled to have legal counsel furnished by the Government. In 1972, in response to an inquiry from the FTC, the Comptroller General issued an opinion stating that it was within the Commission's inherent authority to reimburse indigent parties and intervenors for their attorneys' fees and other costs incurred in adjudicatory proceedings.[2]

In the succeeding years, however, the FTC had provided such funding to only one intervenor prior to the enactment of the Magnuson-Moss FTC Improvement Act. Any question about the authority of the FTC to provide compensation for participants in rulemaking proceedings was resolved by enactment of the FTC Improvement Act, which provides compensation for reasonable costs of attorneys' and expert witnesses' fees and other costs of participation in FTC rulemaking proceedings.

The same question of authority to fund intervenors has also been raised before the Nuclear Regulatory Commission. In response to a number of requests from intervenors for financial assistance, the NRC issued a memorandum and order in Consumers Power Co.,[3] announcing an external study and future rulemaking on the question. A contract was let to the law firm of Boasberg, Hewes, Klores and Kass, and their report on the issues relevant to the funding of intervention was released on July 18, 1975.[4]

Following that study, the Commission commenced an informal rulemaking in August 1975 on possible financial assistance to participants, and it requested a formal opinion from the Comptroller General concerning the Commission's statutory authority to award compensation for fees and costs of participation. On February 19, 1976, the Comptroller General reaffirmed for the NRC the conclusions of his earlier ruling in regard to the FTC. He ruled that the NRC has inherent statutory power—

"to facilitate public participation in its proceedings by using its own funds to reimburse intervenors when (1) it believes that such participation is required by statute or necessary to represent adequately opposing points of view on a matter, and (2) when it finds that the intervenor is indigent or otherwise unable to bear the financial costs of participation in the proceedings."[5]

In late 1976, however, the NRC terminated the rulemaking and decided not to initiate a program to provide funding for participants in nearly all of its proceedings, with the limited exception of some rulemaking proceedings. The Commission generally based its decision on the grounds that it could not conclude that such funding was "essential" to its determination of relevant issues or that it "cannot make" the required licensing or rulemaking determinations unless financial assistance is provided to needy participants. The terms "essential" and "cannot make the required determination" in the NRC's decision come directly from the language in the Comptroller General's opinion. Also, the NRC held that, in view of current congressional consideration of various compensation proposals, it would be inappropriate for the Commission to go ahead on its own—despite its own acknowledgement that it had the authority to do so.

Following his February 1976 decision, the Comptroller General had occasion to issue additional decisions reiterating and clarifying the basic ruling that agencies have inherent authority to use funds for the compensation of certain participants in agency proceedings. The first of these additional rulings came in response to a request in April 1976, from Chairman John Moss of the House Oversight and Investigations Subcommittee for an opinion on compensation with respect to the nine agencies subject to the subcommittee's jurisdiction.

The Comptroller General ruled on May 10 that the situation with those agencies was the same as that of the NRC and, accordingly, "the rationale of our February 19 [1976] decision to NRC is equally applicable to each agency named." Specifically, in that part of the May 1976 decision dealing with provision of funds directly to participants, the Comptroller General stated:

"Appropriated funds of each agency may be used to finance the costs of participants in agency hearings whenever the agency finds that it cannot make the required determination unless it extends financial assistance to certain interested parties who require it, and whose representation is necessary to dispose of the matter before it; and (2) the party is indigent or otherwise unable to finance its participation."

Furthermore, the decision noted that the NRC decision would also be applicable to other Federal agencies as long as there was no specific statutory prohibition.

In response to a request from the Congressional Black Caucus regarding the Federal Communications Commission, the Comptroller General elaborated on the criteria to be used by agencies in making compensation decisions:

"FCC appropriations are available to make payments to persons (and organizations) representing an interest in a matter before it where the Commission determines that such payments are necessary to achieve a fair solution of the matter."[7]

Finally, in response to a request from the Food and Drug Administration, which issued an advance notice of proposed rulemaking on the question of financial assistance for participants,[8] the Comptroller General issued another decision in December 1976.[9]

As before, the Comptroller General ruled that the agency has the authority to reimburse costs of otherwise eligible persons who participate in agency proceedings. The one

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Footnotes at end of article.

limitation, however, is that the agency may not make advance payments to participants without specific statutory authority. It reiterated that compensation is only available to indigent persons or groups.

This most recent decision also contained an important modification of the criteria of eligibility set forth in earlier decisions. Noting that the decision to NRC did refer to participation being "essential," the December 1976 decision stated:

"We did not intend to imply that participation must be absolutely indispensable. We would agree with Consumers Union [which had petitioned FDA for a compensation program] that it would be sufficient if an agency determines that a particular expenditure for participation "can reasonably be expected to contribute substantially to a full and fair determination of" the issues before it, even though the expenditure may not be "essential" in the sense that the issues cannot be decided at all without participation." [10]

Thus, the criterion of participation being indispensable that was utilized by the NRC had been modified significantly.

By February 1977, several other regulatory agencies were in various stages of considering proposals for direct compensation for participants in agency proceedings. The Federal Communications Commission, in December 1976, began an experimental program to waive fees for transcripts and FCC documents and to relax copy requirements and other procedural rules for participants who qualify to proceed in forma pauperis. The FCC action, however, specifically excludes compensation of expenses incurred by participating in agency proceedings. Despite some fanfare in announcing this rather limited relief, it should be noted that several other agencies also provide in forma pauperis relief of procedural costs.

More substantial programs were begun in two other regulatory agencies. In January 1977, the Consumer Product Safety Commission announced that it would provide financial compensation to participants in Commission rulemaking proceedings in which public comments are solicited. The CPSC decided to create an Office of Public Participation whose primary function will be to process applications for such compensation. Also in January 1977, the Department of Transportation announced a 1-year demonstration program of financial assistance to participants in certain proceedings of the National Highway Traffic Safety Administration. At the same time, the Department issued an advance notice of proposed rulemaking to determine whether and in what circumstances such a program should be established on a departmentwide and permanent basis.[11]

As noted above, the Food and Drug Administration has issued an advance notice of proposed rulemaking in response to a petition from Consumers Union. The Environmental Protection Agency has issued a similar ANPR. Among other agencies currently considering such proposals are the Civil Aeronautics Board, the National Highway Traffic Safety Administration, and the Consumer Product Safety Administration.

However, on June 30, 1977, the U.S. Court of Appeals for the Second Circuit, in the case of *Green County Planning Board* v. *Federal Power Commission*, issued a decision which is widely expected to restrict the far-reaching implications of the Comptroller General's decisions of 1976.[12] The Court had previously held that the Federal Power Act did not authorize the award of attorneys' fees to intervenors opposed to construction of electrical transmission lines through the New York county.[13] The Power Commission then held hearings and subsequently denied the petitioners' requests for fees and expenses. Upon appeal in December, 1976, a three judge panel of the Court reversed its previous order denying expenses and remanded the case to the Commission for further consideration. This most recent decision, by the full Court, now holds that it is the responsibility of the courts and not the General Accounting Office to determine the legislative intent of Congress. The Court further holds that the Federal Power Commission has no statutory authority to make such awards. Although this decision applies to the FPC alone, the impact of the Comptroller General's opinion on other regulatory agencies has clearly been weakened.

Even before this decision, some agencies, most notably the Nuclear Regulatory Commission, had declined to proceed under their own authority in this area. It stated that it prefers to act under the mantle of congressional authority. Moreover, the FCC and the ICC have stated that while they may approve compensation of participants in principle, they are unable to provide such assistance in the absence of a special appropriation for that purpose,[14] funding which could be provided only through congressional action.

The need, then, for specific congressional mandate, and the accompanying congressional authorization is that much more apparent. Even before this recent Court decision, the Comptroller General had cautioned:

"It would be advisable for the parameters of such financial assistance, and the scope and limitations on the use of appropriated funds for this purpose to be fully set forth by Congress in legislation, as was done in the case of the Federal Trade Commission by the provisions of section 202(a) of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act." [15]

Congressional action on direct funding

The only specific congressional enactment of authority for direct funding of participants in Federal agency proceedings is section 202 of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act [16] which provides compensation for reasonable attorneys' fees, expert witnesses' fees, and other costs of participating in an FTC rulemaking proceeding. The FTC compensation program is examined on pages 98–113 below.

Prior to that time, the Senate did consider and pass one funding proposal. As originally reported out by the Government Operations Committee, the Energy Reorganization Act of 1974, which established the Nuclear Regulatory Commission and the Energy Research and Development Administration, contained an amendment, introduced by Senator Kennedy, which would have provided financial assistance to intervenors in NRC proceedings.

The amendment was adopted by the Senate, but later deleted by the conference committee. However, the conference report explicitly stated that the deletion of the funding provision "is in no way intended to express an opinion that parties are or are not now entitled to some reimbursement for any or all costs incurred in licensing proceedings. . . . [It] appears that there is nothing in the Atomic Energy Act, as amended, which would preclude the Commission from reimbursing parties where it deems it necessary." [17]

In 1975, Senator Kennedy introduced S. 2715, the Public Participation in Government Proceedings Act which would have (1) provided broad, basic authority for all Federal agencies to award attorneys' fees, experts' fees, and other participation costs to eligible persons in agency proceedings; and (2) permitted Federal courts to reimburse citizens who successfully sue Federal agencies when the lawsuit vindicates important public interests. S. 2715 was reported out of the Judiciary Committee [18] and was discharged from the Committee on Government Operations to which it had also been referred.

The bill, however, did not receive floor consideration during the 94th Congress and Senator Kennedy reintroduced it, with some changes, as S. 270 in January 1977. Because this legislation was the focal point for much of the recent debate over reimbursement for participants, and because it serves as a prototype for several petitions to the agencies for compensation rulemakings, it is useful to summarize the provisions of S. 270.

S. 270 requires agencies to determine the eligibility of persons for the award of reasonable costs of participation in all rulemaking, ratemaking, or licensing proceedings, and in certain other proceedings involving issues which relate directly to health, safety, civil rights, the environment, and the economic well-being of consumers. The bill does not fund attendance, as opposed to participation; nor does it fund participants whose costs are minimal. In order to receive an award, a participant:

(1) Must reasonably be expected to make a substantial contribution to a fair determination of the proceeding, taking into account whether the person represents an interest which is not adequately represented by a participant other than the agency itself; the number and complexity of issues presented; the importance of participation; and the need for representation of a fair balance of interests; and,

(2) The economic interest of the person is small in comparison to the cost of effective participation or the participant does not have sufficient resources to participate effectively.

Agencies may require consolidation of duplicate presentations, and may select one or more representations, compensate only certain categories of expenses, or compensate identical or related representations jointly.

Awards will normally be decided prior to the proceeding and payment will be made after the proceeding but advance payments may be made on a showing of need. Awards may be rescinded (and advance payments called back) if the agency judges the representation by award recipients to be inadequate or in bad faith. Additionally, the agency may require that an award to an eligible participant be paid by any participant in the agency proceeding when that participant acts in bad faith toward the eligible person. There is provision for judicial review of an agency's denial of reimbursement.

The bill provides that in judicial proceedings, any person who successfully challenges an agency action may receive reimbursement for the cost of such challenge if the court finds that he meets the eligibility tests. Awards of such costs are not limited to those who participated at the agency level, but rather to any party to whom the court gives the right of review. The bill does not alter present agency rules on standing. Persons are eligible for reimbursement if the court or agency has, after initiation of judicial action, awarded them a substantial measure of the relief sought, if the court determines that the action served an important public purpose, and for reasons following the agency eligibility test.

Finally, the bill requires that awards of fees and costs be based on prevailing market rates for the kind of services rendered. But, the legislation also sets monetary limitations on the rates of compensation for experts and attorneys appearing before agencies.

Judiciary and statutory fee shifting

Another means of providing financial compensation to public interest intervenors might be to assess the costs of their participation against other parties. While the general rule in American courts has always been that litigating parties pay their own attorneys' fees, whether they win or lose, the courts have long used their equity powers

to carve out exceptions to that rule. Over time it was established that costs may be shifted in cases of bad faith, common fund cases (the substantial benefit exception), willful violation of a Federal court writ of mandamus, or contempt of court. In recent years, some lower Federal courts allowed the private attorney general exception to the American rule, under which courts awarded attorneys' fees to litigants who by their action effectuated a strong congressional policy, benefited a large class of people, and brought an action to protect legal rights which might not otherwise have been protected.[19]

When the private attorney general rationale was finally tested in the Supreme Court, however, it was circumscribed significantly. In the landmark decision *Alyeska Pipeline Service Co.* v. *Wilderness Society*, the Court reaffirmed the primacy of the American rule and declared the judiciary could not award fees under the private attorney general rationale in the absence of statutory authorization. The Court held that the very fact that some statutes provided for fee shifting showed that Congress accepted the American rule, inasmuch as it provided specific statutory exemptions to it. The Court then reasoned that the judiciary was in no position to decide which litigation furthered important public policies in the absence of such specific statutory provision.

For a time it was also argued that administrative agencies, as quasi-judicial bodies, had authority to order fee shifting in the same kind of situation as did the courts themselves—a sort of administrative private attorney general rationale. In 1972, in the third *Church of Christ* case the D.C. Circuit Court overturned an FCC decision in which the FCC denied attorneys' fees to an intervenor, since the fees were payable as part of a written settlement between the intervenor and the broadcaster. However, the courts have held that agencies cannot go beyond ratifying voluntary agreements.[20] In *Turner* v. *FCC*[21] the Court upheld an FCC ruling and held that an agency cannot order a litigant to bear his adversary's expenses in the absence of a clear grant of statutory authority by Congress. This followed an earlier decision in *Greene County Planning Board* v. *Federal Power Commission* which was the first case to consider the issue directly. The circuit court held in *Greene County* that:

"Without a clear congressional mandate we should not order the Commission or PASNY [Power Authority of the State of New York] to pay the expenses and fees of petitioners."[22]

The second circuit, however, recently shifted its opinion in *Greene* in light of the Comptroller General's opinion to the NRC on fee reimbursement (see pp. 92–93, *supra*). Because these intervenors might meet the standards approved by the Comptroller General, the court remanded the case to the FPC for reconsideration in light of the Comptroller General's NRC opinion. The court's decision, however, confirmed the prohibition against fee shifting against losing private parties.[23]

In the wake of *Greene*, *Alyeska*, and *Turner*, it is now settled that courts may not order involuntary fee shifting against losing private parties in the absence of statutory authorization. Therefore, as the Senate Judiciary Committee stated in asserting the need for government compensation to participants:

"Fee shifting . . . is not a viable mechanism for providing citizens with the financial means to participate in agency proceedings. Until or unless Congress creates a comprehensive statutory response to the *Alyeska* decision, other means must be found to enable persons to participate effectively in agency proceedings and to seek judicial review of agency decisions."[24]

Footnotes at end of article.

At present, approximately 100 statutes provide for award of attorneys fees, including, for example, much of the recent environmental legislation, such as the Clean Air Act Amendments of 1970 and the Federal Water Pollution Control Act (1972). A complete list is attached in appendix A, pp. 119–127.

COMPENSATION UNDER THE MAGNUSON-MOSS FTC IMPROVEMENT ACT

The Federal Trade Commission is the only Federal regulatory agency now specifically authorized by statute to provide public funding for participants in all its rulemaking proceedings.[25] The authority was granted by the Magnuson-Moss warranty—Federal Trade Commission Improvement Act (1974) (Public Law 93–637). Section 202 of the Act authorizes the Commission to provide compensation to eligible persons for reasonable attorneys' fees, expert witnesses' fees, and other costs of participating in a rulemaking proceeding.

Eligibility in the act is met by fulfilling two criteria. Compensation may be provided to any person:

"(A) Who has, or represents an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding."

The Commission determines whether the criteria are met in particular cases.

It should be noted that this program is limited to rulemaking proceedings.

An additional limitation, relative to similar proposals for compensation of participants, is that the Act does not provide compensation for persons bringing court challenges to FTC decisions. The Act specifically authorized $1 million as a maximum annual limit for compensation and Congress appropriated $500,000 for the first year of the program.

In August 1975, the Commission issued Rules of Practice which contained the new rulemaking procedures mandated by the FTC Improvement Act. The rules delegated authority over compensation to the Director of the Bureau of Consumer Protection. In August 1976, the Bureau issued detailed guidelines explaining the qualifications for rulemaking compensation and the procedures for processing applications. Additional Guidelines, "Rulemaking and Public Participation Under the FTC Improvements Act" and "Applying for Reimbursement for FTC Rulemaking Participation" were issued in May 1977.

Although the compensation program has been in existence for a relatively short time, we can make a tentative evaluation for the purpose of highlighting the opportunities and problems inherent in this approach. On the whole, the early returns on the program are positive. While admitting that the returns on the program are still fragmentary, the FTC official immediately in charge of the program recently testified in Congress that the program is working well, and relayed the favorable reaction of FTC staff attorneys and presiding officers:

"Both these groups endorse the program strongly. While obviously some participants have been more valuable than others, the program has produced evidence and information relevant and perhaps crucial to various proceedings. It has allowed the infusion of points of view which are necessary for a fair determination which would not otherwise have been represented in the proceedings. Participation by attorneys for interested groups has improved the quality of the oral hearings, in terms of both production and examination of knowledgeable witnesses and cross-examination of representatives of other parties."[26]

While we would normally expect agency evaluations of their own programs to be favorable, the situation here is somewhat different. The compensation program was enacted because Congress believed that consumer and other broad public interests could not be adequately represented by agency staff alone. To the extent that agency staff reacted positively to the compensation program they acknowledged that they are, indeed, benefiting from the additional intervention that the program makes possible.

Moreover, we have additional evidence from participants that the program has enhanced their ability to make a useful contribution to regulatory policymaking. One of the major recipients of compensation has been the National Council of Senior Citizens. David Marlin, counsel for the group, testified that without compensation it would have been impossible for the senior citizens to have participated in three FTC rulemaking proceedings.

A review of one of their submissions is instructive about the potential contribution of citizens groups when they have adequate funding.

In 1975, the Commission commenced a trade regulation rulemaking proceeding on the hearing-aid industry. The hearing aid industry claimed that abuses are rare and that less than ½ of 1 percent of all buyers complain about their purchase. Based on their own experience and surveys, the National Council of Senior Citizens disputed the industry's contentions and supported the proposed rules. The Council had previously conducted studies in Washington and Baltimore, analyzed State laws regulating the hearing aid business, and analyzed the enforcement capacity of State agencies.

Based on that experience 1 year earlier, they had prepared a model State statute. Based on their substantial record in the field, the Council requested and was granted slightly more than $44,000 for their participation in the proceeding. That participation included the direct presentation of consumer views in affidavits of 80 persons from Boston and Miami and the presentation of nine consumer witnesses. They provided several expert witnesses, including a lawyer describing consumer studies in the District of Columbia and Maryland, and an analysis and evaluation of the adequacy of State laws and regulations covering hearing aid distribution, an otolaryngologist, an audiologist, an economist, a gerontologist and a State hearing aid legislative reform advocate.[27]

While it might be expected that the FTC staff would marshal a good deal of the expertise and information on hearing aids that was eventually presented, the actual participation by the senior citizens had several important advantages. First, the compensation program allowed the representative of the primary purchasers of hearing aids to have a direct input into the proceedings. Inasmuch as the industry was ably represented by counsel, equity would seem to require the presentation of consumer views by the consumers themselves. Second, given the national council's deep involvement with this issue, it is in fact unlikely that the FTC staff could match the council's depth of understanding of the problems faced by senior citizens in this matter.

Even when a group does not bring to bear the benefits of experience of a specialized constituency, the compensation program enables participants to compile expert submissions of data which most likely would not otherwise be presented. In the FTC's rulemaking on food advertising, Consumers Union, which received $7,300 from the FTC, submitted detailed comments supporting greater nutritional information.

The CU submission was a highly detailed

argument concerning such matters as food serving size, the form, content and method of presenting nutritional claims, and natural and organic food claims. The comments were prepared by employees and consultants for Consumers Union who have had extensive experience in the fields of nutrition, advertising, and Federal trade regulations.[28] Again, a considerable body of relevant expertise was brought to bear on a rulemaking proceeding. Equally important, that expertise was independent of the Commission, which should give the public greater confidence in its integrity and the ultimate fairness of the proceeding.

The complete list of compensation applications and their disposition is presented below:

FTC PUBLIC RULEMAKING/COMPENSATION

Rule and applicant	Amount requested	Action taken
Vocational schools (proposed Aug. 15, 1974), presiding officer, William Dixon:		
Len Vincent	$135.00	(1)
Consumer Action	19,176.00	[2] $20,020.00
Consumer Action (supplemental)	4,995.00	[2] 4,995.00
Witness compensation	789.47	(1)
Joe Platt, Esq	7,017.00	[2] 5,460.00
John C. Hendrickson, Esq	3,099.00	(1)
Mary Anne Vance, Esq	[3]	[4]
Unfair credit practices (proposed Apr. 11, 1975), presiding officer, Jack Kahn:		
National Consumer Law Center	120,000.00	[2] 91,020.00
National Consumer Law Center (supplemental)	2,000.00	[2] 2,000.00
Do	1,332.00	[2] 1,332.00
Do	4,005.24	[2] 4,005.24
Mobile homes (proposed May 19, 1975), presiding officer, Ray Rhine:		
Center for Auto Safety	27,749.00	[2] 9,133.00
Center for Auto Safety (supplemental)	10,460.00	[2] 9,915.00
Do	7,134.00	[2] 7,134.00
Golden State Mobil Home Owners League, Inc	35,000.00	Pending
Food advertising (proposed May 28, 1975), presiding officer, William Dixon:		
Consumers Union	8,793.00	[2] 7,360.00
Spanish-Speaking/Surnamed Political Association, Inc	2,550.00	(1)
National Health Federation	50,000.00	(1)
National Consumers Congress	7,334.00	[2] 9,295.00
Council on Children, Media, and Merchandising	52,400.00	[2] 51,267.00
Mary Ruth Nelson	270.00	[2] 270.00
Wendy Gardner	295.00	[2] 295.00
Society For Nutrition Education	21,228.00	[2] 18,904.00
Consumer Action (Washington)	46,990.00	[2] 38,158.00
Iowa Consumers League	173.00	[2] 200.00
Indiana Home Economics Association	39.70	[2] 39.70
Connecticut Citizen Research Group	8,242.60	[2] 6,777.00
Utah State University	28,940.00	(1)
Consumer Action, Washington (supplemental)	20,524.00	[2] 5,940.00
Sidney Margolius	1,043.00	(1)
Society for Nutrition Education (supplemental)	1,956.00	[2] 1,956.00
Consumer Action, Washington (supplemental)	14,915.00	[2] 2,746.00
Kurt A. Oster, M.D	[3]	(1)
Council on Children, Media, and Merchandising (supplemental)	9,895.28	[2] 7,709.78
Prescription drugs (proposed June 4, 1975), presiding officer, Henry Cabell:		
Consumer Union	944.30	(1)
Consumer Action	16,100.00	(1)
Consumer Affairs Committee, Greater Washington Chapter, Americans for Democratic Action	14,558.00	(1)
Consumer Newsletter	100.00	(1)
National Council of Senior Citizens	9,227.00	[2] 2,270.00
Craig W. Sandahl	90.23	(1)
Hearing aids (proposed June 24, 1975), presiding officer, G. Martin Shepherd:		
National Council of Senior Citizens	34,926.00	[2] 36,006.00
Consumer Association of Kentucky	[3]	(1)
National Council of Senior Citizens (supplemental)	8,100.00	[2] 8,100.00
National Hearing Aid Society	68,249.00	[2] 34,314.00
California Citizens Action Group	3,665.00	(4)
New York League for the Hard of Hearing	5,500.00	(1)
Health spas (proposed Aug. 15, 1975), presiding officer, Roger Fitzpatrick:		
Consumers Union	15,420	[3]
California Citizen Action Group	23,890	[3]
Funeral industry (proposed Aug. 29, 1975), presiding officer, Jack Kahn:		
Consumers Union	3,830.70	[2] 3,980.00
New York Public Interest Research Group	8,557.00	[2] 8,377.00
Continental Association of Funeral & Memorial Societies, Inc	12,080.00	[2] 12,670.00
Consumer Affairs Committee, Americans for Democratic National Council of Senior Citizens	13,138.00	[2] 8,315.00
Michael Hirsh	[3]	(1)
Minnesota Memorial Society	112.00	(1)
Consumer Federation of America	26,024.00	[5]
California Citizens Action Group	13,441.00	[2] 12,568.00
Central Area Motivation Program	9,792.00	[2] 7,410.00
Arkansas Consumer Research	7,676.00	[2] 6,653.00
National Council of Senior Citizens (supplemental)	528.00	[2] 528.00
New York Public Interest Research Group (supplemental)	3,240.00	[2] 3,363.00
Continental Association of Funeral & Memorial Societies (supplemental)	4,500.00	[2] 4,500.00
Arkansas Consumer Research (supplemental)	666.00	[2] 666.00
Do	375.00	[2]
Consumer Affairs Committee, Americans for Democratic Action, National Council of Senior Citizens (supplemental)	9,824.17	[2]
California Citizens Action Group (supplemental)	3,017.41	[2] 2,657.41
Continental Association of Funeral & Memorial Societies (supplemental)	1,000.00	[2] 1,000.00
California Citizens Action Group (supplemental)	360.00	[2] 360.00
Continental Association of Funeral & Memorial Societies (supplemental)	19,040.00	(1)
Consumer Affairs Committee, Americans for Democratic Action, National Council of Senior Citizens (supplemental)	11,298.81	(1)
Pre-Arrangement Interment Association of America	23,540.00	[5]
Cremation Association of North America	12,900.00	[5]
Protein supplements (proposed Sept. 4, 1975), presiding officer, Christopher Keller:		
Consumer Action Now	15,200.00	[2] 12,710.00
Consumer Action	15,128.00	[2] 15,507.00
Consumer Cooperative of Berkeley, Inc	5,014.00	[2] 3,967.70
Chester W. Sutton, Jr	300.00	(1)
Over-the-counter drugs (proposed Nov. 11, 1975), presiding officer, Roger Fitzpatrick:		
California Citizens Action Group	32,350.00	[2] 26,620.00
Consumer Affairs Committee—Americans for Democratic Action	18,765.00	[2] 7,545.00
Consumer Affairs Committee—Americans for Democratic Action (supplemental)	1,411.00	[2] 1,411.00
Council on Children, Media, and Merchandising	43,966.00	(1)
Do	19,175.00	[2] 19,175.00
California Citizen Action Group (supplemental)	6,992.00	[2] 6,492.00
Preservation of consumers' claims and defenses (proposed Nov. 19, 1975), presiding officer, Christopher Keller:		
David A. Scholo	28.00	[7]
Richard S. Kay	125.00	[6]
Richard A. Victor	250.00	[6]
Richard A. Hesse	150.00	[6]
National Consumer Faw Center	3,193.65	[2] 3,093.25
Used motor vehicles (proposed Dec. 23, 1975), presiding officer, James Greenan:		
Automobile Owners Action Council	31,000.00	[2] 7,300.00
Used Motor Vehicle Study Team	63,246.00	(1)
Center for Public Representation	33,188.00	[2] 33,146.00
Center for Auto Safety/Consumer Affairs Committee, Americans for Democratic Action	63,205.00	[2] 4,500.00
California Public Interest Research Group (CAFPIRG)	28,925.00	[2] 37,988.68
Supplemental	14,649.00	[5]
Automobile Owners Action Council (supplemental)	22,790.00	[2] 16,960.00
CALPIRG (supplemental)	1,370.00	1,370.00
Consumer Action—San Francisco	21,434.00	[1] 10,976.52
Consumer Action—San Francisco (supplemental)	775.00	[2] 775.00
Opthalmic goods and services (proposed Jan. 16, 1975), presiding officer, Henry Cabell:		
Consumer Action (San Francisco)	38,630.00	[2] 37,766.00
California Citizens Action Group	31,992.00	[2] 33,372.00
Arkansas Community Organizations for Reform Now	1,962.00	[2] 1,828.00
New York Public Interest Research Group	12,665.00	[2] 12,575.00
Americans for Democratic Action	11,322.00	[2] 6,652.00
Consumer Action (supplemental)	216.00	[2] 216.00
Americans for Democratic Action (supplemental)	6,280.00	(1)
Consumer Action (San Francisco) (supplemental)	1,604.00	[2] 1,604.00
United Consumers of the Alleghenies	253.00	(1)
California Citizens Action Group (supplemental)	850.00	[2] 850.00
Do	3,582.00	(1)
Do	545.00	[2] 545.00
Arkansas Community Organizations for Reform Now (supplemental)	840.00	840.00
Do	770.00	(1)
Americans for Democratic Action (supplemental)	2,885.00	[2] 2,855.00
Consumer Action (San Francisco) (supplemental)	3,958.60	3,958.00
Revised care labeling (proposed Jan. 26, 1976), presiding officer, John Gray:		
Seymore Goldwasser	[3]	(1)
National Consumers Congress	[9] 56,048.00	[2] 47,352.67

[1] Denied.
[2] Granted.
[3] Not specified.
[4] Withdrawn.
[5] Pending.
[6] Granted, $11,328; grant later refused by CFA.
[7] Withdrawn. These staff witnesses mistakenly applied to the compensation program for witness compensation. They were reimbursed instead with Bureau operating funds.
[8] Granted, stated within above total.
[9] Revised to $48,008.67.

Source: Testimony of Calvin J. Collier, Chairman, Federal Trade Commission, before the Subcommittee on Administrative Practice and Procedure, U.S. Senate Committee on the Judiciary, Feb. 3, 1977.

FTC Improvement Act rulemaking: Total obligated compensation per rule (as of May 1, 1977)

Rule	*Amount*
1. Vocational schools (proposed Aug. 15, 1974)	$30,475.00
2. Unfair credit practices (proposed Apr. 11, 1975)	98,357.24
3. Mobile homes (proposed May 19, 1975)	26,182.00
4. Food advertising (proposed June 4, 1975)	150,917.48
5. Prescription drugs (proposed June 4, 1975)	2,070.00
6. Hearing aids (proposed June 24, 1975)	44,106.00
7. Health spas (proposed Aug. 15, 1975)	8,850.00
8. Funeral industry (proposed Aug. 29, 1975)	83,336.58
9. Protein supplemental (proposed Aug. 29, 1975)	33,430.30
10. Over-the-counter drugs (proposed Nov. 11, 1975)	67,847.00
11. Preservations of consumer's claims and defenses (proposed Dec. 19, 1975)	3,093.25
12. Used motor vehicles (proposed Dec. 23, 1975)	113,016.20
13. Ophthalmic goods and services (proposed Dec. 23, 1975)	112,827.00
14. Revised care labeling (proposed Jan. 26, 1976)	47,352.67
Total	821,860.72

CHART A: ATTORNEY FEES AND COSTS COMPARED TO TOTAL BUDGET AS OF MAY 1, 1977

Participant	Rule	Attorney's fees	Attorney-related costs including travel and per diem	Total for: Attorney's fees and other attorney costs	Total approved maximum budget
San Francisco Consumer Action	Proposed Aug. 15, 1974: Vocational schools	$11,850.00	$4,975.00	$16,825.00	$25,015.00
Joel Platt	do	4,560.00	900.00	5,460.00	5,460.00
National Consumer Law Center	Proposed Apr. 11, 1975: Credit practices	28,120.00	8,500.00	36,620.00	98,357.24
Center for Auto Safety	Proposed May 19, 1975: Mobile homes	15,669.00	7,621.00	23,290.00	26,182.00
Council on Children, Media, and Merchandising	Proposed May 28, 1975: Food advertising	9,720.00	7,146.00	16,866.00	58,976.78
Consumers Union	do	4,580.00	740.00	5,320.00	7,360.00
Iowa Consumers League	do	(1)	(1)	(1)	200.00
Indiana Home Economics Association	do	(1)	(1)	(1)	39.70
Connecticut Citizen Research Group	do	160.00	150.00	310.00	6,777.00
National Consumers Congress	do	(1)	(1)	(1)	9,295.00
Consumer Action (Washington, D.C.)	do	30,900.00	9,308.00	40,208.00	46,844.00
Mary Ruth Nelson	do	(1)	(1)	(1)	270.00
Wendy Gardner	do	(1)	(1)	(1)	295.00
Society for Nutrition Education	do	(1)	(1)	(1)	20,860.00
National Council of Senior Citizens	Proposed June 4, 1975: Prescription drugs	630.00	280.00	910.00	2,070.00
Do	Proposed June 24, 1975: Hearing aids	37,005.00	2,170.00	39,175.00	44,106.00
Consumers Union	Proposed Aug. 29, 1975: Funeral industry	1,620.00	120.00	1,740.00	3,980.00
Arkansas Consumer Research	do	2,660.00		2,660.00	7,694.00
Continental Association of Funeral & Memorial Societies	do	6,156.00	2,000.00	8,156.00	18,170.00
Americans for Democratic Action and National Council of Senior Citizens.	do	9,755.50	720.00	10,475.50	18,667.17
California Citizens Action Group	do	5,556.00	2,265.00	7,821.00	15,675.41
Central Area Motivation Program	do	4,981.00	1,829.00	6,810.00	7,410.00
New York Public Interest Research Group	do	9,273.00	1,912.00	11,185.00	11,740.00
San Francisco Consumer Action	Proposed Sept. 4, 1975: Protein supplements	4,050.00	1,405.00	5,455.00	15,507.00
Consumers Cooperative of Berkeley	do	(1)	(1)	(1)	3,967.70
Consumer Action Now	do	(1)	(1)	(1)	13,955.60
California Citizens Action Group	Proposed Nov. 11. 1975: Over-the-counter drugs	8,832.00	700.00	9,532.00	33,112.00
Americans for Democratic Action	do	13,884.00		13,884.00	15,560.00
Council for Children, Media, and Merchandising	do	7,560.00		7,560.00	19,175.00
National Consumer Law Center	Proposed Nov. 19, 1975: Claims and defenses	1,248.10	1,455.50	2,703.60	3,093.25
Automobile Owners Action Council	Proposed Dec. 23, 1975: Used motor vehicles	11,680.00	2,030.00	13,710.00	24,260.00
California Public Interest Research Group	do	3,240.00	3,074.68	6,314.68	29,358.68
Center for Public Representation	do	4,420.00	1,866.00	6,286.00	33,146.00
San Francisco Consumer Action	do	5,420.00	4,512.52	9,932.52	11,751.52
Center for Auto Safety	do	780.00	720.00	1,500.00	4,500.00
California Citizens Action Group	Proposed Jan. 16, 1976 Ophthalmic goods	7,347.00	446.00	7,793.00	34,767.00
San Francisco Consumer Action	do	3,270.00	6,227.00	9,497.00	43,544.00
Arkansas Community Organizations For Reform Now	do	1,080.00	210.00	1,290.00	2,668.00
New York Public Interest Research Group	do	10,202.00	1,405.00	11,607.00	12,575.00
Americans for Democratic Action	do	11,024.00	4,478.00	15,502.00	19,273.00
National Consumers Congress	Proposed Jan. 26, 1976: Care labeling	11,040.00	1,826.00	12,866.00	47,352.67
Consumer Union/California Citizen Action Group	Health spas	3,150.00		3,150.00	8,850.00
Total		291,422.00	80,991.70	372,414.30	821,860.72

[1] No legal fees involved.

CHART B.—*Summary of attorney fees and costs compared to total budgets (May 1 ,1977)*

Total obligated in maximum approved budgets of participants	$821,860.72	Total obligated in attorney-related costs including travel and per diem	$80,991.70	Percent of maximum approved budgets obligated for attorneys' fees and attorney-related costs including travel and per diem (percent)	45
Total obligated in attorney's fees for participants	291,422.60	Total obligated in both attorneys' fees and attorney-related costs including travel and per diem	372,414.30		

CHART C: COMPENSATED PARTICIPANTS' CONTRIBUTIONS TO RULEMAKING AS OF MAY 1, 1977

Participant	Rule	Nature of participation	Total for attorneys' fees and other attorney costs	Total approved maximum budget
Continental Association of Funeral & Memorial Societies	Funeral industry	Studies, oral testimony, cross-examination, witnesses, rebuttal	$8,156.00	$18,170.00
Americans for Democratic Action and National Council of Senior Citizens.	do	Oral testimony, witness, cross-examination, rebuttal	10,475.50	18,667.17
California Citizens Action Group	do	Study, oral testimony, cross-examination, rebuttal	7,821.00	15,675.41
Central Area Motivation Program	do	Study, oral testimony, witnesses, cross-examination	6,810.00	7,410.00
New York Public Interest Research Group	do	Oral testimony, cross-examination, post-hearing comments	11,185.00	11,740.00
San Francisco Consumer Action	Proposed Sept. 4, 1975: Protein supplements.	Study, oral testimony, witness	5,455.00	15,507.00
Consumers Cooperative of Berkeley	Protein supplements	Study, oral testimony		3,967.70
Consumer Action Now	do	do		13,955.60
California Citizens Action Group	Proposed Nov. 11, 1975: Over-the-counter drugs.	Study, oral testimony, witnesses, cross-examination	9,532.00	33,112.00
Americans for Democratic Action	Over-the-counter drugs	Oral testimony, witnesses, cross-examination	13,884.00	15,560.00
Council for Children, Media, and Merchandising	do	Proposed participation: Oral testimony	7,560.00	19,175.00
National Consumer Law Center	Proposed Nov. 19, 1975: Claims and defenses.	Witnesses, oral testimony, cross-examination, rebuttal	2,703.60	3,093.25
Automobile Owners Action Council	Proposed Dec. 23, 1975: Used motor vehicles.	Proposed participation: Oral testimony, witnesses, cross-examination.	13,710.00	24,260.00
California Public Interest Research Group	Used motor vehicles	Proposed participation: Study, witnesses, oral testimony, cross-examination.	8,794.36	39,358.68
San Francisco Consumer Action	Proposed Aug. 15, 1974: Vocational Schools.	Study, oral testimony, witnesses, cross-examination	16,825.00	25,015.00
Joel Platt	Vocational schools	Oral testimony, cross-examination	5,460.00	5,460.00
National Consumer Law Center	Proposed Apr. 11, 1975: Credit practices.	No final notice yet. Proposed participation: Study, oral testimony, cross-examination.	36,620.00	98,357.24
Center for Auto Safety	Proposed May 19, 1975: Mobile homes.	No final notice yet. Proposed participation examination: Study, oral testimony, cross-examination.	23,290.00	26,182.00
Council on Children and Merchandising	Proposed May 28, 1975: Food advertising.	Study, oral testimony, witnesses, cross-examination	16,866.00	58,976.78

CHART C: COMPENSATED PARTICIPANTS' CONTRIBUTIONS TO RULEMAKING AS OF MAY 1, 1977.—Continued

Participant	Rule	Nature of participation	Total for attorneys' fees and other attorney costs	Total approved maximum budget
Consumers Union	Food advertising	Comments submitted to the record		$7,360.00
Iowa Consumers League	do	Oral testimony		200.00
Indiana Home Economics Association	do	No legal fees involved		37.70
Connecticut Citizen Research Group	do	Study, witness, oral testimony	$310.00	6,777.00
National Consumers Congress	do	Study, oral testimony		9,295.00
Consumer Action (Washington, D.C.)	do	Oral testimony, witnesses, cross-examination	40,208.00	46,844.00
Mary Ruth Nelson	do	Oral testimony		270.00
Wendy Gardner	do	do		295.00
Society for Nutrition Education	do	Study, oral testimony		20,860.00
National Council of Senior Citizens	Proposed June 4, 1975: Prescription Drugs.	Oral testimony, witnesses	910.00	2,070.00
Do	Proposed June 24, 1975: Hearing aids	Oral testimony, witnesses, cross-examination	39,175.00	44,106.00
Consumers Union Funeral Industry	Proposed Aug. 29, 1975	Comments submitted to the record	1,740.00	3,980.00
Arkansas Consumer Research	Funeral industry	Witnesses cross-examination, post hearing comments	2,660.00	7,694.79
Center for Public Representation	Used motor vehicles	Proposed participation: Study, oral testimony	6,286.00	33,146.00
San Francisco Consumer Action	do	Proposed participation: Witnesses, cross-examination	9,932.52	11,751.52
Center for Auto Safety	do	Proposed participation: Study, oral testimony	1,500.00	4,500.00
California Citizens Action Group	Proposed Jan. 16, 1976: Opthalmic goods.	Study, oral testimony, witnesses, cross-examination, rebuttal	7,793.00	34,767.00
San Francisco Consumer Action	Opthalmic goods	Study, oral testimony, cross-examination	9,497.00	43,544.00
Arkansas Community Organizations for Reform Now	do	Oral testimony, witness, cross-examination	1,290.00	2,668.00
New York Public Interest Research Group	do	Oral testimony, cross-examination	11,425.00	12,575.00
Americans for Democratic Action	do	Cross-examination	6,570.00	9,507.00
National Consumers Congress	Proposed Jan. 26, 1976: Care labeling	Study, oral testimony, cross-examination	13,586.00	47,352.67
Consumers Union/California Citizen Action Group	Proposed Aug. 15, 1975: Health spas	Study, oral testimony	3,150.00	8,850.00

ISSUES OF IMPLEMENTATION

Because they may have considerable bearing on future implementation of compensation plans for other agencies and because they bear directly on many of the basic issues involved in such proposals, it is instructive to review the guidelines for participation that the FTC issued in August 1976.

Financial issues

One fundamental problem, which is more than merely an administrative consideration, concerns the mechanics of compensation. When are determinations of compensation made and when are funds dispersed? What activities are covered by compensation? What are the monetary limits of compensation? Federal Trade Commission rules (but not statute) provide that compensation is not available to reimburse costs incurred in preparing the application for compensation. The Commission's rationale is that to reimburse all applicants would multiply frivolous applications, while reimbursing only successful applicants would create a "lottery effect that would encourage hard-pressed organizations to gamble funds in the hope of ultimate compensation." Inasmuch as the application form is rather detailed and requires the presentation of a detailed budget, some potential participants have objected that the application procedure itself should be compensated. Most public interest groups have objected to the denial of compensation for their application preparation costs.

A closely related issue is the timing of the compensation decision. The FTC makes the awards, based upon application, before actual participation occurs. This tends to necessitate a detailed application procedure, which in turn gives rise to the issue of compensation for the application itself. Moreover, this process, although admittedly in the infant stages of the program, has also occasioned delay and an uncertainty which hampers the ability of applicant groups to participate. While there would no doubt be budgetary complications, a way around this dilemma is to allow the program to make compensation awards after participation, if that participation is judged to have met those criteria already used to judge applications. Groups could thereby skip the initial application stage and avoid the delay occasioned by that process. This posthoc process should not replace the prior award but should be an alternative opportunity for groups willing to take their chances.

The total amount of compensation is also an issue. Critics have labeled programs of this type, "lawyer's relief acts," envisioning a specter of huge awards to suddenly enriched public interest lawyers. The statute provides for "reasonable" attorney's fees. The FTC has operationalized the term "reasonable" by using Federal Government salaries as a basis for a maximum hourly rate, graduated by legal experience after law school graduation. The range in the current guidelines runs from $23 to $45 an hour. Fees for consultants and experts are limited to the rates the Commission can pay its own consultants—a maximum of $147 per day. Similarly, travel expenses are limited by Government standards. There have been complaints that these guidelines amounts are too low and that actual awards have been insufficient. While we believe the guideline amounts should be raised to better account for overhead and other real expenses, there should be some limits. There is a further limitation applicable to persons who would be regulated by the proposed rule or would represent such persons. Compensation to such persons may not exceed 25 percent of the aggregate amount paid as compensation in a given year.

The statute prescribes as the financial criterion of eligibility that the participant would be unable to participate effectively because he "cannot afford to pay costs" of such participation. The Commission's guidelines do not interpret this as an indigency requirement, although applicants with substantial financial resources or those whose economic interest is directly affected are clearly excluded. As the Commission notes, "In between are several gray areas. In particular, the statute raises questions about the Commission's authority to compensate an applicant with substantial resources which are being devoted to other causes." [29] The Commission's rules of practice prescribe certain criteria when the issue at stake is economic. A presumption toward compensation favors the applicant when the economic stake of the applicant is small in comparison to the cost of participation.

However, even when the cost of participation is small compared to the economic stakes involved, compensation may be allowed when a large total stake is divided among a large number of people (for example all consumers of automobiles) so that each individual has no practical incentive to participate. For example, if an industry practice costs 50 million consumers $10 each, the total economic stake is huge and eclipses any cost of participation. However, given the small individual stake and the organizational difficulty of getting consumers to pool their resources and make contributions to the participant organization, the interest at stake would normally go unrepresented.[30] In such circumstances, the FTC judges that compensation should be allowed. The FTC has also allowed compensation to groups with substantial resources, such as Consumers Union, if they would be unable to participate because their resources were already committed to other areas or their obligations otherwise were such that they could not participate without compensation.

Substantive criteria of eligibility

In addition to the financial criteria, the Bureau of Consumer Protection must make decisions among applicants based on the interest they purport to represent, the necessity that it be represented, and the prospective adequacy of that representation. In the past, applicants have claimed to represent the interests of consumers as a whole or large subgroups of consumers. While the Commission has accepted such broad representational claims, the Bureau of Consumer Protection notes that the consumer interest is not usually homogenous and much of the issue in a rulemaking is to determine how to weigh various competing components of the consumer interest. Therefore, the Bureau has stated in its guidelines that it will give preference to applicants who define their interest or viewpoint with greater specificity.

Specifically, the criteria which count toward a favorable disposition by the Bureau are the following:

(1) Expertise in the substantive area.

(2) Experience in FTC or trade regulation matters generally.

(3) General performance and competence.

(4) Constituency—a membership organization or one that is supported by contributions from the public.

(5) Contributions—the willingness of a group to spend some of its own money on the proceeding. However, this factor is not determinative.

(6) Point of view—evidence that an applicant has an economic, legal, or philosophical point of view that would help illuminate complex questions about consumer interests.

(7) Relation between the applicant and the interest.

(8) Specifity regarding issues to be addressed, the interest to be represented, and other considerations.

GENERAL ISSUES

Many of the issues that have been raised over the whole issue of Government fund-

Footnotes at end of article

ing of participants also apply to the entire question of broadened participation in regulatory proceedings. Since these wider issues are addressed more fully in other sections of this report, the discussion that follows will more narrowly focus on the participation issues directly related to the question of compensation.

DELAY

The problem of delay is occasionally raised in opposition to any proposal for broadening public participation in administrative procedures. Thus, former Chairman of the Federal Power Commission Joseph Swidler stated:

"It seems to me to be an anomaly that the Federal Government should on the one hand issue instructions to its servants to carry out regulatory programs in important areas of public policy, and on the other hand support the private intervenors whose purpose is frequently to thwart those programs in accordance with the specific interests of the private groups which are involved. Clearly, it is not the intention of Congress to precipitate deadlocks, but the bill—S. 2715—could have that effect." [31]

Similarly, a spokesman for the Northeast Utilities System, an electric utilities holding company, argued that, "Implementation of S. 2715 would be very likely, in our view, to lead to substantial delays in proceedings, without any real benefit except that of fully airing the views of certain people who may become interested in the proceeding." [32]

In our view, the fact that an additional party participates in an administrative agency proceeding does not mean that the proceeding will be delayed. With appropriate management practices and with wide discretionary latitude accorded to presiding officers, administrative proceedings should not be lengthened by the inclusion of an additional participant. Not lengthened, that is, unless the additional participant raises new issues which are relevant and material to the proceeding—issues which cannot be summarily discussed and must be considered. When that occurs, the initial proceeding may indeed take longer—as it should—in order to explore the additional relevant considerations which have been raised. Ultimately, however, the overall time elapsed may in fact be lessened, since if all relevant issues are resolved in the initial proceeding, the likelihood of a subsequent court reversal to consider relevant issues is substantially reduced, and along with it the risk that the agency will simply have to go through its paces all over again.

There is another sense in which compensation for participation might actually speed up the administrative process. Federal Communications Commissioner Benjamin Hooks asserted that compensation could speed up the administrative process by enabling public participants to present more professional, better drafted, more fully substantiated petitions to an agency, thereby lessening the burden on the agency's staff to undertake investigations to ascertain the merit of their contentions.[33]

Finally, rules or legislation providing for compensation can be drafted so that persons who do engage in delaying or disruptive tactics would not be compensated. There is a substantial body of judicial precedent to guide such a "bad faith" test.

PROPRIETY AND NEED FOR COMPENSATION

Probably the most fundamental objection to this approach is the contention that it is not a necessary or even appropriate adjunct to the administrative process. Former FPC Chairman Joseph Swidler argued:

"Typically, the intervenors represent the interests of only a small segment of the population. The assumption of the bill is that the general public will not feel protected unless the Government supports the special interests as against the agency which is required to balance the competing interest in the proceeding. The general public is represented only by the agency, acting under the congressional mandate.

"* * * Hiring a private force for policing the public agencies created by Congress to serve the national interest and subsidizing interventions and appeals, all of this justified on the ground that the public agencies are incompetent and ill intentioned, will not, in my opinion contribute to the credibility of government." [34]

While few deny the right and even the necessity for public participation, the issue here comes down to whether the Government should support certain interests—which critics charge are really private—against other interests. Thus, beyond whether or not the agencies alone represent the "public interest" there are certain equity considerations. These equity considerations, however, cut both ways. Joseph Onek, director of the Center for Law and Social Policy, stressed:

"Government subsidy of participation in agency proceedings already exists in another form. Under our tax system legal expenses are deductible as a business expense. Thus, whenever a business participates in an agency proceeding, the Federal Government in effect pays half the bill.

"Moreover, there are no restrictions to this subsidy. The Government pays half the bill no matter how unnecessary the business participation and no matter how frivolous the business position. And the Government pays no matter how high the legal expenses of the business are. If the business pays its lawyers $200 an hour, the Government will pay half.[35]

Moreover, in regulatory proceedings involving regulated public utilities, the costs of the utilities' participation is directly passed on to customers so that the public at large is directly assessed the costs of presenting one point of view anyway—and a point of view which is often inimical to the public's interest as consumers.

There is another equity consideration that relates directly to the necessity of public participation. If, as we believe, the presentation of a variety of views is essential to the proper functioning of the regulatory process, it is the proper responsibility of Government to facilitate that overall process, including compensation of participants when that is necessary.

CRITERIA OF ELIGIBILITY

While some critics object to the concept of Government funding of participation as a whole, they and others have also focused on the narrower issues of implementation should such proposals be enacted. One such issue concerns the criteria of eligibility for participation. Specifically, one such objection concerns the value or necessity of the substantive contribution to be made by the public participant. As reported by the Judiciary Committee in the 94th Congress, S. 2715 would have awarded compensation if a participant represented an interest "representation of which contributes or can reasonably be expected to contribute *substantially* to a fair determination of the proceeding" (emphasis supplied). S. 270, the currently pending bill, has the same criterion.

The language of the statute authorizing the FTC compensation program on the other hand, states that compensation may go to any person who has or represents an interest "representation of which is *necessary* for a fair determination of the rulemaking proceeding taken as a whole" (emphasis supplied). Critics of S. 2715 argued that, at the very least, the standard should be necessary rather than substantial. This issue, however, may involve a distinction without a difference. In practice, the FTC has interpreted the term "necessary" very liberally. The Bureau of Consumer Protection has chosen to emphasize the notion of necessity for a fair determination and has held that this requirement is met "if the proposed rule would affect the interest in some significant way." [36]

It may well be that there is no practical difference between the application of the "necessary" standard as opposed to "contribute substantially" standard. Agencies that welcome participation may well find that public participation is "necessary" in every case. But what if an agency finds an applicant could contribute substantially but is not necessary? Since the standard will always be discretionary, the result will depend on whether the agency is enthusiastic or negative in terms of public participation. Thus a "necessary" standard could allow agencies most in need of public participation to forestall that participation.

Another question of eligibility relates to financial standards. How much in need should a group be before it becomes eligible? Must a group be indigent? The issue was laid out in the following exchange between Joseph Onek and Senator Allen during this committee's hearing on S. 2715: [37]

Senator ALLEN. Does not the Federal Trade Commission provide also that the public interest group must need financial assistance before any is given for their representation?

Mr. ONEK. I am not fully familiar with that.

Senator ALLEN. I will state to you that that is correct, they do require that they make a showing, that they need this help, or they should be furnished it, but under this bill a well-funded, rich, public interest group could apply for funding of attorneys' fees; is not this correct?

Mr. ONEK. I believe it could, but again the question is the proper definition of need.

You take a group that has some resources. It might wish to participate in several proceedings.

It may indeed have the funds to participate in one of them, but then it could not participate in the others. Under these circumstances, the bill contemplates, I think correctly, that if they can show that their membership does not have such an economic stake in the proceeding that the members should have to pay, they should be eligible. I think that is fair.

Senator ALLEN. Do you feel an organization, with say $1 million in bank accounts, would be able to afford their own counsel?

Mr. ONEK. I would imagine. I doubt that very many of the organizations contemplated in this bill have $1 million in their bank account.

Senator ALLEN. Well, there are some. They have that and more.

This is a difficult, but not insoluble problem. There should be no objection to requiring groups to submit financial statements to insure that they have a need for funding—if a needs test is used. The more complex issue concerns what is meant by "need." The problem is that most citizen groups or small businesses may have the ability to participate in one administrative proceeding over a period of several years. Should we require such parties to completely deplete their resources on a given proceeding, before they are eligible for funding in any other proceeding? In our own view, we should not require such complete indigency. The problem becomes easier if the issue is shifted toward the utility of the participation itself. If a person can present important and otherwise unrepresented interests, the presumption should be toward compensation as long as lesser standards of financial eligibility, short of indigency, are met. Groups with considerable expertise in certain areas should not be foreclosed from participation because they are

Footnotes at end of article.

already contributing, gratis, to other administrative proceedings.

SCOPE OF PROCEEDINGS

A major issue is the range of administrative proceedings in which compensation is to be available. Compensation at the FTC is limited to rulemaking proceedings while the compensation program proposed by S. 270 would cover not only rulemaking, but ratemaking, and licensing proceedings plus all other proceedings relating directly to health, safety, civil rights, the environment and the economic well-being of consumers in the marketplace. Opponents of the legislation object specifically to this broad scope of applicability and some suggest that, as with the FTC, future compensation also be limited to rulemakings. Presumably the rationale for limiting funding to rulemaking is that such proceedings result in rules of general applicability and thus have greater general policy importance. Also, adjudications, being quasi-judicial in nature, present considerations of due process and fairness which might be compromised by the funding of intervenors. If there were currently a clear line between rulemaking as a quasi-legislative function and adjudication as a quasi-judicial function, a limitation of compensation to rulemaking would be particularly well-founded. Such is not the case, however. Some proceedings which are technically rulemaking proceedings are very narrow and deal with the assignment of particular franchises or other matters of concern only to a single company and its competitors, as in the case with many ICC rulemakings. Conversely, many adjudicatory proceedings, such as NRC licensing proceedings, have the broadest public impact. Indeed, it was a licensing decision and not a rulemaking that led to the landmark Church of Christ decision, which proclaimed the necessity of public participation had expanded the rights of intervention.

In general, under the Administrative Procedure Act, agencies have discretion to employ rulemakings of particular applicability or can hand down adjudicative decisions of general application. In our opinion it would be inappropriate and unwise to make the possibility of compensation (and thus enhanced participation) contingent on whether an agency designates its activity as one or the other. It would be particularly inappropriate to do so in a statute which is applicable to a variety of agencies.

A second issue of scope is whether compensation should be awarded for appeals of agency decisions to the courts. Many of the same arguments against compensation at the agency level are also directed against compensation at the judicial level: it will encourage frivolous appeals, it will delay proceedings, and there will be excess cost. Again, the considerations are much the same. Judge Harold Leventhal of the Court of Appeals for the District of Columbia emphasized to the Senate Judiciary Committee:

"It helps the court to have some group, which not only has something to say and some interest—not a financial interest but a nonfinancial, publicly oriented interest—to give us the benefit of a great deal of research in legal and historical matters and an array of scientific and evidentiary materials."

Ultimately, the issue boils down to a consideration of the nature of the administrative process—an issue on which there is considerable room for disagreement. While supporting the concept of compensation of participants at the agency level, Assistant Attorney General Rex E. Lee urged caution about extending the program to the judicial level:

[W]e feel . . . that there is a distinction which Congress may well wish to consider between participation at the administrative level and participation at the judicial level. And the distinction is this. The administrative level is that point at which policymaking is being carried out. It is the point at which all points of view need to be taken into account because it is a mixture of both policymaking and to a lesser extent, dispute resolution. There is, therefore, a distinction between the attorneys' fees issue at that level, and the judicial level because by its nature, litigation typically results when parties have a specific disagreement on a specific legal issue. Now there is no question that there is some relationship between the two. But the issue, as we see it, is essentially a question of how far we should go." [38]

In the same hearings, Judge Leventhal squarely took issue with the position of the Justice Department:

"Historically, it stands the process on its head. The whole concept of private attorneys general appeared first in the court cases and then in the agency cases. . . . And my feeling is that the judicial review really has to be looked at as part of the total administrative process. . . .[T]he court, although it is separate and independent, I think it has to understand the administrative process and should be regarded as the last stage of the administrative process." [39]

It seems to us anomalous to have broad rights of participation, to recognize the usefulness of providing the financial wherewithal to make that participation opportunity meaningful and then to cut off funding at the decisionmaking arena; which may be the final decision stage of the proceeding taken as a whole. Indeed, the courts have had even more experience in the award of fees than have the agencies.

ASSESSMENT

The compensation of participants in agency proceedings is a solution that responds directly and specifically to what is now a fundamental obstacle to public participation—its cost. In addition to having the benefit of vindicating legal rights, the funding of participants may well aid the regulatory process by providing a more reliable information base on which to reach decisions. Indeed, this has been the experience at the Federal Trade Commission.

There are two general categories of objections to this concept. There is first of all an objection which stems from a fundamental objection to broadened participation generally on the grounds of delay, false claims of representing the public and so on. However, that issue appears to be well settled by Congress and the courts—and increasingly by the agencies themselves. Secondly, there are technical objections—the program is too broad, costs too much, and so on. While there is ample room for disagreement over such matters, it is clear that once the first issue is resolved, the second class of problems is readily solvable as the Federal Trade Commission has demonstrated in a relatively short time.

RECOMMENDATIONS

(1) Congress should enact legislation authorizing agencies to provide compensation to eligible persons for costs incurred in participating in agency rulemaking, ratemaking, licensing, and certain other proceedings. Eligibility for compensation of reasonable costs should be conditioned on whether (a) the participant can reasonably be expected to make a substantial contribution to a fair determination of the issues; and (b) the economic interest of the person is small in comparison to the cost of effective participation or the participant does not have sufficient resources to participate effectively. Such legislation should also provide compensation to eligible persons for costs incurred in seeking judicial review of agency actions.

(2) Until such time as general legislation for compensation of public participation costs is enacted, regulatory agencies should implement their own programs to compensate eligible participants in agency proceedings as appropriate.

(3) The APA should be amended to empower agencies to order "fee shifting" in cases of bad faith, willful violation of an agency order or other egregious conduct. Agencies should have the power, as do the courts, to allow exceptions to the general American rule that litigating parties pay their own attorneys fees, whether they win or lose.

FOOTNOTES

[1] 26 Trade Reg. Rep. par. 19059. 26 Ad. L. 2d 474 (1970).
[2] Opinion of the Comptroller General, B–139703; 31 Ad.L. 2d 474 (1972).
[3] CLI–74–42, RAI–74–820.
[4] Boasberg, Hewes, Klores, and Kass, report to the NRC, "Policy Issues Raised by Intervenor Requests for Financial Assistance in NRC Proceedings," Washington, July 18, 1975.
[5] Opinion of the Comptroller General, B–92288, costs of intervention: Nuclear Regulatory Commission, Feb. 19, 1976.
[6] Decision of the Comptroller General, B–180224, May 10, 1976.
[7] B–139703 (Sept. 22, 1976).
[8] 41 F.R. 35855 (Aug. 25, 1976).
[9] B–139703 (Dec. 3, 1976).
[10] Ibid.
[11] 42 F.R. 2864 (Jan. 13, 1977).
[12] 2 Cir., No. 1516 (Slip op. June 30, 1977).
[13] 455 F. 2d 412 (2 Cir. 1972).
[14] U.S. Senate Commerce Committee. "Agency Comments on the Payment of Reasonable Fees for Public Participation in Agency Proceedings," 95th Cong., 1st sess. (1977).
[15] 42 F.R. 2864 (Jan. 13, 1977).
[16] Stat. 2197: 15 U.S.C. 57A.
[17] H. Rept. 93–1445, p. 37 (1974).
[18] S. Rept. 94–863.
[19] *La Raza Unida* v. *Volpe*, 57 F.R.D. 91 (N.D. Cal. 1972); *Wilderness Society* v. *Morton*, 495 F.2d 1026 (D.C. Cir. 1974).
[20] *Office of Communications of United Church of Christ* v. *FCC*, 465 F. 2d 519 (D.C. Cir. 1972).
[21] 514 F. 2d 1354 (D.C. Cir. 1975.)
[22] 455 F. 2d 412, 426 (2d Cir. 1972).
[23] 45 U.S. Law Week, 2320; CA2, Dec. 3, 1976.
[24] S. Rept. 94–863, p. 41.
[25] The Environmental Protection Agency has similar authority in proceedings that are under the Toxic Substances Act.
[26] U.S. Senate Committee on Government Operations, "Public Participation in Government Proceedings Act of 1976," hearings on S. 2715, 94th Cong., 2d sess. (1976). Testimony of James DeLong, p. 40. Hereafter referred to as Government Operations hearing on S. 2715.
[27] Ibid.
[28] Consumers Union letter to Mr. William D. Dixon, Federal Trade Commission, Apr. 28, 1976, re proposed trade regulation rule on food advertising.
[29] FTC Bureau of Consumer Protection. "Guidelines on Compensation for Participation in Rulemaking Proceedings," Aug. 25, 1976, p. 30.
[30] Mancur Olson, "The Logic of Collective Action" (Cambridge: Harvard University Press, 1965).
[31] Government Operations hearings on S. 2715, p. 18.
[32] Ibid., p. 46.
[33] Ibid., p. 96.
[34] Government Operations hearings on S. 2715, p. 21.
[35] Ibid., pp. 5–6.
[36] Government Operations hearings on S. 2715, pp. 6–7.
[37] Government Operations Committee hearings on S. 2715, p. 80.
[38] Judiciary Committee hearings on S. 2715, p. 110.
[39] Ibid., p. 83.

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BEYOND "SUNSHINE": PROMOTING EFFECTIVE CITIZEN PARTICIPATION IN THE FEDERAL ADMINISTRATIVE PROCESS

(By Senator EDWARD M. KENNEDY)

The Wall Street Journal carried a recent article on a controversy now raging in Michigan over whether a major utility in that state, Consumers' Power, should be permitted to construct a nuclear power plant at the company's Midland location. The chief customer of the proposed facility will be the Dow Chemical Company, which is to use the process steam generated by the plant in its nearby industrial facility. Dow's increased power needs were put forth by Consumers' Power as the chief reason it needed the substantially increased generating capacity which the new plant would provide.

The article noted the myriad unanticipated delays the utility has encountered in attempting to secure a license for the plant from the Nuclear Regulatory Commission, and the subsequent problems that have developed between Dow and Consumers' Power as a result. It now appears, for instance, that Dow can no longer wait for the power to be generated by the new facility, and must fill its needs from other sources. Thus, the continuing justification for construction of the nuclear plant is in doubt.

What the article did not mention, however, was that much of this information concerning the current need for the facility was not brought to light by Dow Chemical, nor by Consumers' Power, nor by the staff of the NRC itself. It was revealed, instead, by a consortium of local citizens' groups who were concerned about safety issues and who questioned the need for the utility to increase so substantially its generating capacity. This citizens' group, "Consolidated Intervenors," had raised considerable amounts of money from local opponents of the plant, and, during a four-year period, had mounted a successful legal challenge to its construction. It convinced a federal appellate court that the NRC, in granting preliminary authority to construct the facility, had not given adequate consideration to cost-benefit or resource conservation issues. Their victory, which is expected to have an impact on nucear plant licensing proceedings throughout the country, has now forced the NRC to reconsider its decision to issue a preliminary construction permit.

It does not now appear, however, that Consumers' Power will be facing any more opposition from Consolidated Intervenors. The reason is simple: the citizens' group has run out of money. Despite the fact that the NRC's own Atomic Safety and Licensing Board—which has been conducting the licensing proceeding for the Midland facility—stated that the attorneys and experts retained by Consolidated Intervenors had provided invaluable assistance in resolving the issues involved in this lengthy and costly proceeding, the NRC has repeatedly denied the group's pleas for financial assistance to permit continued participation.

COMMON EXPERIENCE

The experience of this one citizens' group is hardly unique:

In West Virginia, an environmental action group tried to be heard when a power company proposed to locate what the group felt was an unnecessary electrical plant in their area. They were able to scrape together some funds to put their views before the Federal Power Commission, after an environmental impact statement had been filed. But, even though they were going to be affected by the NRC's decision as directly as the power company itself, the group ran out of money before the FPC even began hearings.

In Washington, D.C., there is a group of experts on food and nutrition issues which has organized consumers, published materials, and become well-equipped to provide the Food and Drug Administration with enlightened, scientific views on food issues. But over a year ago this group had to give up initiating administrative petitions before the FDA because it could no longer afford the costs.

An environmental action group in Michigan had to abandon its efforts to force the Atomic Energy Commission to adopt stricter procedures for the use of highly radioactive plutonium by private industry. In particular, the group was concerned about the lack of adequate safeguards in the transfer procedures for this substance and the possibility that plutonium could be acquired by terrorists. The agency kept the group tied up in litigation for almost seven years, bouncing the issue back and forth between the courts and the agency, until finally the group ran out of money and had to give up. In seven years of fighting, they never even forced the agency to reach the substantive issues in the proceeding. Now, ironically, the Carter Administration is stopping commercial use of plutonium fuel because of the potential dangers involved.

Consumers' Congress of Virginia tried to fight the siting of a power plant which they felt would have disastrous environmental consequences. They raised all of the $55,000 it cost to convince their state public utility commission that they were right, but they had no money left when the utility brought the matter to the Federal Power Commission.

Only one citizens' group was able to raise enough money to participate in hearings on liquor labeling—in opposition to over 100 industry participants—which the Bureau of Alcohol, Tobacco, and Firearms announced a couple of years ago. The bureau later dropped its proposal to require informational labeling of liquor because it found "insufficient consumer interest" in the subject.

Even some of the success stories give little reason for encouragement. A year ago the FDA finally banned the use of Red Dye Number 2 in food products. The agency's action was due in large measure to the efforts of the Health Research Group, which had been involved in the FDA proceedings from the beginning. Even though it did participate, the group did not have the funds to present testimony from its own experts. It was forced instead to limit its participation to cross-examination of industry expert witnesses. Had the research group been able to build its own case—the public's case—in that proceeding, one more cancer-causing substance might have been removed from the market three years earlier.

AGENCIES AND THE "PUBLIC INTEREST"

To my mind, the kinds of issues and information which groups like these have tried to inject—with varying degrees of success—in numerous federal proceedings reflect broad public concerns. The viewpoints enunciated must be considered before agencies can even begin to formulate decisions which can legitimately be said to be in the best interests of the American people.

Federal agencies themselves are thought to embody—and to provide advocacy for—the broadest interests of the general public. At the same time, however, they are supposed to provide impartial forums in which competing claims can be fairly heard, weighed, and judged. Through these adversary processes the elusive goal of administrative justice is supposed to emerge clearly.

Although this nation has never determined with any finality whether the primary role agencies are to play in the administrative process is that of advocate for, or adjudicator of, the public's interests, it is clear that they can play neither effectively if they are unable to determine precisely where the "public interest" lies in any given issue. The time has long since passed when agencies could be thought to protect or even discern interests which are not brought forcefully to their attention. As Judge—now Chief Justice—Warren Burger wrote 11 years ago in the first of the now-famous *United Church of Christ* cases:

"The theory that the [FCC] can always effectively represent the listener interests . . . without the aid and participation of legitimate listener representatives fulfilling the role of private attorneys general is one of those assumptions we collectively try to work with so long as they are reasonably adequate. When it becomes clear, as it does to us now, that it is no longer a valid assumption which stands up under the realities of actual experience, neither we nor the Commission can continue to rely on it." [1]

Over the course of the last decade, the federal courts have done much to open agency proceedings to fuller public participation. In particular, they have relaxed the stringent requirements for standing to intervene in proceedings to a point where many practitioners and commentators feel that standing no longer presents a serious barrier.

But these efforts by the courts have not solved the underlying problem. Today the real barrier is cost. It is an unfortunate fact that relatively few citizens can take advantage of the inroads into the doctrine of standing which the courts have made, as the expense of participating in agency proceedings far exceeds the abilities of most citizens to meet it. We have learned that merely increasing access to the agencies is not enough. Citizens have to be given more direct kinds of support if they are to be able to participate effectively in the administrative process.

While the cost of participation is high, the value of public involvement in agency proceedings is unquestionable. In the last eight years there have been over 25 hearings in Congress focusing upon the need to foster greater public participation in federal proceedings. The extensive record of these hearings leads to one inescapable conclusion: without increased citizen participation, our regulatory system cannot function properly. Agency lethargy, unresponsiveness, conflicts-of-interest, cooption by some of the very interests they are supposed to regulate, and outright hostility to the "public interests" agencies are charged with protecting—indeed, all the negative consequences of closed governmental processes—have been documented at length.

My own exposure to the need to bring the public more fully into the federal decision-making process spans this same eight-year period, during which I chaired the Senate Subcommittee on Administrative Practice and Procedure. My first act as chairman in 1969 was to send a questionnaire to government officials and to persons who deal with the agencies. I wanted to find out how responsive agencies were to public concerns and needs. I also wanted to know which agencies were actively trying to encourage public participation in their proceedings.

The results of that survey, and the hearings which followed over the next few years, were very disheartening. In one agency after another, we saw how little attention was being paid to promoting and responding to direct public involvement in administrative decisionmaking. The agencies all seemed to regard public participation as an annoyance to be tolerated, rather than as a resource to be cultivated. The public likewise voiced frustrations and even anger at the cavalier attitude federal bureaucrats often displayed toward the concerns they expressed.

RECENT IMPROVEMENTS

Recently, however, the situation has begun to improve. In 1975 Congress enacted the Magnuson-Moss FTC Improvement Act,

[1] Office of Communication of United Church of Christ v. F.C.C., 359 F. 2d 994, 1003 (D.C. Cir. 1966)

which provided the Federal Trade Commission with authority and funds to make direct grants of financial assistance to individuals and groups who seek to participate in rulemaking proceedings. Last fall it authorized the Environmental Protection Agency to make these kinds of awards in proceedings conducted under the Toxic Substances Control Act. This authority covers adjudications as well as rulemakings. In addition, Congress authorized federal courts to make discretionary awards of attorneys' fees to successful litigants in actions brought under that Act for review of EPA decisions.

Even more significant are the actions several agencies have themselves taken during the last year to establish their own citizen participation programs. In response to requests for rulings by certain agencies and by members of Congress, the Comptroller General has issued several decisions affirming that many agencies already have inherent statutory authority to implement such programs.[2] Although this inherent authority is, necessarily, more limited than the affirmative authority granted under the Magnuson-Moss and Toxic Substances Acts, a number of agencies have seized upon it to begin providing direct financial assistance to representatives of interests agencies feel can make important contributions.

Among the agencies which are presently in various stages of establishing compensation programs are the Food and Drug Administration, the Civil Aeronautics Board, the Consumer Product Safety Commission, the National Highway Traffic Safety Administration, the Federal Energy Administration, and the Environmental Protection Agency (for all its proceedings—not merely those involving Toxic Substances).

The reasons cited by these agencies for utilizing this authority underscore the continuing imbalances which exist in the administrative process:

According to the Nation's Highway Traffic Safety Administration, it is "difficult for some consumer, environmental, and other groups of citizens that are either widely dispersed or poorly financed to bear the cost of participating in Federal regulatory proceedings. By contrast, better financed and organized groups, frequently representative of the regulated industry, are often able to participate vigorously and effectively."

The Consumer Product Safety Commission went even further: "In order for public participation to be meaningful, it must be of sufficient technical competence and presented in such a way that the Commission can rely on it to properly balance the input of the regulated industry. Although the Commission has throughout its existence consistently encouraged public participation in all of its activities, the high cost of meaningful participation in regulatory proceedings often excludes such participation."

And the Environmental Protection Agency stressed why agencies find public participation to be of such great value. It noted a general consensus that citizen representatives in its proceedings do have a significant technical ability and that they have made substantial contributions to better agency decisions. According to the EPA: "They have often provided facts and arguments relevant to the statutory purpose that would not otherwise have been urged on the agency and which the agency might not have uncovered or fully appreciated on its own."

The comments of these agencies on the value of public participation in their proceedings underscores the critical importance of ensuring that these trends are supported and encouraged. Undeniably, citizens have demonstrated that they can contribute significantly to agency proceedings. But it is hardly fair to continue to require, in effect, that a few individuals or groups should have to bear the full costs of prompting agency actions from which all of us benefit.

The program at the Federal Trade Commission, now 18 months old, has worked better than anyone had imagined it would, according to former Chairman Calvin Collier. Indeed, agency staff members, as well as citizen representatives who have participated in FTC proceedings with Magnuson-Moss funds, agree that the program is a success. There is no reason why this basic authority should not be extended to other proceedings and other agencies.

SENATE BILL 270

I have long been convinced of the need to provide uniform authority to all federal agencies to enable them to institute genuinely effective public participation programs. The inherent statutory authority which the Comptroller General has found to exist does not provide agencies with the kind of focused and detailed guidance which ought to characterize any new federal program. Moreover, the public must not be required to wait while each agency of the federal government undertakes lengthy rulemaking to determine whether their own individual generic statutes permit them to provide compensation, and how broadly this authority can be exercised. There is also a real danger that the "agency-by-agency" approach will produce a confusing morass of conflicting regulations which may actually discourage public participation. Indeed, many agencies, citizens' groups, and the Comptroller General himself have urged that Congress act quickly to establish a uniform framework for public participation programs throughout the government.

Senator Charles McC. Mathias and I, along with 18 of our colleagues in the Senate, introduced legislation (S. 270 The Public Participation in Federal Agency Proceedings Act of 1977) last January to meet these needs. Similar legislation (H.R. 3361) is being sponsored in the House of Representatives by Congressmen Peter Rodino and Edward Koch, along with nearly 100 other representatives. The bill has two principal objectives:

First: It would authorize federal agencies to encourage and support increased public involvement in government decisionmaking by providing compensation for the expenses of attorneys' and expert witnesses' fees, and other costs of citizen participation in agency proceedings.

Second: It would promote greater agency accountability by allowing federal courts to award fees and costs to successful plaintiffs in actions for judicial review of agency decisions, where the litigation serves to vindicate important public policies.

The authority provided by the bill extends to all agencies for their discretionary use in all rulemaking, ratemaking and licensing proceedings. In addition, it covers certain adjudicatory proceedings which involve issues relating to health, safety, civil rights, the environment, and consumer economics.

Under our bill, an agency must determine that public participation will promote a full and fair determination of the issues involved in a proceeding. Eligibility to receive an award depends upon, first, an applicants' ability to contribute substantially to the proceeding—i.e. whether his presence may affect the outcome—and secondly, whether he has either a small direct economic interest in the outcome or insufficient resources to participate in the proceeding if funds are not made available.

Fee awards in court actions are subject to more stringent standards. Not only must a party meet the same financial tests as in the agencies, but it must also prevail in the action and must convince the court that the litigation served an important public policy.

The bill contains a three-year authorization, with $10 million to be divided among the agencies each year.

This legislation embodies neither a radical nor a novel approach to promoting greater citizen participation in agency proceedings. The experience at the FTC and the other agencies which have initiated programs of their own proves that there are substantial benefits to be gained. The bill reflects the concerns of numerous interests which have been involved in this issue for many years. It is the product of two years of Senate hearings and the suggestions we have received from business and citizen groups, and from judges and agency officials themselves.

I do not agree with those who say that only the agencies themselves can be the sole guardians of the public interest, or that public funds should not be spent to subsidize non-profit groups who seek to advance their own points of view and who have little accountability to the "public" they claim to represent. Those who make such charges seriously misperceive the purposes to which this legislation is directed.

There can be no dispute that Congress itself must be the ultimate guardian of the public interest, or that it has legitimately delegated certain of its responsibilities to agency officials who have the requisite expertise to make decisions on complex technical issues. The problem is that the "public interest" is not a unitary concept. It involves competing interests which often embody aspects both beneficial and harmful to the "public good." One of the tasks of agencies is to weigh these competing interests, to strike a balance, and find what will provide the greatest possible benefit to the widest number of people. To be able to do so, however, it is imperative that all interests—public as well as private, general as well as specific—be articulately represented in those forums where the overall public interest is ultimately judged.

This, I believe is the real public interest: that the best possible decisions be reached. The expense of participation in proceedings must not be allowed to remain a barrier to achieving full representation of the myriad competing interests of all segments of the American public. If it does, it will continue to be impossible for agencies to serve the purposes for which they were created.

Moreover, I disagree strongly with those who say that this bill will cause additional delays in agency proceedings. This is one of the greatest myths surrounding the legislation, and it should be laid firmly to rest. Studies have shown that citizen participation in agency proceedings is almost never a cause of delay. In fact, several witnesses at both the Senate and House hearings testified that the bill will actually speed up the regulatory process. It will ensure that better administrative records are made at the agency level, thereby making it far less likely that a court will overturn an agency decision for procedural unfairness. Also, the public is more likely to accept agency decisions when it knows citizens have played a role in formulating policy. This, according to several federal judges who testified before our subcommittee, will reduce the like-

[2] Decision of the Comptroller General, 19 February 1976; No. B-92288: "Cost of Intervention—Nuclear Regulatory Commission";

Letter from the Deputy Comptroller General to Congressman John E. Moss, 10 May 1976; B-180224;

Letter from the Deputy Comptroller General to the Congressional Black Caucus, 22 September 1976; No. B-139703;

Decision of the Comptroller General, 3 December 1976; B-139703: Costs of Intervention—Food and Drug Administration.

lihood of appeals to the courts to reverse unfavorable agency decisions. Thus, enactment of S. 270 may have the additional effect of actually decreasing judicial workloads.

Furthermore, agencies have always had at their disposal a range of remedies to deal with participants in their proceedings who use delaying or obstructionist tactics. S. 270 does not change this. In addition, the bill makes clear that persons receiving compensation under this program who cause delay or who otherwise obstruct proceedings may have their awards rescinded or may be compelled to repay funds they have already received.

FURTHER POINTS

Finally, and perhaps most significantly, the citizen participation program in FTC rulemakings established by the Magnuson-Moss Act has not caused any delays in that agency's proceedings. According to former FTC Chairman Collier: "None of the delays in our rulemaking proceedings are in any way attributable to this program." The following points concerning S. 270 should also be stressed:

First, the authority the bill provides is largely discretionary with the agencies, according to the criteria which are set forth in the legislation as guides to the exercise of that discretion. It does not require agencies to provide funds for all those who may wish to participate.

Second, the reimbursement program established by the legislation is experimental. The authorization will expire after three years, and Congress will have a chance at that time to evaluate the program's effectiveness and to make needed changes. In addition, the bill requires agencies and the courts to make detailed annual reports to Congress on the number and amounts of awards that are sought and made, so that we will have a solid record on which to base any decisions as to refunding.

Third, the bill has only limited application to adjudicatory proceedings. The Senate Judiciary Committee last year took the position that since most adjudications involve disputes solely among private parties which have no significant public impact, no purpose would be served by promoting greater public participation in these proceedings.

The types of adjudications which are included—health, safety, civil rights, environmental concerns, and consumers pocketbook issues—have traditionally been the focus of broad public interest. Agencies should be permitted to fund participation in such adjudications, where they conclude it is appropriate.

And Fourth, citizen participation programs are both consistent with and complementary to the proposed Agency for Consumer Advocacy. The new agency, when established, will only be able to address "consumer" concerns. It will not reach the wider range of citizen interests in the environment, public safety, minority rights, and other issues in which diverse segments of the public also need to be represented. Furthermore, the new agency will not always be able to protect the interests of consumers in all situations. This is especially true in proceedings which may affect only small numbers of consumers; for example, in communities located far from Washington, or where there are differing views on what the consumer position in a given proceeding should be.

I believe that enactment of legislation of this sort is long overdue. Congress has given the agencies authority to hire their own legal and technical experts to assist them in resolving the complex problems which confront them on a daily basis. But Congress has not given the agencies adequate authority to reach out for the kind of information which would enable them better to understand the impact of their actions on those people whose interests must be their primary concern. If agencies are truly to be capable of acting in the public's interests, we can no longer deny the public an effective voice in agency proceedings.

President Carter has announced Administration support for this legislation in his recent Consumer Message, and Congress should act on it during the current session. I firmly believe that enactment of S. 270 will enable Congress and the president to realize fully our common objective of securing open and responsive government. Acting together, the president and Congress can forge an alliance to restore meaning to the words "equal access to justice," and can rededicate the federal administrative process to the ideals of fundamental fairness which form the bedrock of our democratic tradition.

QUESTIONS AND ANSWERS ON THE PUBLIC PARTICIPATION IN FEDERAL AGENCY PROCEEDINGS ACT

Have These Types of Awards Ever Been Authorized Previously?

(1) Fees for Participation in Agency Proceedings. Yes, the FTC currently provides for compensation for such participation pursuant to the Magnuson-Moss Warranty Improvements Act of 1975. The FTC has consistently testified that their program, using standards similar to those in this bill, is working quite well; as of November of 1977 a total of $1,138,536 had been awarded in fifty-one applications for participation in fifteen different rulemaking proceedings. During 1976 Congress specifically authorized the EPA to award fees in proceedings conducted under the Toxic Substances Control Act and State Department to reimburse public participants in its proceedings. In addition, the Consumer Product Safety Commission and the National Highway Traffic Safety Administration are operating successful compensation programs, and the Civil Aeronautics Board recently proposed such a program. The Interstate Commerce Commission, the Internal Revenue Service, the National Oceanic and Atmospheric Administration, the Mine Safety Administration, and the Department of Transportation are currently considering whether to implement similar programs of their own.

(2) Fees to Challenge Illegal Agency Action In Court. Currently, over 50 federal statutes allow the courts to award attorneys' fees for members of the general public who move to enforce various laws. The Voting Rights Extension Act, the Freedom of Information Act amendments, the Privacy Act, the Toxic Substances Control Act, and Government in the Sunshine Act, and the Civil Rights Attorneys' Fees Awards Act are among the newest of these statutes. A few, such as the act improving the CPSC, allow such awards specifically for judicial review of these agency actions. Additionally, before the 1975 Supreme Court decision in Alyeska Pipeline v. Wilderness Society which prohibited the practice, courts awarded "private attorneys general" their fees and expenses for bringing such suits.

Why fund public participation? Don't agencies represent the public interest?

The law requires that all agency decisions affecting the public conform to procedural requirements of public notice, opportunity for comment, and the like. Every order or action has to be subject to an adversary process proceeding. "Adversary process" implies that various sides are represented; yet, as several agency officials have testified, they cannot be both judge and advocate of the public interest at the same time. Often, due to the cost of participation, the public interest is not represented, and agency decisions are made without the benefit of public input. This need for the information and diversity of opinion supplied by outside parties who do not have a specific economic interest in the outcome as well as the ability of public representatives to advocate their own position, has led several agency officials to endorse the concept of this bill as necessary to help agencies protect the public interest.

Won't S. 270 encourage frivolous suits or superfluous contributions?

(1) At Agency Proceedings. The bill gives almost total discretion to the agency in the making of awards. Only an agency interested in subverting its own proceedings would make awards where the contribution was minimal. The bill also authorizes fees only where a substantial contribution is made to the proceedings, and money must be returned if such a contribution isn't made.

(2) In Court Proceedings. Frivolous suits will not be encouraged because fees are only awarded if a party substantially prevails. If he loses, he has to pay from his own pocket the enormous costs of bringing suit—the same barrier which for the most part prevents frivolous suits in other areas of the law. Additionally, the court may award fees to the defendant where the suit is frivolous or brought in bad faith or for vexatious reasons. Finally, fee awards are based on reasonable hourly rates, not the contingency basis which may have encouraged high fee awards in some areas of the law. Leaving the award of fees to the courts assures defendants that they will not have to pay when suits without merit are brought against them.

Will S. 270 delay agency proceedings and impose unnecessary burdens on the courts?

No. This bill not only makes every attempt to eliminate delay, but may in fact decrease total time spent on the regulation process:

(1) Consumers Want Speedy Action. Most consumer organizations and individual consumers have no interest in slowing down or holding back the creation of agency regulations that would increase safety and health in the marketplace. Their involvement is aimed at spurring the agencies to move faster.

(2) Citizen Participation Often Results in Faster Agency Action. By enabling citizens to present better-drafted, fully-substantiated petitions to an agency, the bill would diminish the burden on the agency's staff to undertake investigations to ascertain the merits of citizens' petitions. More complete, balanced records would come out of proceedings where all interests are represented, as well as the increased public satisfaction that will flow from the more equitable procedures used in agency determinations. These better hearing records will avoid the serious problem mentioned by one agency witness who said often an entire hearing will be completed, then reviewed, only to find out the record is not complete on the consumer side because most consumer input is necessarily limited by the amount of time and money they can spend. This witness noted that when this occurs the entire hearing has to be reopened to acquire the additional necessary information. This problem is avoided if all sides can afford to participate in the first place.

(3) Consumer Participation Results in Fewer Courts Challenges of Agency Action. As several witnesses noted, increased public participation in agency proceedings usually means the public is more satisfied with an agency's decision because citizens have had an opportunity to participate in the proceedings and there is more likelihood the agency has considered their views. Consequently,

there are fewer court challenges of the agency actions.

(4) Participants Can Be Penalized for Undue Delay. The bill specifically provides that the cost of participation may be assessed against any party causing undue delay or acting in an obdurate or mendacious fashion.

Will S. 270 Increase The Cost Of Complying With Governmental Regulations?

There is no inherent reason why public participation would increase compliance costs. In fact, in many cases, the presence of consumer advocates will help to reduce compliance costs because consumers are not anxious to pay higher prices. Thus, regulations which require trucks to travel empty to accommodate the trucking monopoly, or railroad cars to remain idle, would be opposed. As to health and safety standards, public participants could press for performance standards, allowing the manufacturer to meet the standards with any design he wishes, including the most cost-effective design.

Regulated industries have blamed the government agencies for increased prices in situations where only a small portion of the increase is in fact attributable to regulation. Automobile manufacturers are a case in point. With consumer participation in regulatory proceedings, the cost claims of regulated industries can be closely examined, providing the agency with the accurate information needed to strike a balance between protection of the public and the costs of achieving it.

Won't S. 270 Be Too Expensive?

Yearly authorizations for participation in agency proceedings are limited to $10 million (only one hour of the Pentagon's budget!) and the bill only proposes a 3 year experimental program. And, this bill makes available to the agencies a wide variety of flexible approaches allowing them to maximize public involvement while keeping costs at a minimum. For example, there is no requirement that the agencies must permit all eligible persons to participate in a proceeding or to compensate those which are allowed to participate. The agency may also require consolidation of duplicate presentations or select a single representative capable of providing the most effective advocacy, and can offer compensation only for certain categories of expenses or split funds among several persons representing closely related issues.

Most importantly, if Congress considers public participation important enough to permit it, which current law does, then it is important enough to fund that participation to encourage these contributions and make the right a reality. In some cases, where participants successfully argue against regulation which causes monopoly, such as that in the trucking and airline industries, this participation can actually more than repay the initial cost to the government.

With regard to court awards of fees, a Library of Congress report estimates that only 91 cases, out of the 16,000–18,000 reported cases in a recent 18-month period, would come within the ambit of S. 270. Based on estimates of the average time spent per case (240 hours) and the absolutely highest average hourly rate currently permitted (but never yet awarded) by the FTC ($50/hour), the Senate Judiciary Committee estimates the cost to taxpayers would have been less than $1.2 million for that 1½ year period.

Why not limit the applicability of S. 270 to rulemaking proceedings?

(1) S. 270 is Already Limited. Besides rulemaking (including ratemaking and licensing proceedings), these bills have been limited to cover only those additional proceedings, such as adjudications, which involve issues directly relating to health, safety, civil rights, the environment, and the economic interests of consumers. Where an agency permits participation in such consumer proceedings, the bill should authorize reimbursement. Proceedings involving a single individual's claims before the agency where no broad public interest is involved—such as those at the Veteran's Administration and the Social Security Administration—are not covered by this bill.

(2) Standards To Participate Are Already Limited. The bill provides only for reimbursement where the agency permits participation. The bill in no way affects or grants participatory rights. Standards for public participation in adjudicatory proceedings at most agencies are already very strict and exclude most parties not clearly necessary for a fair determination of the proceedings. S. 270 will aid only those citizen contributors who can meet these high standards.

(3) The Comptroller General has ruled that ten federal agencies have inherent power to make fee awards in adjudicatory proceedings, and has requested Congress to provide standards and criteria for those awards. Not including such proceedings in this bill would mean the agencies, rather than Congress, would be setting those standards.

(4) Adjudications Are Policy Decisions. Frequently, greater public impact is found in adjudications than in rulemaking, because adjudications result in the formulation of agency policy and administrative law that has stare decisis effect in future cases (the agency must follow that rule in future cases).

(5) Public Participation Assists In Adjudications. Some agencies have proceedings other than rulemaking where they have a knowledge that public participation has been of assistance. Examples include the FTC Firestone case, a recent CAB enforcement action, and a State Department import proceeding.

Does S. 270 empower anyone to participate in agency proceedings or file court suits who is not currently authorized to do so?

Absolutely not. This bill is only a funding measure. It merely provides reimbursement for the costs of intervention and judicial review already authorized under existing statutes.

Why shouldn't a citizen be required to participate at the agency level in order to qualify for fees in a court challenge of the agency action?

(1) It Will Create Needless Paperwork. Such a requirement would needlessly flood the agencies with parties filing papers to protect their right to receive attorneys' fees if a future court action becomes necessary. Hundreds of potential litigants, whether they have a small or large interest in the agency proceedings, would file form papers in thousands of agency proceedings. Nothing could stall and delay agency business more than this provision. Ask the Paperwork Commission for comment.

(2) It Will Not Allow For Unforeseen Contingencies. A citizen who initially thought that there was no reason to participate at the agency level will be harshly disadvantaged if the actual proceedings take an unforeseen turn into new substantive areas. Such a party should not be prohibited from receiving reimbursement for challenging in court any agency determination that resulted from such unpredictable developments. Additionally, most agency statutes permit court review without prior agency participation.

(3) It Discourages Consolidation. Current agency practices encourage consolidation of parties to save time and energy result by assigning a single party to represent several groups with similar viewpoints. If that single representative bungles the job, all of the other parties holding the same point of view would be precluded from filing a court action, and would be punished for having helped to streamline agency proceedings by deferring to a single representative at the agency level.

(4) It Prevents Poorer Groups From Bringing Court Challenges. Under S. 2715, an agency will usually make an award to only one public interest representative, in an effort to stretch its resources to cover the maximum number of proceedings. But the many groups precluded from participating at the agency proceedings by the unavailability of government reimbursement should still have a chance to have their claims heard in a court of law.

Why not limit fees to "actual expenses incurred"?

(1) It Creates An Enormous Administrative Burden. It is very difficult to prove the actual expenses including overhead of Public interest attorneys. For example, is fundraising, overhead, compensation of new employees to take the place of the attorney participating in the proceeding, etc., an "actual expense"? Someone at the agency also must review all these computations. Many citizen groups will be discouraged by such unnecessary bookkeeping and decide it is not worth the red-tape to participate.

(2) Court Decisions Don't Require Such Limits. Several court cases clearly hold that the government should not expect attorneys to work for charity. The fact that an attorney partially donates services to a public interest organization should not govern his rate of reimbursement for appearances before an agency.

(3) It Encourages "Farming Out" Work To High-Priced Private Firms. Public interest groups will not use their own salaried attorneys to do this sort of work if the reimbursement rate for them is required to be far below the market price. They will instead give the work to profit-making law firms, charging a higher rate and encouraging inflation of fees paid, or will create adjunct organizations to charge higher rates.

(4) No Criteria Can Be Developed That Cannot Be Evaded. An organization could set up a special section to participate in agency proceedings, paying these attorneys a higher rate, merely to evade this amendment.

(5) It Doesn't Allow For The Contingency Of Losing Some Court Cases. In the area of court awards of fees, there is no advance award of fees, but fees are only awarded if the suit is substantially successful. Since some legitimate cases will be lost and no fees awarded, the proposal for award of actual fees for cases that are won will result in a net loss to the attorney.

(6) It Discriminates Against Local, Small Groups. Local, small groups without staff attorneys will have to hire more expensive outside attorneys to do this work. That may result in discrimination against them in making awards simply because they must pay slightly more for attorneys to represent them, an increased cost the agency may not want to pay.

Why Shouldn't Large Business Interests Be Awarded Attorneys' Fees?

The purpose of this legislation is to encourage participation by members of the public who could substantially contribute to the agency's deliberations, but who could not normally afford to participate without government reimbursement. While business participation provides an important contribution to agency deliberations, the economic

interest of business in agency regulations is usually more than enough to encourage their participation. Because the financial stake of businesses in the outcome of an agency's determinations is sufficient to insure that they will make their views known, it makes sense to reserve the government's limited funds to members of the public who lack a strong enough economic incentive to participate.

Businesses also have alternative methods, which are not available to private citizens or non-profit organizations, by which they can recover a large portion of their expenditures. The tax code permits businesses to deduct the cost of attorneys' and expert witnesses' fees are business expenses, thus shifting a large percentage of these costs to federal taxpayers. In addition, businesses can often pass on the expenses of participation to consumers in the form of higher prices.

Why not use the criteria for the award of fees currently used by the FTC under the Magnuson-Moss Warranty FTC Improvements Act?

The eligibility standards of the Magnuson-Moss Act were the first attempt to define appropriate eligibility criteria for citizen reimbursement. Senator Kennedy's Subcommittee, after hearings to seek out more precise language and assure a fairer allocation of the citizen reimbursement funds, decided upon the language currently in S. 270. The differences between the two are:

(1) S. 270 Specifies Factors An Agency Should Consider In Making Awards. To determine whether a participant is "necessary" for a proceeding, as the FTC eligibility criteria require, the FTC considers the following factors: the number and complexity of the issues presented, the importance of public participation, and the need for a representation of a fair balance of interests. Rather than relying on the nebulous phrase "necessary for the proceedings," which each federal agency might interpret differently and in ways unintended by Congress, the Judiciary Committee bill enumerates the specific factors actually being used to determine whether a party is necessary.

(2) S. 270 Prevents Narrow Award Criteria Being Used By Agencies Hostile To Public Participation. The FTC statute requires that intervenors "represent an interest not otherwise represented in the proceedings." Under this criteria, an agency could, as FTC Commissioner Collier has said, "be tempted to conclude too readily that their own staffs will adequately represent certain interests," and thus make no awards. Therefore, S. 270 requires there be a "fair balance" of interests before the agency, i.e., a fair balance of advocates for the various positions to be represented.

(3) S. 270 Assures All Viewpoint Representatives An Opportunity To Apply For Funds. The FTC has further determined that to qualify for funds under the criteria of the Magnuson-Moss language, the participant must present both "facts" and a "point of view" otherwise unrepresented at the proceedings. The Judiciary Committee determined the primary purpose of S. 270 is to provide funds for diverse and unrepresented viewpoints, and not merely to get outside participants to do unique factual research for an agency. To avoid this narrow and inappropriate interpretation, different language was developed.

(4) S. 270 Encourages Rather Than Discourages Awards. By using "necessary" instead of "substantially contribute" to the proceedings, the bill (which gives agencies enormous discretion in making awards) may result in having awards depend on whether the agency is enthusiastic or negative toward public participation. Since the stated purpose of the bill is to encourage and bring more citizen views into administrative decisionmaking, the bill's present language is most consistent with this objective.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

NOMINATION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of, with a time limit of not to exceed 1 minute, the nomination of James Patrick Walsh, to be Deputy Administrator of the National Oceanic and Atmospheric Administration.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination will be stated.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The second assistant legislative clerk read the nomination of James Patrick Walsh, of the District of Columbia, to be Deputy Administrator of the National Oceanic and Atmospheric Administration.

Mr. STEVENS. There is no objection to the nomination.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

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

Mr. STEVENS. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominee

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

ORDER TO RESUME CONSIDERATION OF THE TREATY

Mr. ROBERT C. BYRD. Mr. President, as in legislative session, I ask unanimous consent that tomorrow, after the prayer, the Senate resume consideration of the treaty.

The PRESIDING OFFICER. Without objection, it is so ordered, as in legislative session.

Mr. ROBERT C. BYRD. Mr. President, I suppose that should be done in executive session. That would not require its being done in legislative session.

ORDER FOR RECESS UNTIL 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 12 o'clock noon tomorrow.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, tomorrow the Senate, after the prayer, will resume its consideration of the Neutrality Treaty. At that time, the question will be on the adoption of the amendment by Mr. STEVENS.

Under the order previously entered, Mr. STENNIS will be recognized, after which Mr. STEVENS will be recognized on his amendment. When Mr. STEVENS is recognized there will be a time limitation for debate on the amendment. That time will begin running when Mr. STEVENS is recognized, the time to be equally divided between Mr. STEVENS and Mr. CHURCH.

At the expiration of the 3 hours, or if the time is yielded back prior to the expiration thereof, I would assume that a rollcall vote would occur, and probably will occur on a motion to table.

In any event, I think Members can be assured of at least one rollcall vote tomorrow and, hopefully, we can press on, if there are other amendments, to article III, and dispose of them; if not, we can press on, in any event, to article IV.

RECESS

Mr. ROBERT C. BYRD. Mr. President, with that expression of optimism, I move now in accordance with the order previously entered that the Senate, in executive session, stand in recess until the hour of 12 o'clock noon tomorrow.

The motion was agreed to; and at 6:30 p.m., the Senate, in executive session, recessed until tomorrow, Wednesday, March 8, 1978, at 12 noon.

NOMINATION

Executive nomination received by the Senate March 7, 1978:

IN THE MARINE CORPS

The following-named officer under the provision of title 10, United States Code, section 5202, to be assigned to a position of importance and responsibility designated by the President, in grade as follows:

To be general

Lieut. Gen. Robert H. Barrow, [redacted], U.S. Marine Corps.

CONFIRMATION

Executive nomination confirmed by the Senate March 7, 1978:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

James Patrick Walsh, of the District of Columbia, to be Deputy Administrator of the National Oceanic and Atmospheric Administration.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.