dent issue a statement that the Biological Weapons Convention is a binding agreement, (2) the Arms Control and Disarmament Agency seek a resolution of noncompliance allegations through the Conference of the Committee on Disarmament, and (3) the issue be raised in the United Nations Security Council.

H. Res. 1027. February 15, 1978. Ways and Means. States the sense of the House of Representatives that the Internal Revenue Service should include on the estate tax return a statement setting forth the limitations on penalties for good faith errors in such returns.

H. Res. 1028. February 15, 1978. Banking, Finance and Urban Affairs. Expresses the sense of the House that the national motto, "In God We Trust," shall continue to be engraved and printed on the currency of the United States.

H. Res. 1029. February 15, 1978. Ways and Means. States that the Commissioner of the Internal Revenue Service should not implement the proposed reorganization of certain Internal Revenue Service district offices until the appropriate committees of Congress have had an opportunity to hold hearings on the proposal.

H. Res. 1030. February 16, 1978. Sets forth the rule for the consideration of H.R. 3377 (Claims by Wichita Indian Tribe).

H. Res. 1031. February 16, 1978. International Relations. Condemns the recent poisoning of Israeli oranges. Declares it the sense of the House of Representatives that the President direct the United States delegations to the Conference of the Committee on Disarmament and the United Nations Special Session on Disarmament to urge that the poisoning incident be placed high on the agendas of these organizations. Declares it the sense of the House of Representatives that the President direct the United States delegation to the Conference of the Committee on Disarmament to recommit itself to efforts to negotiate an effective prohibition of chemical weapons.

H. Res. 1032. February 16, 1978. International Relations. Condemns the recent poisoning of Israeli oranges. Declares it the sense of the House of Representatives that the President direct the United States delegations to the Conference of the Committee on Disarmament and the United Nations Special Session on Disarmament to urge that the poisoning incident be placed high on the agendas of these organizations. Declares it the sense of the House of Representatives that the President direct the United States delegation to the Conference of the Committee on Disarmament to recommit itself to efforts to negotiate an effective prohibition of chemical weapons.

H. Res. 1033. February 16, 1978. International Relations. Recognizes the contributions of General Jose de San Martin to the cause of personal freedom and liberation of the Latin American people.

SENATE—*Monday, April 10, 1978*

(Legislative day of Monday, February 6, 1978)

The Senate met at 8:45 a.m., on the expiration of the recess, in executive session, and was called to order by Hon. KANEASTER HODGES, JR., a Senator from the State of Arkansas.

PRAYER

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

O Lord, our God, we thank Thee for the blessed assurance that we are not called upon to face our duties alone or in our own strength, but at all times we may be accompanied by Thy presence. We ask for Thy nearness, Thy wisdom, and Thy strength that we may be our best selves, fortified by Thy grace. Even amid the pressure of daily duty may there come to us the hush of solemn thoughts, vistas of splendor, windows of insight, when the shadows fade and the clouds of uncertainty vanish and the inner eyes of the soul see clearly the course we should pursue. Breathe through the things that are seen the peace of the unseen and the eternal. So may we hasten Thy coming kingdom as we seek the highest and best for the Nation.

And to Thee shall be the praise and thanksgiving. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 10, 1978.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KANEASTER HODGES, JR., a Senator from the State of Arkansas, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

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

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

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, as in legislative session, not to extend beyond the hour of 9 a.m. with statements therein limited to 3 minutes.

Is there morning business?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

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

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. 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.

THE PANAMA CANAL TREATIES—REACTIONS IN PANAMA

Mr. STEVENS. Mr. President, I have a series of translations of reports from the Panama news media, both the printed and the oral media, concerning discussions that have been going on in Panama about the actions of the U.S. Senate.

I ask unanimous consent that these translations of articles which appeared in those media from March 20 through April 5, 1978, be printed in the RECORD at this point.

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

TORRIJOS CALLS FOR MEETING TO STUDY TREATY SITUATION

Our chief of government, Gen. Omar Torrijos Herrera, today convened a meeting of the National Foreign Policy Council [consejo nacional de politica exterior] in order to study the new situation that has arisen regarding the ratification of the canal treaties by the United States.

The meeting took place at Farallon. During the meeting it was pointed out that the reservations and amendments to the neutrality treaty approved with 68 votes in favor and 32 against in the U.S. Senate have been analyzed on the following basic principles that Omar stated in a letter sent to President James Carter hours before the treaty was voted on: Any reservation that may represent a blemish to national dignity or that alters or changes the objectives of the treaty or that is aimed at blocking the true exercise of Panamanian sovereignty over all territory will be unacceptable to Panama. Our government will not pass judgment on the amendments and reservations, made to the Torrijos-Carter treaties until the U.S. Senate concludes the ratification process, since our people did not ratify the treaties separately but together.

At a forthcoming meeting in which the members of the Council of State and our ambassador to the United States will participate, the policy to be followed in face of the new situation that the most conservative sectors in the United States are creating around the ratification of the treaties that give our country control over the Canal Zone before the year 2000 will be discussed. This is what policy based on principles means.

The spirit of the Panamanian revolutionary process is flexible, it is broadminded and patient, but our people and the revolutionary government have principles that are not abstract but arise from the blood shed by our martyrs in order to eradicate the colonist from the fatherland.

Treaties are a peaceful solution sought by us in order to prevent a high social cost for liberation. However, our sentiments and our

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

flexibility must not be confused with something else. The attitude of our people is reflected in Omar's watchword: "Either on our feet or dead, but never kneeling."

NEGOTIATORS ESCOBAR, ROYO HOLD PRESS CONFERENCE

Romulo Escobar Bethancourt and Aristides Royo, who were part of Panama's treaty negotiating team, met this afternoon with the local press to report on the status of the new Panama Canal treaties which are midway in the process of ratification by the United States.

Escobar and Royo explained that we are experiencing a moment which is not one of euphoria but neither is it one of defeat. They asked press, radio and television newsmen to help the government maintain an atmosphere of calm and watchful waiting. They explained the differences between the amendments and the reservations by the U.S. Senate to the international agreements. Amendments change an article of the pacts totally while reservations are Senate opinions which are added to the pacts and are only obligatory when they are accepted by the other country in the exchange of instruments of ratification.

Escobar indicated that a reservation such as the one presented yesterday by Sen. Dennis DeConcini and approved by the Senate may oblige Panama to present its own reservations when the instruments of ratification are exchanged. For this reason, the Panamanian Government has decided not to make any statement until the Senate decides on the second treaty, the canal treaty.

At that time, the Panamanian Government will analyze each and every one of the amendments and reservations and will take a position.

However, Royo said, if the Senate continues whittling away at the treaties as it has done so far, it may turn out that Panama will have to tell the world that there are no new canal treaties.

Both negotiators agreed that the canal pact itself, which contains a series of revindications of an economic nature for Panama, will be much more difficult for the U.S. Senate. Royo pointed out: The neutrality treaty was easy for them and very hard for us. Now comes the treaty which is hard for them and good for us. That canal treaty has still not been subjected to discussion and already has 27 amendment proposals. Until the Senate makes a decision, the atmosphere in Panama should be one of calm, never one of frustration or defeat. There should be an atmosphere of analysis without reaching states of despair.

Among the measures adopted to maintain the atmosphere of calm is the postponement of the beginning of classes until 17 April. Escobar explained that the objectives of the conservative senators are to defeat the treaties or to lead Panama to another plebiscite and also to cause problems in Panama by exasperating the people by offending them. Escobar said we will have to endure those provocations because the most important thing now is the treaties' approval. Our irritation in this case is of secondary importance

Escobar pointed out that one of the articles of the canal treaty which will be torpedoed by the senators is the one referring to the sea level canal. He explained that Panama never wanted this article and that General Torrijos himself said it was equivalent to a second marriage by the same couple.

FURTHER REPORT

Panamanian negotiators Aristides Royo and Romulo Escobar Bethancourt held a news conference at 1430 with local newsmen in the offices of the Cerro Colorado Corporation located in the National Bank Building to explain the position of the Panamanian Government.

Royo said that the position of the Panamanian Government at this crucial moment in the history of the nation is prudent, wise and politically adequate. He added that the neutrality treaty has some aspects which are hard for the Panamanian people to accept. However, he added, it is the treaty by which the United States returns the Panama Canal to Panama which really contains concessions favorable to the Panamanian people. Therefore, in the opinion of the negotiators, this treaty, which the U.S. Senate will soon begin discussing, is the one that will undergo a long series of amendments, of which 27 have already been announced.

Meanwhile, Escobar Bethancourt told newsmen that it was necessary to understand that the Panama Canal is part of the U.S. defense system and, for this reason, it was hard for the U.S. Senate to give up the canal to Panama. Escobar Bethancourt said that last night the Panamanian Government was facing a state of uncertainty and could not express any joy over something which still is incomplete.

He added that the last reservation to the neutrality treaty touches upon the Panamanian Government's main concern not to have the U.S. Government meddling in Panama's domestic, political or state affairs. Further, he said that nonetheless, our government is highly optimistic regarding the power of understanding of the two countries linked together by the canal.

Royo and Escobar Bethancourt said that the Panamanian Government's final position will be established when the Torrijos-Carter ratification instruments are exchanged and that Panama has only two options: to accept the ratified treaties as they stand or to consider that they violate the nature of the Torrijos-Carter treaties approved by the Panamanian people during a plebiscite on 23 October 1977. For this reason, the Panamanian Government is maintaining a cautious attitude and wise prudence, Escobar Bethancourt said, and is waiting for the final results of the U.S. Senate debates.

CRITICA ON TREATY AMENDMENTS, RESERVATIONS

While the nation analyzes the real meaning of the word "amendment—which changes the true nature of an article of the treaty and affects its essence, implying, according to some, the "rejection" of the document—and while the legal effects of the notorious "reservations"—which is a weaker term than "amendments" but stronger than "interpretations"—are considered, the local media researches, gathers information and evaluates the scope of the U.S. Senate sessions on the Torrijos-Carter treaties.

The fruitful meeting held yesterday afternoon with treaty negotiators Romulo Escobar Bethancourt and Aristides Royo was part of this search for information. The dialog revealed through details on the treaty negotiating sessions and the way in which the United States views certain articles of the treaty.

This is how we found out that despite the existence of Spanish and English versions of the documents, the characteristics of our different legal systems—the Anglo-Saxon and Latin systems—have led to interpretations being made from very particular viewpoints and this, together with the idiomatic concepts, produce adverse effects in each country every time the texts are analyzed.

The necessity of making serious and thorough studies without haste, concerning what has occurred so far and what is yet to be discussed, was clearly established after the exchange of opinions. We are aware of the lack of experience of President Carter concerning the ways in which the senators operate, even those of his own party. This inexperience has been the cornerstone of the obstacles to ratification, but it has been useful since it was his "virgin" spirit which led him to materialize the negotiations. This fact must be taken into consideration because if they are not ratified in this first [as published] year of the U.S. President's term, several decades would have to pass before another president would decide to follow in his footsteps or thousands of lives would have to be lost to end definitely the American colonialist presence in our country.

For now, the DeConcini amendment can be considered to be part of the "Torrijos-Carter understanding" although it was made in bad faith. The final conclusion about its scope will be given by us later. However, that was the general conclusion. We must be prepared to hear more amendments and, especially, dozens of additional reservations being proposed with greater diatribe against Panama and its rulers since thus far we have heard very few heirs of the intelligence of a Jefferson, a Lincoln or a Benjamin Franklin.

REACTION TO TREATY RATIFICATION GENERALLY MILD

Two minor demonstrations by extreme leftwing university students have been the only reaction on the part of the Panamanian people following yesterday's ratification of the first of the Panama Canal treaties which was voted on in the U.S. Senate. Aside from that, Panamanians received the news of the ratification of the neutrality pact with almost total indifference.

The Americans who live and work in the Canal Zone and had firmly opposed the new agreements also received the ratification of the neutrality pact with overwhelming apathy.

Last night, the extreme leftwing students staged a demonstration against the ratification on the campus of the University of Panama. The group of demonstrators was small, as was the demonstration staged this morning in front of the office building of the American Embassy.

Olimpo Saenz, leader of the Camilo Torres Circle, said that the important thing is not the number of participants but the essence of the protest movement against the canal treaties.

On campus last night and this morning at the U.S. Embassy, the demonstrators symbolically burned the new treaties. There was no violence reported during any of the events.

The Panamanian Government reacted by announcing that it will call a special general State Council meeting with Panamanian Ambassador Gabriel Lewis Galindo in attendance. The Panamanian Foreign Ministry revealed last night that the Council of State meeting will be held only after the U.S. Senate considers the second treaty, the one that actually refers to the Panama Canal.

One office worker explained the people's apathy toward the ratification by noting that we Panamanians feel that the conventions negotiated between the two countries do not fully meet Panamanian expectations, let alone doing so following the amendments and reservations made by the U.S. Senate.

STUDENT GROUP DENOUNCES TREATY CHANGES

Members of the University Anti-imperialist Front (FAU) yesterday picketed the U.S. Embassy to protest and denounce the efforts by U.S. senators to change the political conditions of Panama [condiciones politicas de Panama] in favor of their plans of oppression.

The group issued a communique pointing out that everything indicates that the U.S. Government is maneuvering with amendments, understandings and reservations in an effort to reverse the essential gains that the Torrijos-Carter treaties provide Panama.

Ambassador to U.S. Returns, Comments on Canal

(Special report from Washington by Diana Arosemena—presumably recorded)

Gabriel Lewis Galindo, Panamanian ambassador to the United States, and his legal adviser, Ricardo (Bilonic) Paredes, returned to Panama early this morning at the request of Chief of Government Gen. Omar Torrijos to participate in the very important meeting which General Torrijos will hold with his government team concerning the ratification of the neutrality treaty.

Ambassador Lewis, before leaving the United States and being besieged by television, press and other communications media representatives, said the following: Our government has declared radio silence because, in international politics, very often the best word is the one that is not spoken. General Torrijos and President Carter, before the television cameras and with the world as a witness, designed a suit of clothing which replaced the colonial cloak that covers 1,442 square km of our land. This cloak was created in 1903 by a Frenchman who claimed to represent Panama and by then U.S. Secretary of State Hay, a well-known colonialist and expansionist figure.

President Carter more closely approaches the sense of morality and dignity of his people than some government spokesmen. What Senator DeConcini added to the neutrality treaty and what he said during his speech yesterday has wounded the deepest feelings of almost 2 million Panamanians.

I pray to God that in the scale of values of our people, 32 [as heard] will be the number that will inspire us to continue fighting until we achieve our ideal. Panama is a small country, but it is a nation that is large in pride and dignity and it will never be a land of eunuchs. Latin America is awakening. We have all been humiliated 32 times over.

Costa Rican, Nicaraguan Presidents Comments on Ratification

Costa Rican President Daniel Oduber has stated that the ratification of the Panama Canal neutrality treaty by the U.S. Senate was a struggle of all America and that the United States has shown that it is possible to discuss any hemispheric problem on an equal footing.

(Question by unidentified interviewer—begin recordings.) Here with us is the president of the Republic of Costa Rica, Daniel Oduber Quiros, who will speak to us about the approval of the Panama Canal treaty today. [as heard] Don Daniel, what do you think about the approval of this treaty?

(Answer) Look, Marcia, it has been such a long struggle—as far as I can remember, at least 16 years—dating back to when I first assumed the office of foreign minister of Costa Rica. Since then we have waged what I would call a hemispheric struggle along with the Panamanian people and all its government representatives so Panama could recover its rights over the canal. I still do not know in depth the amendments that I have been told would be added to the treaty. However, if this whole set of concepts, this whole set of legal provisions, is acceptable to the Panamanian people, I would say that a struggle of all of America has been won and that the United States has been able to show the world that it is possible for a large and a small nation to negotiate on an equal footing on the American continent. The approval of the treaty has a profound meaning. In the few days that I have left in office. I will make this known to all the people, groups and countries whom I asked to be patient for many years in order to negotiate and draw up a treaty that marks the beginning of a new era for the Republic of Panama.

(Question) Don Daniel, what effects do you think the approval of this treaty will have on U.S. relations with the Latin American countries?

(Answer) The most important thing is that President Carter has demonstrated that an American president can believe in fraternal relations on an equal footing with the nations of the American continent. Many times as a government leader and politician throughout all the years that I have been engaged in these activities, I came to doubt the good faith of the U.S. Government leaders as far as their relationship with Latin America is concerned. However, in the specific case of President Carter, since he was elected I realized that Latin America meant something to him and during the times that I have talked to him and other officials of his administration, I have reached the conclusion that Latin America has a lot to expect from the United States under Jimmy Carter's rule. [end recording]

In the meantime, Nicaraguan President Gen Anastasio Somoza today came out in favor of the ratification of the neutrality pact in Washington yesterday. President Somoza said it was a step forward toward international equality.

(Question by another unidentified interviewer—begin recording.) What meaning does the ratification of the Torrijos-Carter canal treaties have for you and for the small and weak nations?

(Answer) Well, (aware) that there is international law, that we live according to treaties and that legal power has greater value than force, the world has come to recognize the interests of nations, whether large and powerful or small. I think this is a step toward international equality.

(Interviewer) that is right! (end recording)

Independent Lawyers Express Concern Over Treaty Amendments

The Independent Lawyers Movement today expressed what it termed deep concern over the approval of some amendments, understandings and reservations to the neutrality treaty, especially the approval of the reservation by Senators Dennis DeConcini and Sam Nunn, which they consider to be more harmful to the interests of Panama.

Workers Central Rejects Treaty Amendments, Reservations

(Article by Mario Martinez P.)

Several unions in Panama and the Canal Zone have expressed concern over the ratification of the neutrality treaty with the inclusion of certain amendments and reservations which curtail the gains achieved by the people of Panama.

At the same time, the National Central of Panamanian Workers (CNTP) recommended that "the unity of all forces which support the (revolutionary) process be strengthened around the great anti-imperialist front." In a statement to the media yesterday, the CNTP expressed "unrestricted support for Gen. Omar Torrijos and the reaffirmation of our revolutionary position." It urged its members and all progressive sectors of Panama "to seek international economic and technical support and to massively participate in the upcoming elections for popular power."

The CNTP issued a statement yesterday expressing "its most vigorous rejection of the U.S. Senate maneuvers which curtail essential gains of the Panamanian nation." According to the statement, the labor organization, one of Panama's largest, rejected the so-called amendments, reservations and understandings of the neutrality treaty.

The document, which was signed by the plenum of the CNTP executive secretariat, made certain recommendations to its members and asked them to "close ranks" in view of the present situation. It also encouraged its members to demand that the U.S. Government faithfully comply with the treaties approved by the Panamanians. It made clear that it is necessary to avoid desperation and "imperialist" provocations. Similarly, it requested support for Gen. Omar Torrijos and the process he heads.

Regarding the position to be followed by CNTP members, it called for "the rejection of any attempt by the U.S. Government to perpetuate the presence of its soldiers in our territory."

The reaction of the different labor organizations is in regard to certain last minute amendments or reservations to the neutrality treaty ratified by U.S. senators on Thursday. According to the Panamanians, the amendments or reservations curtail in practice the hopes for national liberation to recover the territory described as the Canal Zone. The CNTP statement notes that the amendments and reservations to the neutrality treaty "are for imposing conditions on our people and government with the preconceived purpose of perpetuating the presence of murderous troops in the canal strip, the colonial and neocolonial enclave and everything that goes with it.

Torrijos, Aides Studying U.S. Senate's Treaty Amendments

(Article by Luis Castilla Bravo)

Without making any sort of public statement in reply to the U.S. Senate, Panamanian Chief of Government Gen. Omar Torrijos Herrera and his chief aides have been meeting in permanent session since Friday to assess the extent of the well-known Senate amendments, particularly the DeConcini amendment (as published), and the reservations established by the U.S. Senate to the treaty on neutrality signed by the United States and Panama.

As may be recalled, Panama approved a "package" of two documents that make up the treaties on the Panama Canal. Both were intimately linked and therefore subject to a single condition: the disappearance on 31 December 1999 of the last Yankee boot from our national territory.

These documents, submitted to the Senate's scrutiny after being signed by President Carter, underwent minute and thorough consideration by that august chamber but did so in reverse, that is, instead of first analyzing the document that indicates the end of the Hay-Bunau Varilla Treaty and sets a date for the end of U.S. presence on that part of the territory, the Senate ratified the second part, which is practically military in nature.

General Torrijos indicated on the same day the Senate was voting that under no circumstance would he accept amendments that injure national dignity. On his part, Carter has said that these amendments do not affect the spirit of the treaty, but the senators have already begun to express serious concern since, in the opinion of some of them, the treaty has been violated.

Although the national and foreign press has attempted to penetrate into the residence on 50th Street owned by the chief of government's economic adviser, where the permanent sessions are taking place, all efforts have been futile.

It has been learned behind the scenes that General Torrijos, in addition to consulting with his main advisory team, is also consulting the main leaders of the world before giving an official reply. On the other hand, in yesterday's session, the Senate began to show concern regarding Panama's reaction since up to now there has only been quiet, and quiet generally comes before the storm.

Robert P. Griffin, for example, one of the treaties main opponents, said yesterday that he could not understand how the senators could vote in favor of one of the treaties and against the other. "As I see it," he pointed out, "the two of them constitute a whole."

GOVERNMENT OFFICIALS DISCUSS TREATY RATIFICATION PROCESS

(From "La Llorona" column)

Aristides Royo, Adolfo Ahumada, Perez Valladares, Rory Gonzalez, Ambassador Lewis Galindo and Foreign Minister Gonzales Revilla make up the group of ranking state officials headed by Vice President Gerardo Gonzales who left Paitilla Airport yesterday for Parallon, presumably to discuss the course taken by the treaty ratification process in the U.S. Senate.

COLUMNIST CALLS FOR UNITY IN FACE OF TREATY CHANGES

("Conciencia Publica" column by Miguel Angel Moreno Gongora: "Unity and Sorrow of the Fatherland")

The voting on the neutrality treaty and the reservations, understandings and amendments adopted show how wrong were those who once thought that President Carter's political ability and the Senate's respect for him were in direct proportion to his self-esteem and Christian good faith toward Panama. Circumstances turned out to be against him. In the eyes of U.S., Panamanian and world public opinion, his personal prestige and political stature have been dealt a serious blow. They have been very seriously wounded.

President Carter has to be either naive, very blind or very insincere not to realize that the final result of what occurred in the Senate at 1630 on 16 March does not represent the Panamanian people's aspirations and is not in keeping with the promises he made to the world that justice would prevail for Panama.

In view of the imminence of an adverse vote and seeing himself weak and incapable of fulfilling his promises and predictions regarding the voting, the U.S. President had to make concessions to senators in one group or the other. In the end, these concessions resulted in a treaty patched, scratched out and rough drafted against Panamanian interests because it grants the United States the right to reserve for itself the interpretation and acceptance or rejection of situations that will be humiliating for Panama because they distort the objectives of the treaty, confirm and reaffirm perpetuity, make acceptable the right to intervene in our domestic affairs and prevent us from fully exercising our sovereignty even after we physically recover the canal, as we will demonstrate shortly.

The Panamanians' votes for the treaties were aimed at responding affirmatively to a question concerning the text of the documents that were later submitted to the Senate. That was the will of the majority, that was the watchword and that was what our sovereign people consented to. We may or may not have agreed with the treaties, but as Panamanians and in the face of the accomplished fact, the only thing left for us to do was to wish that the voting would favor the bright destiny of our national greatness. Nonetheless, this was not the case because in a new demonstration of secular imperialism the senators of both parties adulterated the contents of the treaty, making it unacceptable to every good Panamanian. From the standpoint of international law, our public laws and honest diplomacy, this simply and clearly means that the treaty has been virtually rejected because it definitely is not what we Panamanians voted for.

The amendments, reservations, understandings and interpretations—terms under which the adulterations that the senators included in the treaty are euphemistically masked—automatically lead to its rejection because they render ineffective the will of the Panamanian people as set forth in the October plebiscite.

Now that the text of the treaty has been changed, we must begin a new stage of negotiations. The results of these negotiations must later be subjected to a new plebiscite in accordance with the constitution, which establishes that any treaty regarding the canal, its adjacent zones, the canal's protection, or the construction of a new sea-level canal or a third set of locks will be subjected to a national plebiscite.

We must face this new stage in our national suffering with unity and patriotism and with serenity and prudence. In particular the government leaders must avoid all prejudices, malice or reservation toward those that oppose it, because those opponents are above all Panamanians as patriotic as they are. They feel the fatherland's sorrows with the same intensity.

CLOSE ANALYSIS OF TREATY MODIFICATIONS URGED

(Editorial: "The U.S. Senate and the Neutrality Treaty")

The U.S. Senate yesterday took a stand regarding the "Treaty for the Permanent Neutrality and Operation of the Panama Canal" in ways and in terms which have already been disseminated by the various media and which we have covered in our reporting section. We now have to wait for the debate on the "Panama Canal Treaty"—announced for the immediate future—to start. We also have to wait for the U.S. Senate to reach a decision on it. Consequently, considering that the two treaties will become effective simultaneously, one should feel that it is too soon to express definite judgments and opinions on what was agreed upon in Washington yesterday, which is only a part—although a substantial part—of the matter that is covered as a whole by the two aforementioned treaties.

In spite of everything and even though, we repeat, it would be wiser to wait for a final U.S. Senate decision, differing opinions, both for and against, will be made known regarding yesterday's decision. Naturally, the opinions expressed will be varied and probably of a discordant nature.

One of the first questions to ask ourselves would be to what extent and how the reservations, modifications, additions—or whatever they are called—introduced by the U.S. Senate will alter the scope, meaning or goal of the dispositions established in the articles of the original texts, which were signed by President Carter and General Torrijos and ratified by an overwhelming majority of Panamanians in a plebiscite held for that purpose. It is necessary to read and analyze with care, attentiveness and a great deal of calmness the so-called modifications before reaching a definite opinion on the matter. If after such an analysis one should consider them as unimportant, secondary and having no affect on the essence of what had been previously agreed upon and signed, then there should be no objection to accepting them, thereby avoiding a situation in which the treaties—which were so laboriously negotiated—will not be put into effect. At any rate, what is most advisable now is to keep an alert and vigilant attitude until complete Senate ratification is achieved after the "Panama Canal Treaty" is voted on.

POSSIBLE EFFECTS OF CARTER'S LETTER TO TORRIJOS EXAMINED

("Bona Fide" column by Camilo O. Perez: "The President's Serious Problem")

We have been weighing the contents of the letter that President Carter sent from Washington to the Panamanian chief of government immediately following the executive's acceptance of the DeConcini reservation. The letter states that Panamanians should not be worried about the "reservations" or amendments."

President Carter's statement seems to be opposed to the will of the Senate and at the same time a contradiction of the U.S. legal system. The effect of Carter's statement can be seen in the light of two possibilities:

1. It is an imprudent and naive maneuver. However, it is made in good faith befitting a man devoid of puritanical philosophical ideas. In this respect, Carter is a good Baptist.

2. It is a reply which seeks only one thing: to placate the various Panamanian sectors who do not see eye to eye with the amendments, reservations and understandings.

Besides, there is a danger that might directly affect the U.S. Senate's acceptance of the Panama Canal treaty. When the undecided senators realize that none of the amendments or reservations already approved in the neutrality treaty will meet with the President's approval, according to the letter we are commenting on, President Carter better be prepared for the second round of debates on the treaty that will return the Canal Zone to Panama.

We are more than sure that the senators will intensify their strategy on the Senate floor, and that, aware of the President's position, they will not believe in other agreements [as published] and will propose amendments and reservations which will be even more harmful and frustrating to Panama.

This means that President Carter and his Senate aides will have to struggle harder to avoid the defeat of a strategy as complicated as the one they carried out recently.

When statements are made, however, we must consider the way they will be interpreted domestically, as well as abroad.

A calm study must be made so as to establish a sort of security cordon. [as published] The same thing happens here. There are serious sectors that believe that the reservations and amendments are a change in the text of the treaty. They are not mistaken. Therefore, the senators who will propose amendments and reservations will be rejecting the treaties and will work toward that end.

FEP ISSUES COMMUNIQUE REJECTING SENATE'S TREATY CHANGES

(Communique issued by the Federation of Panamanian Students at special session held at the University of Panama on 21 March 1978)

"For organized vigilance by the people to defend the dignity of the fatherland":

1. Through the information media, the country has received with surprise the postponement until 17 April of the opening of classes for elementary and high schools and subsequently for the university. The same surprise was felt by the national leadership of the Federation of Panamanian Students (FEP), which was never consulted about the measure. The published report states that there was a request from the Board of Directors of the National Federation of Parents Associations employing the "argument" that Holy Week was at hand and that there are material problems involved in the opening of classes.

2. However, this postponement occurs in the context of the discussions of the Torrijos-Carter treaties, which are currently the subject of debate by the U.S. Senate. Unofficially, it is being maintained that the measure was designed to forestall possible provocations on the part of antipatriotic forces within the student movement. Although we concede that such a possibility exists, such a position reflects a great lack of confidence in and an underestimation of the maturity of the Panamanian student movement and of the masses in general.

3. For this reason, the FEP, based on its historic principles and on its revolutionary authority derived from the sacrifices of its militants and its martyrs, in response to the DeConcini reservation and the possible amendments that may be made to the Torrijos-Carter treaty, declares its firmest and most militant support for the position based on principles and national dignity that was outlined by Commander Torrijos in his letter to Carter on 15 March: "Panama will

consider unacceptable any reservation which sullies the national dignity, which distorts or changes the objectives of the treaty or which seeks to prevent the exercise of sovereignty by Panama over all its territory, the turnover of the canal and the military withdrawal on 31 December 1999."

4. It is obvious that the imperialists, taking advantage of the failings of the process and depending on their unquestioning supporters in Panama, seek by means of the amendments and reservations to halt and destroy the process of national liberation which is being led by the military. Consequently, although it is true that the FEP realizes that the popular movement and Panamanian patriots in particular must exercise great patience, it is no less true that this calm should not be interpreted as passivity or as a sign of weakness or desperation. In this lies the hope of the enemy who wishes to isolate Commander Torrijos from his people and promote wavering within the forces committed to the struggle for national liberation, as well as to exclude the masses, its only guarantors, from this patriotic struggle.

5. Despite all the pressure, blackmail, provocations and attempts to anesthetize the patriotic conscience of our people, the popular movement has received with indignation and without cowardice the "reservations" approved by the U.S. Senate, which have only caused concern among those who trusted in the kindness of the imperialists, those who placed their own interests above the sacred interests of the fatherland and those who never believed that we were involved in a real struggle for national liberation and who did not realize that if there is no ratification, our people, fearing nothing, will take the path imposed by the circumstances in order to achieve their full independence—even taking up arms if necessary.

6. Therefore, we oppose the method used to decide on the postponement of classes because it introduces mistrust and suspicion about the fate of the treaties.

7. In addition, we demand the publication, as soon as possible, of the amendments and reservations attached to the neutrality pact by the U.S. Senate and [an explanation of] the extent of these amendments and reservations.

8. Moreover, in order that our people not be left out of this patriotic struggle, we demand the inclusion of all the active forces of the country into the process of determining and preparing the alternative actions to be taken as a result of the demands of the U.S. imperialists.

On our feet or dead, but never on our knees.

The FEP is on the march; nothing and no one can stop it.

(Signed) Federal Executive Council of the FEP.

Foreign Ministry Releases Text of Canal Treaty Changes

(Text of Panamanian Foreign Ministry communique dated 27 March 1978)

In our communique of 16 March we expressed the government's decision not to make any pronouncement on the Senate's resolutions concerning the treaty on the permanent neutrality of the canal and the operation of the Panama Canal. We said our reason for this was that the Panamanian people had approved two treaties, that is, the one referring to neutrality and the treaty on the Panama Canal, and until the Senate decides on the latter treaty is will not have given an answer to the decolonization program approved by the Panamanian people.

We also said in that communique that the government as whole would analyze the conditions under which the Senate gave its advice and consent to the neutrality treaty and the conditions it would express when pronouncing itself on the Panama Canal treaty. We have undertaken this process. But since the national liberation process is a national commitment which requires that each citizen be totally aware of the Senate understanding on the treaties, the Foreign Ministry has deemed it advisable to publish the text of the Senate resolution on the neutrality treaty without waiting for its official text to be delivered to us through the regular channels.

We are experiencing a crucial moment in our history. Now more than ever, the fatherland demands of its children calm, dignity and a sense of national unity.

Panama views its future with the calm of a nation that is enveloped in an irreversible national process of decolonization.

Let us recall that only peace-loving peoples can be free. Panama has decided on its definitive liberation. We are accompanied in this process by the peoples of the entire world, as we evidenced at the Security Council meeting held in March 1973 in Panama. There the world, in view of the veto of the U.S. delegates, vetoed [veto] the United States for not resolving the causes of conflict produced by the presence of a foreign government on Panamanian territory.

We recommend that our fellow citizens objectively study the documents which are being published today in Spanish and English so that they can assist the government in adopting the most patriotic decision which, as Panamanian Chief of Government Gen. Omar Torrijos Herrera has said, will be within the framework of a vast national consensus.

Foreign Ministry.

Negotiator, Ambassador Leave for Washington

Education Minister Aristides Royo left yesterday for Washington together with Panamanian Ambassador to the United Gabriel Lewis Galindo. No official source has disclosed the reasons for the departure of minister and negotiator Royo for Washington, but it is believed that his trip is related to the Senate debate on the Panama Canal treaty. It was also not disclosed if Dr. Royo is carrying any special message from the Panamanian Government to U.S. authorities.

Bayano Sees Treaty Amendments as Deliberate Provocation

BAYANO, an organ at the service of Panamanian workers, has stated in its editorial that the incorporation or reservations, understandings and amendments into the treaty on the neutrality of the canal and the functioning of the waterway is a political maneuver designed to produce an unsettled situation within Panamanian society.

The newspaper, which is published biweekly, later states that by means of the attitude adopted by the U.S. Senate, the Carter administration is skirting its historic responsibility by transferring the problem to the national government, particularly to its top leader, General Torrijos.

In his letter to the U.S. President on 15 March, our chief of government said that no amendment or reservation that harms the truly just aspirations of the Panamanian people will be accepted. The biweekly BAYANO emphasizes that U.S. Government circles have directed the first amendment and reservations toward the issue that is most sensitive where the Panamanian nation is concerned—the nation's right to the sovereign and independent exercise of effective neutrality, with intervention or foreign military aggression—in other words, to make the Panamanian liberating process react to the provocation.

The BAYANO editorial emphasizes the people's devotion to peace and to the construction of a future without the wounds of a bloody struggle for liberation. However, in the face of an attempt to keep the aggressive imperialist boot on their soil eternally, our people will be prepared to take action, whatever the consequences, in order to achieve total independence, BAYANO says in closing.

Columnist Equates Senate Canal Treaty Changes With Rejection

("Bona Fide" column by Camilo O. Perez: "Amendments to Amendments and so on Until the End of Time.")

We have read in the front page of yesterday's issue of La Estrella de Panama a paid advertisement consisting of a translation of a quotation from Time magazine's latest issue. It deals with President Carter's change of attitude in the face of pressures from some senators, including Mr. DeConcini.

In spite of the commitment between President Carter and General Torrijos regarding a "certain pledged word," the powerful U.S. political and monopolistic forces have prevailed over this "pledged word."

Our position in this connection is characterized by calm study and a cautious wait-and-see attitude. This is so because, as we have repeatedly said, this is a problem of U.S. politicians and not of Panamanians. However, we would not be surprised if things changed in the future and Washington decided to pass on to Panama the responsibility for rejection.

Notwithstanding the foregoing, we feel that the first treaty has already been rejected by the U.S. Senate. Thus, the waiting in regard to the other treaty, that is, the treaty concerning the Panama Canal, involves only a matter of procedure to formalize the rejection.

Mr. Carter faces a serious political problem that will lead to decisions which will for the first time bring to the surface the crisis which has existed for decades in the relationship between Congress and the Executive branch.

Furthermore, once the treaties and the declarations containing the reservations and amendments are returned, we Panamanians will face the possibility mentioned above, which time has mentioned in order to attack Carter.

We have begun a study of history and found that there is a particular precedent justifying what the Senate is now doing. In other words, when the Thompson-Urrutia treaty was negotiated, the U.S. Senate returned it with certain amendments after discussing it, feeling that it had approved the treaty in that manner. It was then that the Colombian Government, in view of that fact, returned the treaty to the U.S. Government with its own observations and amendments to the proposed amendments. This forced the Senate to discuss the matter again. The rest is history.

In this case, after the treaties reach Panama with all of the detailed observations, we will have to analyze the cited precedent in order to keep the responsibility for crisis from being passed on to the Panamanian people.

This is so because if violence arises as the only possible argument to achieve our patriotic demands, let the first shot be fired there and not here. That is the way the Vietnamese acted.

Commentator Expects Public Debate on Treaty Changes

("Analysis of the News" commentary by Mario Velasquez)

Following the holy week break, which the Panamanians take advantage of to escape from reality a little, by vacationing in the country's interior and participation in religious celebrations, the country returns to normalcy and to its daily cares.

We notice with satsifaction that the week begins with the official public announcement by the Foreign Ministry of the amendments, reservations, and understandings which the

U.S. Senate introduced to the resolution of ratification of the Treaty on the Permanent Neutrality of the Canal and the Operation of the Panama Canal.

The public announcement of these important documents is accompanied by a Foreign Ministry communique which reiterates the government stand announced in its previous communique of 16 March to the effect that it will not make any pronouncement on what the Senate had agreed to in relation to the neutrality treaty until the Senate has decided on the Panama Canal treaty, on which it will probably vote in late April.

I feel that both Foreign Ministry communiques—the one dated 16 March and the one of this morning—display a clear sense of responsibility in handling a very delicate issue. It is a sensible and patriotic thing for the government to make a very serious evaluation and a thorough study of these amendments, reservations and understandings prior to taking a decision which, due to the nature and dimension of the problem, will be a most important one. Likewise, the public announcement of these documents and the recommendations included in the last paragraph of the communique published this morning, which asked the Panamanians to study the documents published in order to help the government make the most patriotic decision, is an invitation to a public debate on these amendments, reservations and debates. This is the only possible means by which the community will be able to discuss the scope of these amendments and make public its opinion, and in this manner the government will have sufficient data to permit it to make a decision within the framework of a great national consensus, as this morning's Foreign Ministry communique said:

Actually, the Foreign Ministry communique which we are commenting on is in the spirit of the letter which Gen. Omar Torrijos sent President Carter on 15 March. In fact, in this letter Torrijos told the U.S. President that the Panamanian Government will begin the careful study of these reservations and will announce its position once the Senate has completed the voting on both treaties. Then, in a strong worded paragraph which is a reiteration of a political decision and which really voices the unanimous feeling of the Panamanians, Torrijos told Carter that such a study will be based on the following concepts: Panama will not accept any reservation which offends national dignity, which distorts or changes the objectives of the treaty or which is aimed at impeding the effective exercise of the sovereignty of Panama over all of its territory, the turnover of the canal, and the end of military occupation on 31 December 1999. Torrijos then added in the same letter sent to President Carter that the Panamanian people will not accept any words, misplaced commas, or ambiguous phrases which are aimed at or mean an occupation in perpetuity disguised as neutrality or an intervention in Panama's domestic affairs.

It seems very clear that these paragraphs we have quoted define the national position shared by all conscientious Panamanians. In the light of these concepts Torrijos is transmitting to Carter the manner in which the amendments, reservations and understanding which the Senate will add to the two Panama Canal treaties will be studied. In other words, Torrijos has established parameters, points of reference for the studies to be made of the amendments. This is not a matter of legal speculation or intellectual loopholes, but very clear and precise terms of consideration which pertain to our national dignity and sovereignty. The serious part, the obscure part of this issue is found in the U.S. counterpart, where a series of situations and interests, visible and complex, are having a negative influence on the handling of the problem of the ratification of the treaties.

If there is any doubt in this respect, the Panamanians should at this stage of our relations with the United States be convinced that U.S. national interests prevail in these relations and that there has never been anything which we could call generosity or altruism in Washington's policy toward our country.

As for the senators, a large majority of them are immersed in the political problems of their states, in their reelection possibilities, and concerned solely about what they call the national security interests of the United States. We witnessed the 7-hour U.S. Senate debate on Thursday, 16 March, when the neutrality treaty was approved. Together with Luz Maria Noli [Televisora Nacional reporter], we were the only Panamanians inside the U.S. Senate during those dramatic hours. We lived that historical moment and were not able to notice at any time any moment of grandeur or a sense of history on the part of the dozens of speakers who came up, one after another, to reiterate their concern over the military, economic, and political interests of the empire, totally removed from and indifferent to the interests of a small republic which has lived for 75 years tied down to the fate of the U.S. nation.

Nothing reflects the spirit of the Senate better than the conversation between President Jimmy Carter and Republican Senator Edward Brooke, when the only black senator told Carter that he was creating a sort of Frankenstein by not permitting changes. Carter told him that he had given his word to Torrijos and he could not back down. Senator Brooke then answered him: Look, that is the Panamanians' problem; that is not our problem. The report on this conversation is carried in today's issue of the Time magazine, dated 27 March. The report adds that the Senate leaders then convinced President Carter to back down, and subsequently negotiations began with Nunn, Talmadge, DeConcini and other senators who insisted on amendments.

And this concludes our analysis for today. Tomorrow, we will continue with more on the same subject.

CRITICA SEES NEED FOR PLEBISCITE ON AMENDMENTS

(Editorial: "Foreign Ministry Communique")

The Foreign Ministry yesterday released a press communique which was widely disseminated by all the information media in the country. The Foreign Ministry began by recalling that on 16 March it had said that the "revolutionary government had decided not to make any pronouncement on the Senate's resolutions in relation to the treaties on the 'Permanent Neutrality of the Canal and the Operation of the Panama Canal.'"

As was clearly stated on that occasion, the revolutionary government decided to abstain for now from giving an opinion on the Senate decision. The reason was obvious: The Panamanian people by constitutional mandate in the 23 October plebiscite gave their approval, without reservations or amendments, to the two treaties that were signed on 7 October 1977 in Washington before the chiefs of state of the continent in the OAS Room of the Americas, the so-called Torrijos-Carter treaties which form, under their signature, a single legal entity.

However, the U.S. Senate recently began debating the canal treaty, which is the more important for Panama, without lessening the importance of the neutrality treaty. Therefore, the Foreign Ministry affirmed that the national liberation process is a national commitment, which is why it decided to publicize the Senate resolution so that all the changes made to the neutrality treaty may be studied by all the people in order to achieve the broadest patriotic consensus of national opinion before making a decision on a matter of such vital interest.

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

Some of those amendments are acceptable, such as that agreed upon between President Carter and General Torrijos before the plebiscite was held. But there is one which, because it affects the sole responsibility of Panama in the canal's operation after the year 2000, cannot be accepted, primarily because it would permit U.S. armed intervention in the event of a canal stoppage, which is something that has happened more than once to its actual "owners."

We will try to study these amendments in order to pinpoint their lack of reasoning. Meanwhile, the revolutionary government can also prepare its reply, duly approved by the people, in case President Carter cannot manage to eliminate the humiliating and intolerable aspects of these amendments.

RADIO MIA FORECASTS NEW TREATY PLEBISCITE

(Unattributed commentary)

The Foreign Ministry communique did not reveal the official position of the Panamanian Government. The ministry merely issued a document to enlighten the nation on the amendments, reservations and changes made by the U.S. senators.

We do not know, however, what the position of the Panamanian Government, of General Torrijos or of the foreign minister is. In fact, they have turned the problem over to us that we might express our opinion as Panamanians.

Mario Velasquez' statements, however, have made us wonder, because he would appear to imply, as far as I can see, that President Carter was able to obtain the ratification of the first treaty by modifying his position concerning his promise to General Torrijos and allowing the amendments to be included. If Carter had not negotiated with DeConcini and the others, the treaty would probably not have been ratified.

The above leads us to believe that the treaty has not been altogether satisfactory to the chief of government's original position. Yesterday, for example, we approached Dr. Cesar Quintero while visiting the Finance Ministry and asked him about the matter. Quintero told us that the situation was one which demanded that every Panamanian express an opinion on the treaty and that he is considering initiating a serious analysis of the significance and effects of the amendments.

Taking all the above into consideration, we venture to advance the following journalistic predictions; first, that we will have to hold another plebiscite. Neither the government nor General Torrijos is going to assure sole responsibility for accepting a treaty with amendments which constitute changes.

Amendment means correction. Reservation, as far as we have been able to determine, means that the U.S. Government includes some considerations to the treaty which are attached to it and, once it is delivered to Panama with said reservations, if Panama fails to respond to them within a specific period of time as established by international law, then the reservations become part of the treaty, tacitly accepted through Panama's silence.

Consequently, we believe the government is again considering passing on the responsibility to the people. We do not believe that General Torrijos is considering accepting the treaty, as many claim. Thus, it is quite probable that we will have to hold another plebiscite on the ratified documents. We have come to this conclusion in view of the official silence, since nobody knows what the position of the government in this respect is.

Second, after the statements made last night by Mario Velasquez, who has all along been close to General Torrijos and who has usually followed the line of the government, we have concluded that the treaty was ratified because Carter failed to fulfill his promise to General Torrijos, and we believe that in view of this failure, the chief of government will not accept full responsibility.

And third, we believe that a meeting of General Torrijos with President Carter in Venezuela, with Carlos Andres Perez as mediator, is imminent. This meeting could be official or unofficial. As you know, our chief of government could get in his plane here, take off, and suddenly appear in Venezuela, even without the knowledge of President Perez. However, they will meet and talk, for such is the modern diplomacy introduced by General Torrijos, which has been criticized by some sectors because it dispenses with diplomatic coordination. Nevertheless, whether good or bad, such is the way General Torrijos has handled things in the country, and in doing so he has placed the problem of Panama on an international level.

We repeat, the three scoops we have for you today, the products of our journalistic deductions, are: first, that the government is not pleased with the ratified treaty; second, it is being implied, according to my understanding, that President Carter had to yield ground in his promise to General Torrijos, which will be sufficient reason for the treaties to be subjected to a new plebiscite; and third, a meeting between President Carter and General Torrijos during Carter's visit to Venezuela—or perhaps before—is imminent. Such are our scoops for today.

FOREIGN MINISTRY COMMUNIQUE ON TREATY CHANGES PRAISED

(The "Los Hombres y Los Hechos" column)

The communique issued recently by the Foreign Ministry under Nicolas Gonzalez Revilla's leadership revealing the amendments and reservations attached to the neutrality treaty by the Senate is very timely and patriotic. This has helped to determine the national consensus sought by the government.

It has been disclosed that one of the main points in the agenda Carlos Andres Perez has set up for President Carter's visit to Caracas is a review of the situation regarding the Panama Canal treaties. This is most important bcause it is another sign of Latin American solidarity with our country.

MATUTINO URGES RESISTANCE TO TREATY CHANGES

(From the "Bitacora de la Redaccion" column)

The amendments and reservations attached to the neutrality treaty and those which may be attached to the Panama Canal treaty will be discussed within the context of an extensive national consensus. The decision taken in this respect places in the hands of the people, of all Panamanians, the historic responsibility that must be borne. The measure is a wise one and in line with the October revolution's philosophy of dialog and consultation.

Let those who have denied us the patriotic right to end the causes of conflict stemming from the Hay-Bunau-Varilla treaty examine carefully the pronouncements to be made from now on.

It is our belief that our country has honestly lived up to its part in the negotiations which resulted in the Torrijos-Carter treaties.

And our leaders, like the people who ratified those legal instruments in a democratic plebiscite, recognized the many failings of the treaties and stated for the historical record that we remained "under the umbrella of the Pentagon."

But from that to having to accept the whims and power struggle of a group of senators who seek to wound Panamanians and their leaders with insults and humiliate us with amendments and reservations without name is something else.

Panama and its leaders cannot be called intransigent. But we should be intransigent in face of a situation which does not settle the causes of conflict but which, on the contrary, multiplies them in an offensive way.

In the meantime, it is up to the citizens to form an opinion, to evaluate the documents and measure the consequences and sacrifices and decide if we must continue struggling for the irreversibility of the process of decolonizing our fatherland.

At this time the Panamanian chief of government, Gen. Omar Torrijos, should be aware that he has never been alone and will never be alone in the struggle which he has led honestly.

TV COMMENTATOR ANALYZES DECONCINI, NUNN RESERVATIONS

("Analysis of the News" commentary by Mario Velasquez)

Of the group of reservations, understandings and amendments approved by the U.S. Senate, there are two which cause the most concern. They are the reservations presented by Democratic Senators Sam Nunn and Dennis DeConcini. Nunn's reservation states that nothing in the treaty shall preclude Panama and the United States from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate at any time after 31 December 1999 the fulfillment of their responsibilities to maintain the regime of neutrality established in the treaty, including agreements or arrangements for the stationing of any U.S. military forces or the maintenance of U.S. defense sites in the Republic of Panama after that date that Panama and the United States may consider necessary or appropriate.

In fact, what this reservation intends is to leave open the possibility to negotiate for the maintenance of U.S. armed forces in Panama after 31 December 1999, the date after which, according to the canal treaty, there will be no foreign troops in our country. Although a reservation of this nature has the strength of the fact that one of the signers is the foremost military power of the world, which today has militiary bases in our country and inexhaustible resources to force negotiations this amendment, in its specific wording, in any case leaves open the alternative of negotiations between the two parties, Panama could or could not negotiate, reach an agreement or not reach an agreement on the maintenance of U.S. defense sites in our country after the year 2000. This is a power or prerogative which it would have anyway, whether Senator Sam Nunn's reservation existed or not.

However, it would seem very premature to include in the neutrality treaty a clause to negotiate for an eventuality which could occur in any case within 23 years.

The other worrisome reservation is the one submitted by Senator Dennis DeConcini, Democrat from Arizona. This reservation states textually: Notwithstanding the provisions of Article V or any other provision of the treaty, if the canal is closed or its operation, are interfered with, the Republic of Panama and the United States shall each independently have the right to take such steps as it deems necessary, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

This reservation, approved by the Senate with the consent of President Carter, constitutes the real crux of the problem. Its text is fairly clear, and the conclusion is simple: This amendment establishes the unilateral U.S. right to intervene in Panama with military force to reopen the canal and reestablish its operation, as the case may be.

Some might think that Senator DeConcini's reservation is a kind of expansion, with different wording, of the principles contained in the Torrijos-Carter joint declaration of 14 October, which refers to the responsibility which the United States and Panama have to insure that the canal will remain secure and open to the ships of all nations, which says that each of the two countries, according to their respective constitutional processes, will defend the canal against any threat to the regime of neutrality and consequently shall have the right to act in case of aggression or threat directed against the canal or against the peaceful transit of ships through the canal.

However, this declaration of understanding incorporated as an amendment to the treaty ends by saying that it does not mean and will not be interpreted as the rights to U.S. intervention in the internal affairs of Panama. Any action on the part of the United States will be directed toward insuring that the canal will remain open, secure and accessible and that it will never be directed against the territorial integrity and political independence of Panama.

Let us now see what Senator Dennis DeConcini says about his reservation approved by the Senate. We have already read the text of the reservation, and the local press has published it. If that reservation worries us after reading it, let us now see what Senator DeConcini said in the U.S. Senate on the afternoon of 16 March when he explained the scope of his reservation: The purpose of this reservation, Mr. President, is very simple. It is designed to establish a precondition for the acceptance of the neutrality treaty by the United States. This precondition establishes that, disregarding any reason and in spite of any other measure which the neutrality treaty may establish or to whatever other interpretation it may be subjected, if the Panama Canal is closed, the United States has the right to enter Panama by any means that may be necessary to reopen the canal.

Senator DeConcini added: There are no conditions, no exceptions or limitations to this right. By the terms of this amendment the United States will decide when that necessity exists and will exercise its own judgment about the means necessary to insure that the canal will remain open and accessible.

Many of the discussions with respect to the Panama Canal treaty, added DeConcini, have centered on threats which might come from third parties, specifically from communist countries. While this concern is certainly justified, I have been equally concerned over the possibility that internal Panamanian activities could also become a threat to the waterway. Labor strikes, the actions of an unfriendly government, disorders and political uprisings, each one, separately or jointly, could cause the closing of the canal. As I read the treaties, there is no specific guarantee that any stoppage of the canal arising from the internal activities of the Panamanian may be rapidly and adequately handled.

DeConcini goes on to say: Although General Torrijos has brought a substantial degree of stability to Panama in these recent years, it can be argued that Panama's history is one of instability and political unrest. Senator DeConcini goes on to say that under normal circumstances the United States should not contemplate interfering in the internal affairs of another nation. However, there exist unique and special circumstances surrounding the relations between the United States and Panama. Since the turn of this century, the United States has exercised de facto sovereignty over the Panama Canal Zone. We have maintained this control over the canal for a simple reason. The Panama Canal is vital to the security, economy and armed forces of the United States.

This fact, DeConcini says, must be recognized in any treaty contemplating fundamental changes in U.S.-Panamanian relations. The amendment contains a very specific reference to the use of military force in Panama. I believe, DeConcini says, that these words are absolutely crucial because they establish the right—which I am not convinced is adequately contemplated in the body of the treaties or in the leadership amendments—of the United States to take military action if warranted by the circumstances. Furthermore, DeConcini says, this amendment makes it very clear that the United States can take military action in Panamanian territory without the consent of the Panamanian Government.

The Arizona senator then goes on to say: This issue of consent is also crucial because this amendment is directed primarily at situations in which the canal is closed due to internal trouble in Panama, such as strikes, political uprisings or other similar events, in which case Panamanian permission to take military action would be meaningless.

He then adds: If the United States must have a right under this treaty, that right must be to act independently to protect and keep the canal open.

Concluding, Senator Dennis DeConcini adds the following in one of his closing paragraphs: I hope the Senate will support this amendment I am submitting to the resolution of ratification granting the United States the right to keep the canal open. I am also pleased to announce that the U.S. President has supported this change and has indicated that it will be a constructive step toward achieving the goals of the neutrality treaty.

I feel this supporting speech delivered by Senator DeConcini will be a very important factor when the time comes to evaluate the nature and the scope of the reservation he submitted and which the U.S. Senate incorporated into the resolution of ratification. This closes our analysis for today.

Tomorrow, dear listeners, we will continue with our comments on and analysis of this topic, which is so important and exciting topic to Panamanians.

Camilo Torres Circle Member Criticizes Treaty Changes

(Statement by Olimpo Saenz, member of the Camilo Torres Circle, on the 27 March Foreign Ministry communique on the U.S. Senate resolution to the Panama Canal neutrality treaty, during the "Canonero de Domplin" program—live)

The nation, the Panamanians of today and tomorrow, can never accept, under any circumstances, these amendments, which are extremely humilitating to the nation and to every Panamanian. Neither can they accept the reservations and understandings, for similar reasons.

The treaty submitted to the consideration of the Panamanian people in the 23 October plebiscite did not include these reservations, understandings, or amendments. Since a treaty is a document between two nations and since the United States added reservations and amendments and the Panamanians approved a treaty in a plebiscite that did not include these reservations and amendments, then the Panamanian people must express its position concerning these amendments, reservations and understandings.

According to the U.S. Constitution, it is the Senate's duty to ratify the treaty. According to the Panamanian Constitution, the treaty must be approved by the Panamanian people in a plebiscite, as approved by Article 274.

Romulo [Escobar Bethancourt] may say anything, just as he has been doing since he became Torrijos' adviser. He said these reservations and amendments are palatable. The only palatable thing here is the Panamanian people, who must express themselves; the only palatable thing here is the predominance of the nation's permanent interests over the goverment's interest, over the chief of staff's interests, over the interests of the $50 million offered to the National Guard, over the interests of the permanence of Torrijos as head of state, over the interests of all those close friends, or, as Diogenes de la Rosa said, the close enemies in power who have been feasting for the last 10 years on the public treasury which they refuse to give up. That is why they tell Torrijos the amendments and the reservations are palatable. Nothing in those amendments is palatable to the Panamanian people. On the contrary, it is dirty water, contaminated with germs that will last for 23 years and, in fact, perpetuity, but only the terms have been changed. The people have been deceived on many occasions. In the Spanish and English languages, perpetuity and permanence mean the same thing: something that is forever, that never ends.

Independent Lawyers Favor Rejection of Treaty Amendments

In a lengthy communique to the nation delivered to the communications media this afternoon, the Movement of Independent Lawyers (MAI) makes an extensive analysis of the amendments, reservations and understandings attached to the resolution of ratification of the neutrality treaty and ends by asking the government to reject said reservations.

The MAI notes that this is the only way the Republic of Panama can safeguard its sovereignty and give proof that it is consistent with the people's struggle and the tide of history, which will eventually raze all colonialist structures still existing in the world.

The extensive communique is signed by Carlos Ivan Zuniga, Bolivar Davalos, Carlos Enrique Adams, Joaquin Ortega, Juan Felipe de la Iglesia, Garcia Almengor, Mario Galindo, Tomas Herrera, Rodrigo Sanchez, Jose Manuel Faundez, Natividad Pinango, Elsa de Garcia and Diogenes Arosemena.

Matutino Urges Calm Study of Treaty Amendments

(Editorial: "At the Edge of the Great Decision")

With a high sense of responsibility that will go down in history, the revolutionary government, through the Foreign Ministry, has released to the nation the text of the U.S. Senate resolution on the Panama Canal neutrality treaty.

This information, which has reached the public before the document is officially delivered to the Panamanian Government, is intended by the government to educate our people about the changes to the treaty so they can express their comprehensive, calm and, above all, patriotic opinion.

The language used in that resolution is clear, precise, without any contradictory terms or legal jargon. The senators say what the United States wants, how it wants it and how long it wants it. They also state what that nation will not do, what must be conceded both on their part and on Panama's regarding certain clauses of the neutrality treaty. In effect, what the Senate documents convey, according to the resolution, is how the senators feel, how we should feel, how they speak and how they must be interpreted. To all of this they add how we should feel regarding thier interpretation of that treaty and how they want us to interpret what is written therein.

Going even further, the added documents specify the cases in which Panama and the United States jointly can or must act accordingly to given circumstances. And going even further they also state when they can act unilaterally in circumstances which they and/or we, jointly or by supposition [por supuesto], consider an attack against the Panama Canal's neutrality.

It is left up to the analytical minds of Panamanian jurists to make a deep and detailed study of these amendments and the amended treaty. To us, the men in the street, the Panamanians who feel and who by feeling give an opinion of mind and soul, we have only—but not least—to make an evaluation of those amendments in terms of the whole. We will obtain a clear concept of them in the light of the debates which surely will be elicited by such a significant topic and await the government's decision on behalf of the Panamanian people.

That decision (it is good to know this and to trust that it will not be any other way because there is no reason to doubt it) will never be made without regard to the interests of the fatherland. In making the decision the team led by General Torrijos will listen to as many Panamanians as wish to state their opinion regarding an issue which commits us before history. And it will be a decision born of national dignity and the course set by the people when they approved the Torrijos-Carter treaty in the 23 October 1977 plebiscite—that treaty, and not another with added documents which distort the essence of the one approved by Panama.

Because if they present us a disfigured, altered document in place of the one signed by a Panamanian in the presence of the chiefs of state of America, then we would face two treaties, that of 1903 and that of 1978, the latter having been subjected to Senate surgery without the benefit of an anesthetic and containing no Panamanian signature. The watchword of the moment is to wait calmly, analyze thoroughly and decide with dignity.

Strength Seen in Government Silence on Treaty Changes

(Danilo Caballero commentary)

The calmness of our people is tantamount to struggle. The approval of the Torrijos-Carter neutrality treaty—with the amendments, reservations and other limitations imposed on the original test by the U.S. Senate—is undoubtedly the vital focus of political expectations in Panama. This is understandable if we take into consideration that the canal problem is not only a matter of extreme sensitivity for our people but one of primary importance to the revolutionary process because it establishes a landmark in the true beginning of the decolonization of our territory. The attitude adopted by the people and the government has been the right one.

The position to be adopted now is one of impartial, comprehensive and sensible analysis of the amendments we already know and those that will undoubtedly be added to the second treaty. This position has nothing to do with the passions and resentments of the fatalism regarding our geographic position which prevailed in Panama in previous decades. An impartial analysis should be made because what is at stake is the destiny of the fatherland, the very existence of our people who are in a difficult position. A comprehensive analysis also should be made because it is impossible to analyze the new situation created by the amendments and reservations without looking at all the implications at the national and international levels. It should be a sensible analysis, because it implies that a people with our pride and sensitivity will never accept anything that would offend, even in the slightest, our dignity and our condition as free men.

The stand taken by Omar has, then, been the correct one. It is that no official position will be stated until the debates on the second treaty are held and it becomes evident what new cats the senators are going to let out of the bag. Meanwhile, the amendments and reservations are being studied from two necessary angles: the legal and the political.

We Panamanians possess the basic ability to visualize the future without hurrying and in terms of the revolutionary line.

There are the 9 years of struggle of the revolutionary government and even more directly the historic words of Omar's letter to President Carter. In this letter, our people, through the chief of government, reminded U.S. imperialism that neither our geographical size nor the difference in wealth of the two countries allows a large nation to offend the dignity of a courageous people.

Our historical struggle has been for decolonization—to remove the ignominious enclave and the U.S. military presence from our territory.

Our people approved the Torrijos-Carter treaties because they realized that we were smaller in strength and saw the treaties as a guarantee of decolonization. Logically, if the treaties deviate from their original aim of decolonization they are no longer what the people approved in the October Plebiscite. It is worthwhile to recall all of this, especially because it is the stand adopted by Omar, who together with the people and the national guard will make sure that deecolonization becomes a tangible reality for the generations to come. Consequently, we must have a clear picture of this game of amendments and reservations. We must realize that what is really desired is to limit the development of the revolutionary process by circumscribing all our aspirations. This is only one part of the problem. The other is the defeatist attitude of certain sectors which have never understood that a struggle for national liberation and a revolutionary process in a country such as ours are determined by complex situations which are not evident at first glance.

No, gentlemen of the historic fatalism, the revolution is not a party or a game. It is a very difficult science. It is a continuous struggle, and its duration cannot be determined by individual desires but by specific conditions.

Those of us who were born with the revolutionary process as a coherent voice in the media have complete trust in Omar and in our people. We know as well as everybody should that negotiations were chosen as the sacrifice with the least social cost. But the calmness of our people and revolutionary government should not be confused with apathy or lack of enthusiasm. On the contrary, that calmness is synonymous with struggle because those who are ready to give everything for the fatherland do not have to brag about it. In the revolutionary struggle calmness is a basic condition which reflects maturity. And in the same manner in which we calmly analyze the meaning of amendments and reservations we will confront any new situation that may arise and defend the honor of Panama. We are certain that the man who has placed our fatherland in a position of international dignity for the past 9 years is the one who will take up the final victory.

Columnist Examines Senate's Treaty Approval Role

("Bona Fide" column by Camilo O. Perez)

When the canal and neutrality treaties were still being negotiated, we wrote in this same column about the U.S. Senate's role in the treaties' ratification. We were not mistaken when we said that there were three alternatives:

1. That the Senate would ratify the treaties as accepted by Panama.

2. That it will definitely reject them.

3. That it will return them with reservation and amendments.

Today we are faced with the third alternative. Therefore, we believe that it would be well to reprint the column published last August. It reads as follows:

Can the Senate change or amend a treaty? Article II, Section 2, Paragraph 2 of the U.S. Constitution determines that the president can make international treaties "with the Senate's advice and consent based on a two-thirds majority vote of the senators present at the time of voting."

Notwithstanding this constitutional precept, practice as well as jurisprudence have reduced the senatorial function to the simple ratification of treaties. Therefore, the power and prerogative of negotiating international treaties has been left exclusively in presidential hands.

It is understood, however, that a pragmatic president will do everything possible to have both chambers on his side when negotiating treaties. This can be done by keeping Congress constantly informed, having the Congress' prior approval of the treaty in question or at least keeping the Senate Foreign Relations Committee informed about treaties that could present problems.

In 1936 the U.S. Supreme Court handed down a decision in this respect in the case of the United States versus the Curtiss Wright Corporation.

The Senate's specific functions begin when it is asked to approve a previously negotiated treaty. When this situation arises, the alternatives are the following:

A. Unconditionally approve the treaty in question.

B. Deny its approval.

C. Accept the treaty with conditions by stipulating a series of changes or amendments to the treaty.

However, the third option will practically create another treaty and would call for negotiations between the two parts involved. The Senate cannot, by means of amendments, impose its will on a sovereign nation. This was clearly established by the Supreme Court in the case of the Fourteen Diamond Rings versus the United States.

The above article, based on a consultation made by Dr. Hugo Spadafora, means that the third possibility, previously considered and a reality today, establishes the criteria for a rejection by means of amendments and reservations from the point of view of U.S. jurisdiction. Whatever Mr. Carter says now is in conflict with this juridical tradition. We shall continue. . . .

Aristides Royo Returns from U.S. Visit

With the return of Dr. Aristides Royo, negotiator of the Torrijos-Carter treaty, from the United States yesterday, the day ended in a suspenseful atmosphere with regard to the status of ratification of the canal documents. Approached by CRITICA at the Tocumen Airport terminal, the young negotiator was very cautious and sober in making statements, since his mission to Washington was carried out to express the official opinion of the Panamanian Government.

Dr. Royo did, however, call attention to the climate prevailing in Washington among members of the Senate. Specifically, it was learned that several senators who were in their respectives states for Easter week found quite a bit of discontent with regard to the senatorial decision to ratify the neutrality treaty. In fact, it is well known that there are already 200,000 signature on the petition to revoke the mandate of Senator DeConcini of Arizona, despite the fact that that senator suggested the famous reservation which harms the interests of Panamanians.

It is rumored in news circles that the purpose of Royo's trip to the U.S. capital was to express officially to President Carter's team of advisors the Panamanian Government's displeasure with the reservations and amendments introduced into the neutrality treaty.

Reports to Torrijos

In Farallon Chief of Government Gen. Omar Torrijos received a direct and confidential report from Aristides Royo, education minister and negotiator. Royo arrived from Washington last night, where he had been on an official mission.

Commentator Fears Precedent Set By Neutrality Treaty Changes

("Analysis of the News" commentary by Mario Velasquez)

The results of the voting on the neutrality treaty were described by the U.S. press and political analysts in that country as a victory for President Carter.

The narrow margin by which the treaty was approved came about after what has been termed the greatest and most intense public relations and publicity campaign ever carried out by the White House. The approval of this treaty and the approval of the treaty which will be voted on in a few weeks constitute a vital objective for Carter and his administration.

It was not only a matter of Carter's interests in solving an old conflict with Panama but also a concern with other domestic and international problems connected with the treaties. In his 14 months in office the neutrality treaty has been the first document of true importance which the Carter administration succeeded in having approved at the Capitol. During these 14 months the Carter administration has been going downhill in the eyes of the U.S. public. Several news articles and commentaries have questioned the President's ability and competence to deal with the complex and difficult public affairs of the United States. The rejection of the Panama Canal treaties—after the extraordinary publicity campaign carried out by the government in favor of the treaties and after the degree of Carter's participation in it—would have had devasting effects on the image of the White House and the President. Carter spoke with each of the 100 senators at least once. He made 87 telephone calls in the past 2 weeks and called or sent messages to certain stubborn senators at least half a dozen times. The President also held meetings with civic and political leaders and newsmen from at least 35 states to elucidate and brief them on the treaties. The day before the voting, Carter made 16 telephone calls in a desperate search for the magic number of 67 senators. Despite the spectacular decorations of this White House publicity campaign, I have the feeling that in a way President Carter and his advisers miscalculated the level of influence they could exert and the degree of resistance they would find in the senators. The fact which speaks for itself in this sense is that it was not until the morning of 15 March, 30 hours before the voting that President Carter, by accepting the dismal DeConcini reservation, gathered the votes necessary to reach the key number of 67 senators.

In effect, the 23 March issue of NEWSWEEK magazine affirmed that the DeConcini reservation was an instrument to help persuade at least three other senators, Bellmon of Oklahoma, Brooke of Massachusetts and Paul Hatfield of Montana, who in the end voted for the treaty. Carter accepted the DeConcini reservation because it was the only way to get the 67 votes. Despite the fact that Carter admits in the TIME magazine article that he had given his word to Torrijos, the President of the United States could not lose the vote. He had to win it at any price. This decisive fact occurred after the U.S. media had denounced certain maneuvers made by the White House to satisfy the requests of certain senators and thus win their support. At the end of the long debate on the neutrality treaty the U.S. Government realized that a defeat would not only have negative effects on its bilateral relations with Panama and multilateral relations with Latin America, but that it would affect the image of the Carter administration in important matters such as the energy bill, the SALT talks with the USSR—a pact which, in fact, is expected to meet strong resistance in the Senate—and U.S. Middle East policy. The treaties have even been connected to the existing concern over the presence of sizeable Cuban armed forces in the Horn of Africa.

Carter administration experts estimated that the rejection of the treaties would have a negative effect on the government, especially on Jimmy Carter himself, in the future handling of other affairs and on the political future of the President and his reelection possibilities for 1980.

In regard to the fate of the other treaty, which is the main treaty of the documents, I have the feeling it will also be approved. My fear is that since the door to amendments has been opened, and a precedent has been established on reservations and understandings in the ratification solution, this treaty will also be approved with a series of reservations that could change the spirit and wording of the treaty. If that occurs, it would be up to the Panamanian Government and people to adopt a decision on the treaties, amendments, reservations and understandings. Insofar as this decision rests with General Torrijos, I believe that we would be experiencing one of those crucial moments in the life of a country and its leader, in which case Torrijos would probably be facing the most important decision ever confronting a Panamanian in the 75 years of the republic's existence.

Treaty Changes Called Unacceptable Without New Plebiscite

(Article by Antonio J. Sucre: "How Do You See the Treaties? Quite Mistreated!")

Neither the question nor answer are mine. They were offered by two prominent Panamanian jurists shortly after the U.S. Senate's approval, with amendments and reservations, of the neutrality treaty.

This is the case, and I define my position as follows:

The amendments consist of the word-for-word addition of the Torrijos-Carter declaration into Articles IV and VI of the neutrality treaty. Such amendments are "palatable" [potable], according to Romulo Escobar Bethancourt, personal adviser to the chief of state.

If we apply this gastronomic term to diplomatic terminology, it would appear to indicate that the national government has decided to support such amendments, employing the formality that, since the aforementioned unsigned declaration had received wide publicity in Panama before the plebiscite, it was tacitly approved when the treaties were approved.

However, the reservations do have a deep effect and cannot be termed anything but sophisticated surgery.

Panama cannot reject such reservations without rejecting the treaty. If Panama chooses to accept the altered treaty, it would be committing itself to negotiate the concession of military bases after the year 2000.

One way or the other, sooner or later it would have to give its consent to the presence of military bases on its territory beyond the year 2000.

And this contradicts the spirit and text of the treaties submitted to plebiscite.

Mistreated as they have been by the U.S. Senate, such treaties, once they were approved by the United States, would require a new plebiscite in Panama.

To become "palatable," such reservations would have to be filtered through a new democratic process, which is obviously what they are trying to avoid.

Torrijos, National Guard Officers Discuss National Situation

Panamanian Chief of Government and National Guard Commander in Chief Gen. Omar Torrijos met with the General Staff, the military zones chiefs and the chiefs of several National Guard combat units at the Tinajita military post and from there left for Pedregal on a 15-km military administrative march [marcha administrativa militar] which ended at air force installations at Tocumen airport.

Along the march route a large number of people greeted the participants. During the march, General Torrijos, as well as Col. Garcia Ramirez, second in command, members of the general staff and the rest of the officers exchanged opinions on various matters an devaluated the situation of the country which awaits ratification of the new canal treaties by the U.S. Congress.

Col. Garcia Ramirez noted the importance of the equality existing among the National Guard officers and the high command. During the meeting, recently commissioned officers held cordial talks with General Staff members who later met separately, apparently to discuss the future of the canal treaties.

This meeting was held behind closed doors at the air force installations at Tocumen airport. Nothing has been revealed publicly about the subjects discussed or agreements reached. So far, no authorized spokesman has made any comment.

Torrijos Address Journalists on Canal Treaties, Elections

[Speech by Gen. Omar Torrijos Herrera during opening of Fifth National Journalists Congress in Santiago, Veraguas Province. on 1 April—recorded]

Executive board members of the National Union of Panamanian Journalists, Monsignor Nunez [as heard], all comrades: I wanted to take advantage of this opportunity during the national press meeting in Veraguas to make certain pronouncements which directly affect the course of the domestic and political life of the country. However, I first want to commend you on the organization, the hours of work that I know went into organizing a congress such as this one and for the great many truths that have uttered here, truths which I know and which I will summarize by recalling a single incident.

When Dr. Escobar Bethancourt spoke about the role of youth guide played by Manuel Celestino Gonzalez, I could remember that during my early years as first lieutenant and second lieutenant in the National Guard, Manuel Celestino Gonzalez used to visit the prison house regularly. From the place where we picked him up and took him to his almost regular residence, which was the model prison—the regular residence of all those whose views were opposed to the system—along that route, whether as sermonizing or advice or plain conversation, everything he said was true. Everything he said was true, and that is how one came to realize that the mission of the armed forces could not continue to be the persecution of anybody for his ideas or because his way of thinking asked for changes in the status quo.

We are almost 75 years from the day of our independence. The country's social calendar is 22 years away from the 21st century.

I mention these dates because it is necessary for us to understand that whatever we do now or fail to do is directly related to the way in which the future generations will greet the dawn of the 21st century.

This year, to speak even more specifically, this year, 1978, rife with emotions, triumphs, unpleasantness and victories, each Panamanian has to think over and become convinced that his views on the treaty should be responsible and well thought out, so that his final decision will be a contribution, will contribute to the national life a view that was well thought out in his own conscience since the government will not express any views or make final decisions or condemn or applaud what is going on right now until they return to us the treaty that we forwarded. Then, within an overall framework, we will examine what the people approved during the plebiscite and how the U.S. Senate interpreted the views that the people approved in the treaties that were submitted for discussion and approval during the plebiscite.

After that, in a wide-reaching and far-ranging way, using all means of communication, we, the government, will consult the views of this people, and within the framework of those views we will decide on the answers and the way to respond to what the United States has sent back.

This is the time when all of us, including myself, must make great efforts not to feel, feel and feel but to think, think and think and not fall into the unsound attitude of considering the returned treaty to be bad if it affects the interests of the group that it represents even if it is good for the country or the opposing view—bad for the country but good for the stability or survival of the government.

In this respect I can give full assurances to the people through all the newsmen present here that if the treaty harms the interests of the country it has to be bad for the interests of the government. This is not an observation that I have made by myself. I made it after consulting with the ranking military commands and after observing that my daily promenades [patrullaje], daily conversations and the daily dialog begun almost 10 years ago have made me realize that if the permanence in power of General Torrijos and his government team depended on selling out the homeland, selling out its dignity, selling out the dignity of those who have not even been born yet, then we would not stay in power a single minute after such a sell-out plan or idea came to light. I say this because back in 1969 and 1970, when we had not even formed a government team and when many of our plans and desires were mere ideas and not programs as they are now, we were threatened along with other guard officers who held views similar to those of the people who maintain the enclave. We were threatened that if we did not carry out what the government that we had just overthrown had agreed upon in the sense of ratifying the treaties as soon as possible, the stability of the government would be jeopardized.

That was the time when at the International Hotel—and I think in the presence of Dr. Romulo Betancourt [as heard] and others—I said that if in order to stay in power I had to betray my country, I would rather leave right away. And I say this because it has been my consistent, consistent, consistent way of thinking, and when a man is consistent in his way of thinking no fear can be harbored that he will change his conceptual, intimate, worthy truth overnight for a truth based on convenience.

I attach great importance, almost historic importance to these elections, the electoral process that has already started and whose initial stages are already being carried out, because this event coincides with the greatest international event that our country has experienced, the ratification or refusal to ratify [the treaties] and because this event comes at a time when history sees all the countries that support the Panamanian cause.

All countries without exception—not one has failed to voice its solidarity so far—have their eyes set on the domestic and politcal behavior of the government and people of Panama.

I understand that every era, every year, every political year, every stage has its development plan and its politcal leadership plan. I understand that every era is marked by a certain attitude, and I think it is high time to say that the government is willing to assume an attitude, to assume the initiative of an attitude of realignment of the politcal structures. In this sense, the executive branch has not adopted and does not plan to adopt an unyielding, sectarian attitude because unyielding and sectarian attitudes de-

stabilize the government and could perhaps lead to the reappearance of the elements of social unrest which compelled the National Guard to become involved in national life. What we do will be done with the conviction that we should make an effort to end the causes of discontent that permanently placed the population—the students, the workers, the Panamanians [as heard]—in opposition to the public forces, and we would not even want to remember those things of the past. That is why we cannot be unyielding, precisely because we were used almost in a (sports-like) fashion to correct the intransigent attitudes of other governments.

If after August, which I am leaving open for you to think about or to analyze, the incumbent and the elected representatives feel that adjustments have to be made to the constitution to accommodate the legislative, administrative and political structures so that the country can enter a stage of increased consultations, the government will not take issue with this, and it is willing to take the initiative to discuss whether the next representatives assembly can include with effective voice and vote, with full legislative powers, the vice presidents elected in every province into the National Legislation Council.

Furthermore, as food for thought, if you do not feel that this is sufficient, we are even [willing] to include the entire assembly, to grant the entire assembly the real power to legislative and not have any laws that are not approved by consensus, a consensus of half the members plus one, and this would compel the executive branch to consult more extensively, more profoundly and more regularly on laws which have great significance in the national life. This also compels the representative to consult the various opinion groups existing in his electoral jurisdiction because if he does not consult with them and airs views that are not checked out with the people who eletced him, he could make any of the mistakes that would lead to the revoking of his mandate.

All these ideas are aimed at achieving a somewhat more flexible administration, a legislation that is closer to the people and is the result of greater consultation. The executive branch would also be willing to share its responsibilities in certain important administration post, such as certain autonomous agencies, by submitting the appointment of certain directors to the approval of the representative assembly. In other words, if the executive branch submits the appointment and the assembly does not confirm it, the assembly would be involved in the election of those who from prominent positions have to cope with major national work groups. Thus we are giving the 505 representatives what in the United Nations could be called a veto power.

The public forces which I am honored to command do not harbor and have never harbored the intention of making incorrect, domineering, terrorizing use of Article 2 of the constitution. What does scare the public forces, and I want to state its through the most outstanding representatives [of the people], is the prospect of going back to those times when the public forces were consulted only to be ordered to fix the bayonet and disrupt the tranquillity, the liberties of all those men who, filled with extreme emotion regarding the cause of their country, could not endure so many injustices and consequently disrupted order by staging demonstrations. What order did they disrupt. I wonder. The order established by the governments of the chosen group and for the chosen group.

Indeed, the officers have asked me that if there is any change, any constitutional adjustment, [cualquier cambio, cualquier ajuste constitucional] it reduce the possibilities that the public forces may be used as forces of revenge or reprisal to correct the errors, the neglect, the carelessness and the frauds of the governments, as we were so often used in the past.

I am airing all these views because I am convinced of the value of the system, a system which honors the natural leaders in every community, a system which gives opportunities to all those who really deserve them and a system in which leading a man to the polling booth to cast his vote of support for the natural leader is a fact that is viewed as a conversation between two neighbors and as a commitment that one neighbor enters into with another. It is a system that is based on real, not apparent, democracy, a system which tackles real, not apparent, problems, a system which aims for real solutions and not apparent solutions. If, despite the system, isolated instances have occured in the administration, and isolated instances have indeed occurred, they had to occur. [sentence as heard] Let us not deceive ourselves, they will not be completely eradicated. But they are isolated instances. They do not constitute the overall conduct of the government. Proof of this is that, once they were discovered, punishment was meted out. How? The greatest punishment for whoever misuses state funds or his powers is not prosecution, because prosecutors hardly even punish anymore since the thieves do not leave a bill, and if one does not have a bill they are not punished. The greatest punishment is publicity. That is it. The press commending, or punishing [sancionando] someone who does not deserve to be applauded. I say that this system aims for real solutions [causas], because throughout 9 years we have been able to introduce many real solutions. We have been able to eradicate many problems the lack of solution of which once kept the people in a constant state of protest. But back then it was much easier for the governments to stay in power because they had a well-behaving and ordinary [adocenada] guard which was capable of hurting, imprisoning or killing even the lowliest student representative or even the lowliest son of this poor people. Thank you. [applause]

Negotiator Lopez Guevara Analyzes DeConcini Reservation

The government has sponsored a series of informational meetings with communications media representatives to explain those points of the treaties which the government feels should be made clear to the community. The second meeting of this series was held today with negotiator Carlos Alfredo Lopez Guevara presiding. Lopez Guevara began by saying that there is a basic problem in the usage of the words, conditions, reservations and understandings. According to Lopez Guevara, these are terms used by the Senate in its internal relations with the U.S. President. What must be clear, Lopez Guevara said, is that the two countries are bound by the contents of the notes exchanged on the ratification documents. He added that whatever is said in exchange notes will also be negotiated, and the two countries will be bound by it.

However, Lopez Guevara said that Panama has formally requested these documents in order to have a more specific idea of the scope of the terms used by the Senate and their connotation in the U.S. legal system.

Lopez Guevara explained the meaning of the word reservation as it is used in international law. He said that it means a counterporposal made by one party to the other. This counterproposal can be accepted, rejected nor negotiated upon by the other party. If one of the parties rejects the counterproposal or reservation and at the same time presents another, this must be done before the exchange of notes because one cannot participate in the exchange ceremony with reservations.

Lopez Guevara described the exchange of notes as a ceremony that should be carried out based on the identical English and Spanish versions of the text previously approved by the two parties, the United States and Panama in this case.

During the question and answer period, Lopez Guevara expressed his point of view by stressing that he feels it is important for Panama to reiterate the principle of nonintervention in the exchange of notes. According to Lopez Guevara, not as a negotiator or government official, but in his own personal opinion, the two amendments known as the leadership amendments are an expansion of the Torrijos-Carter memorandum of understanding issued on 14 October 1977. According to Lopez Guevara, the Nunn reservation does not contradict specific regulations of the treaty because in the same fashion in which Panama can negotiate commercial and agriculture treaties with the United States it can also negotiate in the future a possible U.S. military presence.

Lopez Guevara added, still expressing his personal opinion, that just as a constitutional regulation could be used to dispose of the Nunn reservation, there are legal arguments which could also be used to detract from the value of this reservation.

Lopez Guevara answered a question regarding Aristides Royo's recent trip to Washington by saying that today's meeting was not held for the purpose of releasing news but for the journalists and government officials to talk. He referred to Royo's trip to Washington as a dialog held by the two parties.

During the meeting Lopez Guevara said on three different occasions that the national government has not adopted a position regarding the amendments and reservations introduced by the U.S. senators in the ratification process in the United States. He said that the government will adopt a position as soon as the U.S. Senate completes the U.S. ratification process. He described a preliminary statement as unnecessary.

Replying to questions, Lopez Guevara said that the documents issued by the Foreign Ministry would open what he termed to be a full range of possibilities regarding a national consensus. In giving his opinion as a lawyer, he stressed that if the amendments and reservations introduced by the Senate and included in the ratification resolution involve substantial changes to the treaties approved by the Panamanian people, then another plebiscite would have to be held.

However, Lopez Guevara made his very personal interpretation of the DeConcini reservation. He said that it is a naked and bare-faced interpretation of Article 4 of the neutrality treaty. He said this naked and bare-faced presentation is in fact more offensive, but that it does not detract from what is stated in Article 4 of the neutrality treaty. However, Lopez Guevara conceded that DeConcini's reasons for the reservation given to the Senate on 16 March would serve, in case of doubt, as a reference point to clarify the extent of the reservation approved and included in the resolution of ratification. Lopez Guevara estimated that if Panama makes an effort to reaffirm the nonintervention principle expressed in the exchange of notes, this principle would prevail over the DeConcini reservation because it has legal precedence. In any case, Lopez Guevara replied to questions of possible U.S. intervention in Panama as a result of the DeConcini reservation. First, he said, the U.S. attitude at the present time would not permit the disembarkation of Marines, as in Santo Domingo. Second, after the U.S. experience in Vietnam, the Senate would not permit U.S. troops to be sent abroad again. Third, the attitude of the U.S. people is changing. He noted in this respect that it had not taken him, Lopez Guevara, more than 10 minutes to change the mind of an average U.S. citizen by explaining things to him.

Fourth, he has faith in what he perceives to be the honesty of U.S. youth.

Lopez Guevara rejected the notion that during the neutrality treaty debates the U.S. senators made a show of arrogance by taking into consideration only the interests of their own country without any consideration for the small country they were dealing with. Lopez Guevara mentioned the names of two or three senators, including Frank Church, who spoke in favor of Panama. The Senate is made up of 100 senators. He did not make any comments on the statements of minority leader Howard Baker, who immediately after the voting on the neutrality treaty told the U.S. press that he had never before received such a large amount of mail as that received by the Senate against the Panama Canal treaties.

Even though Lopez Guevara showed respect for freedom of the press, a freedom accepted by the Panamanian Foreign Ministry itself, he warned of the danger of elaborating on the possibilities of intervention opened by the DeConcini reservation, noting that this could serve as a precedent and that there was no reason to play into the hand of the North Americans.

Columnist Calls Some Treaty Amendments Acceptable

("Macheteando" column by Mario Augusto Rodriquez: "Acceptable Amendments")

Among the additions which the U.S. Senate made to the Torrijos-Carter treaty to transform it into a different treaty, there are, in my opinion, some which would be acceptable or, even more, would have to be accepted by our government and people. I refer to those which constitute only a transcription of the memorandum of understanding agreed to by President Carter and Chief of Government Torrijos before the treaties were submitted in a plebiscite to the Panamanian people. It is true that the memorandum was never signed by either Carter or Torrijos. But it was publicly accepted by both government leaders, that is to say, it is backed by their word. And the word of a statesman, of a government leader, is worth as much as or more than his signature. In Panama's case it is true that the memorandum was not included among the documents specifically listed on the ballot. But it is equally true that its text was known much in advance, that it was public knowledge that General Torrijos had not only approved it but had expressed his willingness to sign it. That is to say, when we went to the polls and chose the affirmative answer by a majority of over two-thirds, we knew exactly that the corresponding texts were interpreted and would be applied in accordance with the explanation contained in the memorandum subsequently added as an "amendment" by the Senate.

In addition, the text of the memorandum of understanding in no way changes the significance of the dispositions originally included in the Torrijos-Carter treaty concerning neutrality.

Immediately after the "amendments" consisting of the Torrijos-Carter memorandum of understanding come the "understandings" added by the Senate on its own account and at its own risk. The first "understanding" refers specifically to Article V of the Torrijos-Carter treaty on neutrality. It is the most important article for Panama and in a clear and precise way guarantees our rights and responsibilities after the year 2000.

That article is also convenient for the United States because it guarantees that Panama will not be able to permit the military forces of any other country to occupy areas which up until that date had been occupied—although in an evidently arbitrary way—by the U.S. military. But it appears that not even that guarantee was sufficiently satisfactory for the minority of conservative senators who were able to impose their prejudices and perplexities "democratically" upon the majority of their colleagues and even the Government of the United States.

Torrijos Letter Explains Stand on Treaty Ratification

Dr. Jorge E. Illueca has explained to each and every one of the United Nations permanent delegates Panama's official position on the amendments, reservations and agreements introduced into the Torrijos-Carter neutrality treaty.

Dr. Illueca, our representative at that important international organization, explained to all the delegates that the Panamanian Government has a specific method to deal with the recent developments connected with the Senate's decision to introduce reservations and amendments into the neutrality treaty. At the right moment, he added, the Panamanian Government will announce its final decision. The document was drafted by our Foreign Ministry.

The Panamanian document was immediately translated into all the official working languages of the United Nations.

Meanwhile, it has been learned that the Panamanian chief of government has sent a letter to all presidents, chiefs of government, kings and other leaders through the representatives of the more than 115 states that comprise the United Nations. The letter explains Panama's position on the U.S. Senate's current process of ratification of the treaties.

Jurists Score DeConcini Treaty Reservation

At a panel meeting sponsored by the Panamanian Executive Association [APEDE] last night, Panamanian jurists Julio Linares and Cesar Quintero advocated the complete rejection of the DeConcini reservation to the neutrality treaty.

Both agreed that the DeConcini reservation contradicts the originally signed neutrality treaty because it grants the United States the right to intervene in Panama, to occupy our entire territory militarily and to exercise sovereign rights at least over the occupied areas.

The two jurists pointed out that any reservation to a treaty entered into between two nations is considered to be a rejection of the treaty, since it is an attempt to modify or limit the scope of the treaty, and that the reservations made to the neutrality treaty affect the structure of the treaties as originally approved.

Dr. Quintero said he doubts whether the U.S. Senate will ratify the Panama Canal Treaty without reservations and amendments. To him, this is the more important of the two treaties.

Dr. Quintero also pointed to the serious threat to the integrity of Panama as a nation posed by the reservation presented by Senator Nunn, which states that after the year 2000, Panama and the United States may at any time after 31 December 1999 make agreements on the fulfillment of their responsibilities to maintain the neutrality regime, as well as on the stationing of U.S. military forces or the maintenance in the Republic of Panama of U.S. defense sites after the date that both nations may deem appropriate. Dr. Quintero explained that he feels that sooner or later Panama will have to consent to the presence of military bases on its territory beyond the year 2000.

The distinguished Panamanian lawyers agreed that for approval of the neutrality treaty, the national government must call a second plebiscite because the constitution of the Republic of Panama establishes that to ratify a treaty of the type with which we are concerned, it is imperative to have the approval of the Panamanian people and the executive branch. On the other hand, the jurist explained, if the treaty is rejected by the Panamanian people, the national government does not need to call a plebiscite.

Dr. Quintero said he is of the opinion that President Carter is committed to the ratification of the treaty. It is clear, however, he added, that he cannot reject any of the amendments or reservations introduced by the U.S. Senate.

If the treaties are rejected by the Republic of Panama, they would become ineffective, and a new period of negotiations could be reopened.

The reservations made to the neutrality treaty, according to Dr. Linares, are contrary not only to the UN Charter but to a number of treaties which prohibit the intervention of a state in the internal affairs of another.

Dr. Carlos Sucre, another panelist invited by APEDE to take part in the broad debate on the reservations, amendments and accords to the neutrality treaty, reserved the right to express his opinion after the U.S. Senate decision on the Panama Canal treaty.

Some persons attending the panel, members of APEDE, questioned the need to wait until the Panama Canal treaty ratification, while others opposed ratification of the treaties with the reservations introduced by the U.S. Senate.

Independent Lawyers Call for Rejection of Treaty Changes

(Manifesto No. 4 Issued by Movement of Independent Lawyers)

The Movement of Independent Lawyers (MAI), which has carefully followed the development of the U.S. Senate deliberations regarding the ratification of the Torrijos-Carter treaties, believes that since the first phase of the ratification process is over, it should explain its position on what that legislative body has done so far.

As the public knows, the MAI opposed the ratification of the Torrijos-Carter treaties by the Republic of Panama on the grounds that the treaties, far from satisfying the legitimate aspirations for which the Panamanian people have struggled, imposed onerous burdens on our country which are in no way justifiable and which deeply harm the most cherished national interests.

When the U.S. Senate began formal consideration of the treaties, the MAI decided to refrain from making a public pronouncement regarding the treaties or the process of ratification. Two basic considerations justified this decision: first, that anything the movement said would not exert any desirable influence on the decision reached by that legislative body with regard to the matter concerning all of us. The second and perhaps more important reason concerns the MAI's interests in not having its position regarding the treaties confused with that of the senators who, for reasons very different from ours, opposed ratification of the treaties.

In the face of the fait accompli of the amendments and reservations (hereinafter to be called the senatorial changes) which the U.S. Senate has introduced into the misnamed "Treaty Regarding the Permanent Neutrality and Operation of the Panama Canal," the national government has decreed an official silence pending the completion of the ratification process. This silence, if it were really observed, would perhaps be justified by virtue of the wide-ranging and serious consequences that will necessarily result from whatever decision the government reaches with regard to the acceptance or rejection of the amended treaties. However, a source of concern lies in the fact that while decreeing the above mentioned silence the government, in the voice of Dr. Romulo Escobar Bethancourt, announced that the senatorial reforms are "potable" ["potables"], which is equivalent to saying that they are acceptable. Apart from the fact that this statement is a prejudgment regarding the basis of the problem which allegedly is to be studied, it could undoubtedly also induce many foreign govern-

ments which have supported our cause to hasten unwittingly to the support of the amended treaty, when in the final analysis the position of the Panamanian Government must be precisely that of rejecting the new contractual texts as the historic meaning of the Panamanian people's struggle demands. The situation that would result from such actions by foreign governments would in no way be favorable to our national interests.

In view of the Senate changes and the approval accorded them initially by the Panamanian Government, the MAI believes that the reasons for maintaining silence no longer exists, and it believes that the time has come to explain its position with regard to the ramifications of these changes.

As far as is known on the date of this communique, the senatorial changes consist of: A) incorporation of the Torrijos-Carter statement of understanding into the neutrality treaty; B) provision for the possibility that the Republic of Panama may grant to the United States of America, after the year 2000, the right to maintain military bases on Panamanian territory; and C) concession to the United States, independent of the other provisions of the treaty, of the unrestricted, unconditional and unilateral right to take whatever measures it considers convenient—including the right to use its armed forces on Panamanian territory without the consent of the territorial sovereign—in the event that the canal is closed or its operations are interfered with for any reason, including purely domestic matters.

The Torrijos-Carter statement of understanding of 14 October 1977, as the MAI stated from the beginning, reiterated by way of clarification certain rights injurious to Panama which are granted to the United States in the neutrality treaty—rights which also constitute a most emphatic denial of neutrality in the true sense of the word. From this viewpoint, the Torrijos-Carter statement of understanding, despite its faulty wording, does not grant to the United States rights other than those contained in the treaty to which the statement of understanding refers. Consequently, the incorporation of said agreement into the text of the neutrality treaty, although formally an amendment of the treaty, in the main merely restates the harmful concessions granted in the treaty. Therefore, the amendment follows the literal sense of said understanding which repeatedly refers to the treaty and is based specifically on Articles 4 and 5.

The other two senatorial changes mentioned in previous paragraphs, on the contrary, if accepted by the Republic of Panama, would undoubtedly constitute substantial changes in form and content of the neutrality treaty, to the extent that the United States, through these changes, has proposed to the Republic of Panama the conclusion of a treaty that differs from the original.

One such change, ignoring the literal sense of Article V of the neutrality treaty, according to which after the year 2000 "only the Republic of Panama shall maintain military forces, defense sites and military installations within its territory," considers the possibility that the Republic of Panama will grant the United States the right to have military bases on Panamanian territory after that date. It is said that this change is without substance since it is always within the power of any state, in the exercise of its sovereign rights, to amend at its own discretion through bilateral agreements the treaties it has concluded with another state. This argument is not valid. In effect, it happens that one of the aspects of the neutrality treaty highlighted by the national government was the very fact that it called for the dismantling of existing U.S. military bases in Panama by the year 2000, a fact which might have induced some states interested in this dismantling to take part in the neutrality treaty by becoming signatories to it. With this adherence completed, repeatedly government spokesmen [as published] would no longer be a bilateral agreement but would become a multilateral agreement with the consequence that any change which anyone desired to make in it would have to be agreed on by all the states signing the treaty. In contrast, the senatorial amendment under discussion would permit the Republic of Panama and the United States without the consent of the other states taking part in the treaty, to conclude bilateral military agreements to permit the United States to maintain bases in Panama after the year 2000. Such agreements would ruin the neutrality treaty even more. This being the case, no state which is not within the sphere of U.S. influence would be party to this treaty. Nobody who studies the ramifications of the senatorial reservation in the light of the aforementioned can say that the reservation is harmless.

The other change which has been mentioned, that of Senator Dennis DeConcini, would give the United States the right to take any measures it deems necessary, including the use of its armed forces in Panamanian territory, if the canal is closed or its operations are interfered with for any reason, even when such reasons pertain exclusively to the internal affairs of the Republic of Panama.

Viewed from any angle, the DeConcini reservation is a reprehensible and outrageous U.S. attempt to get the Republic of Panama to give the United States the right to intervene in affairs within our exclusive jurisdiction If anyone doubts that it extends this far, let him read the words Senator DeConcini used to support his reservation in the U.S. Senate.

The MAI has no choice but to express its most profound indignation at the lack of respect the DeConcini reservation shows for the Republic of Panama. Fundamentally, its approval is a challenge to the Panamanian people's nationalist calling, a calling which has apparently been underestimated by the U.S. Senate.

If the DeConcini amendment had been proposed by U.S. Government representatives at the treaty negotiation stage, it would undoubtedly have been rejected. There is no valid reason to accept it now or to employ legal or diplomatic sophistry to minimize its repercussions and to ignore the irreparable harm which its approval by the Panamanian Government would do to the Panamanian state and nation.

On the other hand, it should be noted that in connection with the forementioned senatorial changes it is clear that the U.S. Senate has not approved the Torrijos-Carter treaty. To pretend otherwise is to fail to see the truth and the legal facts. As treaty writers Moore, Kelsen, Hackworth, Verdross, Rousseau, Accioly, Podesta Costa, Oppenheim, Shwarzenberg and Anzilotti point out, in bilateral treaties reservations are equivalent to a rejection of the signed treaty and should be viewed as an offer to obtain a new treaty. This, no more and no less, is what the U.S. Government will be proposing to the Republic of Panama when it asks Panama to accept the reservations approved by the U.S. Senate.

The unequivocal rejection of said reservation is the only way in which the Republic of Panama can safeguard its sovereignty and demonstrate that it is on the side of the struggle of its people and with the tide of history that will sweep away all the colonialist structures that remain in the world. To accept these reservations is to condemn the present and future generations to having to hear once again the phrase which U.S. Secretary of State Hay uttered in 1903 when he said that the treaty is rife with clauses that every Panamanian patriot should object to.

Panama, 23 March 1978.

For the MAI (the executive and consultative board).

(Signed) Carlos Ivan Zuniga, Mario Galindo H., Bolivar Davalos Moncayo, Tomas Herrera, Carlo Enrique Adames, Rodrigo Sanchez, Jose M. Faundez, Joaquin Ortega V., Natividad E. Pinango, Juan Felipe de la Iglesia, Elsa M. De Garcia, M. B. Barcia Almengor, Diogenes A. Arosemena G.

REVOLUTIONARY STUDENTS ISSUE ANTITREATY COMMUINQUE

(Communique Issued by Revolutionaary Students Front; Read by Member Guillermo Calvo—Date Not Given)

In view of the situation presently prevailing in the country, in which the canal issue is the main concern, the FER-29 [Revolutionary Students Front] finds it necessary to explain its position to the citizenry.

The treaty is a manifestation at our level of the efforts being carried out worldwide by the Yankee imperialists to improve their image and that of the capitalist system at a time when the system is experiencing one of its worst economic crises.

At present, the national liberation movements in Asia and Africa have weakened the political and economic domination of the United States of America. Therefore, on this continent, the Torrijos-Carter treaty has been signed as a mechanism to maintain the domination of the Yankees in Latin America—their strategic rearguard in the face of the defeats they have suffered at the hands of popular forces on other continents.

Role of the Government in the Negotiations:

The Torrijos government maintained throughout the negotiating process a position of defeatism and surrender as a result of its economic bankruptcy and its $2 billion debt to the Yankees. The outcome of these negotiations behind the people's backs—after a discussion in which the freedom of expression of those of us who opposed the treaty was curtailed—was a treaty which from the legal point of view is a monstrous aberration and which politically and economically favors the Yankee imperialists and the dominant Panamanian classes and leaves untouched the causes of conflict between the United States and Panama.

Ratification of the Neutrality Pact and its Amendments and Reservations:

After a series of insults was hurled at Panama by the U.S. Senate, the neutrality treaty was ratified with its respective amendments and reservations. These amendments and reservations are designed to clarify the ambiguities contained in the neutrality pact and clearly establish the framework for U.S. action in Panama.

The reservation of Senator Dennis DeConcini established . . right to interfere whenever the United States for any reason unilaterally considers free transit through the waterway to be threatened. We know that for the Yankees a student strike, a situation of economic crisis or a request by workers for a wage increase would be sufficient motive for the U.S. President to order a military invasion.

The government is therefore at a crossroads. It must either reject the amendment or allow intervention. The military men who are in power cannot act freely since they respond to the interests of the rich classes, interests which are the same as those of the imperialists, and the amendments serve as a guarantee by which the United States can protect its economic and political interests throughout Latin America. If the government accepts these amendments, it will be legalizing a permanent intervention in our fatherland and it will be stripping itself of its revolutionary mask to revealing what it has always been—servile, defeatist and traitorous.

We know that the government will not reject the amendments or the treaty because the treaty is its last means of emerging from the economic asphyxiation in which it finds itself as a result of its irrational policy of

promoting models of development which favor nonproductive capital sectors such as commerce and services.

Now that the true imperialist nature of the Torrijos-Carter treaties has been revealed, the popular movement, which from the beginning strongly rejected the treaties, has stepped up its repudiation of them. Panamanian revolutionaries and patriots have established as their immediate goal the rejection, not only of the amendments, but also of both treaties, since they are injurious to national sovereignty and dignity. We must shake off once and for all the mirage of an easy victory and realize that the struggle will be long and hard and full of sacrifice if we are to perform the tasks that the situation demands. Now more than ever, we must defend our right to make decisions regarding a problem that is so important to our people—the problem of the canal. An attempt to usurp this right is being made by those who seek only a more viable formula for continuing the exploitation of our people. Sovereignty or death, we shall triumph.

TREATY AMENDMENTS SEEN AS CHANGING NEUTRALITY CONCEPT

("Conciencia Publica" column by Miguel Angel Moreno Gongora: "The Declaration of Understanding")

In the 23 October 1977 plebiscite we approved the Panama Canal treaties together with their annexes and protocols, which several weeks earlier, on 7 September, had been signed by Carter and Torrijos in a pompous and spectacular ceremony in Washington. This plebiscite was preceded by a worrisome and hasty public debate in which the opponents of the United States had only 45 days to express ideas and establish positions.

The chief of government of Panama arrived in Washington, and after his meeting with Carter on 14 October a declaration of understanding was issued referring to Article IV of the neutrality treaty which interpolates the criteria that "each of the two countries, according to their respective constitutional procedures, will defend the canal against any threat to its neutrality and consequently will have the right to act in case of aggression or threat directed against the canal or the peaceful transit of ships through the canal," and that "the neutrality treaty provides that the warships and auxiliary ships of the United States and Panama will have the right to transit the canal in an expeditious manner." This has the intention, and it will be so interpreted, of insuring the transit of those ships through the canal as quickly as possible, without obstacles, with simplified documentation and, in case of necessity or emergency, to go to the head of the line to transit the canal quickly.

The North Americans, who have now assumed the power to determine what the Panamanians aspire to, feel, reject or want, said that the declaration does not require another plebiscite and that the senators could therefore approve it as an amendment. But they were wrong again because from this moment on, in my opinion and in the opinion of many Panamanians, it is not necessary to expect further amendments, reservations, conditions or understandings to consider the neutrality treaty changed.

The inclusion of the declaration of understanding as an amendment to the neutrality treaty constitutes a substantial change to the sense and objective of the treaty because granting special concessions and privileges to U.S. ships changes the neutrality concept, which means no participation in any state of belligerency and complete impartiality. It also represents a negation of the will of the people. If the declaration was not included in the treaties passed in the plebiscite, it is clear that it does not have our consent.

The senators, not content with the declaration of understanding and demonstrating a great lack of confidence, even with President Carter, and with irrepressible colonialist voracity, went even further and introduced, through an "understanding," the concept that the interpretation of the state of "necessity or emergency" for any U.S. ship to go to the head of the line to transit the canal in an expeditious manner will be made unilaterally by the United States. This means that every time that the United States "feels like it," it can allege "necessity or emergency," and we cannot even express our opinion. We have no right to dispute it.

If the introduction of the declaration of understanding as an amendment substantially altered the will of the Panamanian people, the understanding which confers the right of unilateral interpretation to the United States of the meaning of "necessity or emergency" constitutes the greatest disregard for our dignity as a free and sovereign nation.

MATUTINO COLUMNIST URGES REJECTION OF SENATE AMENDMENTS

(Article by Carlos Bolivar Pedreschi)

At the beginning of the very brief and unique national debate over the Torrijos-Carter treaties in October 1977, some Panamanians concerned about the country's fate pointed out the possible interpretation that could be made of some of the treaties' clauses. One of these clauses was precisely Clause IV of the "Treaty Regarding the Permanent Neutrality and Operation of the Panama Canal," which virtually made the United States the only guarantor of the canal's so-called neutrality and its operation.

With regard to this clause, we said that the way in which it was improvidently drafted was laying the foundation for the interpretation that the neutrality treaty was giving the United States the right to intervene militarily in Panamanian territory by way of a supposed defense of the canal's neutrality and operation. During the negotiations, when the government had not yet departed from some positions which we at the time thought were positive, the government itself was aware of the risk in officially granting the U.S. Government the status of being the only guarantor of neutrality. As a matter of fact, government spokesmen said, with sufficient foundation in our opinion, that "in providing that the United States is the only guarantor, we are granting it the right to intervene unilaterally in Panama in the 21st century."

This obvious risk of U.S. military meddling in Panama in the 21st century, which is implied by recognizing the United States as the only guarantor of neutrality, was explicitly corroborated by the negotiators and U.S. officials. In fact, this time the Panamanian Government could not say, regarding U.S. military intervention in Panama, that it was deceived by the negotiators and other U.S. Government officials. Colonialism has spoken clearly on this occasion. As a matter of fact no other conclusion can be deduced from the statements made by spokesmen of that colonialism which we proceed to transcribe:

". . . The treaty does not place limitations on our ability to take the necessary measures in case the canal's neutrality is threatened or violated" (statement by negotiator Linowitz published in the Miami HERALD on 9 September 1977).

"The United States not only can decide unilaterally to intervene in Panama after the year 2000, but in the next 23 years it will be exclusively the decision of the United States to determine how many soldiers should stay in the Canal Zone to defend the canal" (statement by U.S. Defense Secretary Harold Brown, published in LA ESTRELLA DE PANAMA on 28 September 1977).

And finally, here is what the letter and spirit of the neutrality treaty means to the U.S. Government:

". . . The treaties give U.S. forces the right to defend the canal even against Panama" (statement by George S. Brown, chief of staff of the U.S. Armed Forces, published by the Miami HERALD on 27 September 1977).

But even if some might have understood that the U.S. right to intervene militarily in Panama after the year 2000 was limited to military intervention in the Panamanian territory known as the Canal Zone—an action still sufficiently harmful to the national sovereignty and dignity—it now seems that according to one of the conditions presented by the Senate for the ratification and validation of the Treaty. Regarding the Permanent Neutrality and Operation of the Panama Canal, this right of perpetual U.S. military intervention in Panama is extended to all of the national territory. This is a right which not even the infamous 1903 treaty granted the U.S. Government. Provision No. 1 approved by the U.S. Senate as a condition for ratification and validation of the neutrality treaty literally and clearly states:

"(1) Notwithstnding the provisions of Article V or any other provision of the treaty, if the canal is closed or its operations are interfered with, The Republic of Panama and the United States of America shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, as the case may be." [as published]

The quoted provision leaves no doubt that the government and the Panamanians who accept the amendments, reservations and conditions are accepting in 1978 the perpetual right of a foreign power to intervene militarily in the sacred territory of the fatherland. And this time those who do so will be unable to denounce colonialism and its spokesmen for having deceived us and for not speaking clearly. And if these amendments, conditions and reservations signify decolonization and national liberation, then obviously political language has lost all ability to communicate.

The quoted provision by which the U.S. Senate expressly understands that the neutrality treaty gives the United States the right to use military force in Panama very clearly means that the government and the Panamanians who accept this provision are accepting that at some time, U.S. troops can be in any part of Panamanian territory, not excluding the cities of David, Penonome, Colon, La Palma, Porras Park, Santiago Square, Avenue A or the University of Panama, to cite just a few examples. And this would evidently mean the return in 1978 to stages in our history that have already been overcome by the efforts of even the traditional parties, stages when, as in 1925, the U.S. military troops installed themselves in our Santa Ana Square under the pretext of maintaining order and at the same time crushed a tenant movement. If this humiliating condition proposed by the U.S. Senate is considered acceptable then one would have to reach the absurd conclusion that there is no colonialist contamination in Panama.

In view of the seriousness of the situation arising from the amendments, reservations and conditions, we patriotically urge the national government to reject them and ask the Panamanian people to express their totally justifiable repudiation of them. We firmly believe that the obligatory rejection of the amendments, reservations and conditions by the national government will be backed by a united country and will result in a real national consensus which is necessary to analyze the risks and alternatives of a truly national canal policy. As we expressed previously, because of the disproportion of the forces involved, the nationalist cause extends beyond one man and one government

and for some time even all of us together will not be enough.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Juvenile Delinquency Subcommittee of the Judiciary Committee be authorized to meet during the session of the Senate today to hold hearings on violent juvenile crime.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Constitution Subcommittee of the Judiciary Committee be authorized to meet during the session of the Senate today to consider S. 571, HUD attorneys' fees.

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

The ACTING PRESIDENT pro tempore. Who yields time?

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

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

CONCLUSION OF MORNING BUSINESS

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

EMERGENCY AGRICULTURAL ACT OF 1978—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 9 o'clock a.m. having arrived, the Senate will now proceed, as in legislative session, to the consideration of the conference report on H.R. 6782. The time for debate on this conference report is limited to 2 hours, to be equally divided and controlled by the Senator from Georgia (Mr. TALMADGE) and the Senator from Maine (Mr. MUSKIE), with the vote on adoption of the conference report to occur at 11 o'clock a.m. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 6782) to permit marketing orders to include provisions concerning marketing promotion, including paid advertisement, of raisins and distribution among handlers of the pro rata costs of such promotion, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate proceeded to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of April 6, 1978.)

Mr. TALMADGE. Mr. President, I ask unanimous consent that Bill Seale of Senator HUDDLESTON's staff, Nancy Foster of Senator STONE's staff, and Bill Motes of Senator CLARK's staff be granted the privilege of the floor during consideration of the conference report on H.R. 6782, including all rollcall votes thereon.

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

Mr. TALMADGE. Further, Mr. President, I ask unanimous consent that the following staff members of the Committee on Agriculture, Nutrition, and Forestry be granted the privilege of the floor during consideration of the conference report on H.R. 6782, including all rollcall votes thereon:

Henry Casso, Carl Rose, Dale Stansbury, Phil Fraas, Bill Bates, Karen Schubeck, William Taggart, Glenn Tussey, Morgan Williams, and Stu Hardy.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that William Twilley, of my staff, be granted the privileges of the floor during the consideration and debate on the agricultural bill.

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

Mr. TALMADGE. Mr. President, the Chair has already reported the conference report on H.R. 6782, the Emergency Agricultural Act of 1978.

This legislation grew out of 2 weeks of exhaustive hearings conducted by the Senate Committee on Agriculture, nutrition, and forestry during February and March on the economic crisis confronting American agriculture.

Our committee heard testimony from more than 200 witnesses, most of them grassroots farmers and ranchers from all sections of the Nation. The urgent message that our committee received from these hearings was that a great segment of American agriculture was in deep financial distress. We heard in no uncertain terms that farmers needed help to produce this year's crops—and they needed it now.

Immediately following these hearings, our committee reported major farm emergency legislation, because time was of the essence, our committee chose a House-passed bill dealing with Federal marketing orders for raisins as a vehicle to obtain the quickest possible consideration of the emergency farm legislation.

The Senate passed the bill on March 21. On the following day the House asked for a conference on the bill, H.R. 6782, and the Senate agreed.

I had hoped that the conference could meet during the Easter recess so that we might have legislation ready for consideration when the Congress reconvened on Monday of last week. Unfortunately, prior commitments of several members of the conference made this impossible. Therefore, the conference got down to work on the bill on our first day back last Monday. The conference completed action on Wednesday, and the report is now before the Senate.

Mr. President, I wish to state at the outset that the substitute bill agreed to by the conference is considerably changed from the measure that the Senate approved on March 21. Several provisions that were written into the bill by the committee and by Senate floor amendments were eliminated.

As a result of the conference deliberation, a modified bill has been agreed upon. It consists of four titles.

Title I incorporates a modified version of the flexible parity proposal of which the distinguished Senator from Kansas, Mr. DOLE, is the principal author. It provides for a graduated scale of target prices for the 1978 crops of wheat, feed grains, and upland cotton based on the amount of acreage an individual farmer agrees to set aside from production.

For wheat, the range scale is from a target price of $3.50 per bushel for a 20 percent set-aside to $5.04 per bushel—roughly parity—for a 50-percent set-aside.

For corn, the range is from $2.40 per bushel for a 10-percent set-aside to $3.45 per bushel for a 50-percent set-aside.

The target prices of other feed grains would be established on a fair and reasonable relationship to corn.

For cotton, the bill sets a minimum target price of 60 cents per pound. The price would be increased to 72 cents per pound for a 35-percent set-aside and to 84 cents for a 50-percent set-aside.

Mr. President, I ask unanimous consent that a table showing the entire range of set-asides and target prices for the covered commodities be printed in the RECORD at this point.

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

Wheat

Setaside	Target level
20 percent	$3.50
35 percent	4.25
50 percent	5.04

Corn

Setaside	Target level
10 percent	2.40
35 percent	3.05
50 percent	3.45

Cotton

Setaside	Target level
35 percent	.72
50 percent	.84

Mr. TALMADGE. Mr. President, the effect of the flexible parity approach would be to increase substantially minimum target prices established under the 1977 Farm Act for this year's crops. Those target prices currently are set at $3.00 for wheat, $2.10 for corn and 52 cents for cotton.

Title I of the conference bill also increased the loan rates on 1978 crops. Under the bill, the loan rates would go from $2.25 to $2.55 per bushel for wheat, from $2.10 to $2.25 for corn, and from 44 cents to 48 cents for cotton.

Title II of the conference bill is the "gasohol" provision. It would authorize the secretary of agriculture to permit land set aside or diverted from production in 1978 to be planted to crops, other than those for which a set-aside is provided, that might be converted to industrial hydrocarbons as fuel.

This title would further authorize the Secretary in future years, when there may be no set-aside acres, to make incentive payments to farmers to produce crops that could be converted to gasohol.

Title III of the conference bill would increase the borrowing authority of the Commodity Credit Corporation from $14.5 billion to $25 billion.

Title IV is the original raisin provision of the House bill. It amends the Federal marketing order provisions to authorize market development and research activities for raisins and makes some other minor changes in the law.

The bill the Senate passed on March 21 included a provision to increase the lending limits on real estate and operating loans made under the Consolidated Farm and Rural Development Act.

It also made family farm corporations and partnerships eligible for such loans.

This is very important and urgently needed legislation. However, both the House and Senate Agriculture Committees recently approved comprehensive farm credit bills that include the provisions of the 1-year emergency bill. The conferees felt it would be better to deal with the credit provisions in the permanent legislation that will be considered by both Houses in the near future.

In working its will, the conference saw fit to eliminate the program that I originally sponsored to pay farmers to divert on a voluntary basis not less than 31 million acres from production of wheat, feed grains, and cotton this year.

It was the consensus of the conference that my cropland diverson proposal was contradictory to the flexible parity approach which had been adopted earlier by the conference.

I was disappointed by this action of a majority of the conference. However, I signed the conference report and urge its adoption by the Senate.

Certainly there are many unanswered questions about the flexible parity concept. But farmers need help now. The time element is critical. And the conference substitute, in my view, is preferable to no bill at all.

There is no question but that an economic crisis exists in rural America. Farmers have been caught between falling prices and skyrocketing production costs.

Many are broke and many others face financial ruin if a solution is not forthcoming.

In January, I urged the President and Secretary of Agriculture to use authority that Congress provided under the 1977 Farm Act to pay producers to take unneeded cropland out of production this year. The failure of the administration to take timely and effective action made it necessary for Congress to act.

The legislation I proposed would have directed the Secretary of Agriculture to implement a paid land diversion program.

My bill provided a workable, practical, effective, and immediate means for dealing with the farm crisis.

My bill would have had a far less inflationary impact than the flexible parity approach.

I do not think it would have faced the veto threat that the conference bill faces.

My bill would have stimulated higher prices for farm products in the marketplace.

It would have brought the huge, price-depressing surpluses down to manageable levels.

It would have put hard cash in farmers' pockets now.

It would be the most cost-effective approach to the farm problem and actually would have saved $90 million in present program costs.

The substitute bill is not everything that all members of the conference wanted. But it is the only feasible legislative means that is now available to Congress to help farmers.

The hour is late. Time is of the essence. Crops are already in the ground and up in many sections. Planting will have been completed throughout the Southeast and Southwest within a matter of days and will be underway throughout the country in a few weeks.

There is no reason for further debate now on the merits of the Talmadge land diversion bill as opposed to the Dole flexible parity bill. A majority of the conference decided that question as far as this legislation is concerned last week.

As much as I might regret that decision, as much as I might fear that it will mean no emergency farm bill at all, I intend to support and work for the conference substitute.

I gather that the President apparently intends to veto the conference bill if and when it reaches him.

I have not had an opportunity to discuss the matter with the President, but I hope that his mind is not closed on the subject.

I urge the Senate to adopt the conference report, and I hope the House will do likewise. I hope the President will reconsider his decision—if, indeed, he has made the decision—to veto the bill.

Farmers need help.

They need help now.

As one Member of this Senate, I intend to do everything within my power to try to provide them that help.

Mr. President, I see the distinguished Senator from Maine, the chairman of the Budget Committee, is now on the floor. I withheld asking unanimous consent to waive the budget provisions. Does the distinguished Senator intend to make a point of order on the conference report?

Mr. MUSKIE. That depends on what the Senator from Georgia does. He certainly has that option. If the question is not raised in any other way by the Senator from Georgia, I intend to——

Mr. TALMADGE. If the Senator will not raise a point of order, I shall not move to waive. If the Senator intends to make a point of order on the conference report, I intend to move to suspend the budget provision.

Mr. MUSKIE. Well, I think the issue ought to be raised, I say to my good friend, because what is at stake is not only the merits of the bill, but whether or not the Senate is disposed to meet its commitment to the budget process or suspend it when it becomes uncomfortable. I think the procedural issue needs to be raised. I did not raise it at the time the Senate bill was under consideration because of the pressure of the time, because I was willing to get to the substance. But now, we have reached the point, the conference having acted, that the substance of the bill is such a serious question under the Budget Act that I think we need also to consider the procedural issues.

So I will raise the point of order unless the Senator raises the issue the way he suggested. Maybe we both will make our point.

Mr. TALMADGE. Mr. President, in accordance with section 904(b) of the Congressional Budget Act, I move that section 303(a) of that act be suspended with respect to the consideration of the conference report on H.R. 6782.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion. The motion is debatable.

Who yields time?

Mr. MUSKIE. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. MUSKIE. I understand that under the provisions of the unanimous-consent agreement, no vote will take place until the hour of 11 a.m.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. MUSKIE. Does that apply to the motion just made by the distinguished floor manager of the bill?

The ACTING PRESIDENT pro tempore. It does.

Mr. MUSKIE. I am prepared to debate the issue and I shall also debate the point of order question so that the Senator's motion will be understood in its full implications. It is immaterial to me whether the issue is resolved under a motion to suspend, which, to me, is more horrendous from the point of view of the Budget Act than a motion made under the provisions of the Budget Act. The Senator from Georgia is proposing to suspend the act when there are procedural options available under the Budget Act to reach the same point. I am perfectly willing to debate the issue on either ground.

Mr. TALMADGE. Mr. President, a parliamentary inquiry: As I understand the situation now, there will be two votes, the first one to occur at 11 o'clock on the motion I just made to suspend the provisions of the Budget Act, to be followed immediately thereafter, if my motion prevails, by a vote on the conference report. Am I correct?

The PRESIDING OFFICER (Mr. CLARK). The Senator is correct.

Mr. MUSKIE. A parliamentary inquiry: The Senator from Georgia has now made his motion, I understand.

Mr. TALMADGE. I have.

Mr. MUSKIE. May I ask the Parliamentarian what, then, would be the status of the point of order under section 303 if I should raise it?

The PRESIDING OFFICER. The Senator's point of order would not be in order until after a vote on the motion of the Senator from Georgia. If the motion carries, the point of order would not be in order.

Mr. MUSKIE. As I understand it, it is not a question for the Parliamentarian, because it is not really a parliamentary question. A motion to suspend has been made in order to avoid the point of

order; so that, in the debate on the motion to suspend, I shall discuss the issue in terms of the point of order in order that, if the Senator's motion is defeated, there may then be a motion on the point of order.

May I ask this of the Parliamentarian: If I should make the point of order in the course of the next 2 hours and the motion of the Senator from Georgia fails, will a vote then occur, or would a ruling be made at that point on my point of order?

The PRESIDING OFFICER. The Senator is correct; the Chair will rule at that time.

Mr. MUSKIE. I can make the point of order in advance of that time in order to have it in front of the Chair at that point?

The PRESIDING OFFICER. No, the point of order will not be in order until the motion of the Senator from Georgia is disposed of.

Mr. MUSKIE. A parliamentary inquiry: Under the unanimous-consent request, I take it that the votes must follow back to back. Will there be an opportunity, following the vote on the motion of the Senator from Georgia, to make the point of order?

The PRESIDING OFFICER. There would be such an opportunity.

Mr. TALMADGE. Mr. President, I yield 5 minutes to the distinguished Senator from Kansas, a member of the Committee on Agriculture, Nutrition, and Forestry.

Mr. HODGES. Will the Senator yield for a unanimous-consent request before he begins?

Mr. DOLE. Yes.

Mr. HODGES. Mr. President, I ask unanimous consent that Rhona Weaver and Steve Moore of my staff be accorded the privilege of the floor during consideration of and vote on H.R. 6782.

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

Mr. MUSKIE. Will the Senator yield for a similar request?

Mr. DOLE. Yes.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the following members of the Budget Committee staff be granted the privilege of the floor during consideration of and votes on the conference report on H.R. 6782: John McEvoy, Karen Williams, Van Ooms, Dan Twomey, Lewis Schuster, and Jacques Cook.

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

Mr. McGOVERN. Mr. President, if the Senator will yield for the same purpose, I ask unanimous consent that Mr. Owen Donley, of my staff, be granted privilege of the floor during all procedures and the vote today.

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

The Senator from Kansas.

Mr. DOLE. Mr. President, I think the Senator from Georgia has fairly well stated the case and given us the highlights of the conference report now before the Senate.

There is no doubt in this Senator's mind that there probably are a number of good alternatives we could be considering today. Certainly, the initiative by the distinguished Senator from Georgia, our chairman, is one of those, as is the initiative by the distinguished Senator from South Dakota, which, in fact, is incorporated in the conference report by virtue of the Foley amendment which was, in fact, the McGovern amendment when it was considered on the Senate side.

But at this point, the Senator from Kansas would like to address what I consider may be the highlight of what will happen.

This could be doomsday for the American farmer, and that is how it is being advertised by the administration. Already, the halls are filled with lobbyists from the White House trying to shoot down this bill in the Senate.

We have had veteran employees spending thousands of dollars and their time on the Budget Committee trying to figure out the worst possible cases and how much such cases would cost. I do not know how many hours were spent to dream up these worst possible conditions.

We have had statements from the great farm journals the Washington Post, the New York Times, the Wall Street Journal, decrying the cost of the program. I doubt they have even considered the cost themselves but rather have just taken the word from the Budget Committee or the Congressional Budget Office or the USDA.

So today we have probably thousands of farmers in Washington, not because they want to be here, but because their very livelihood is at stake.

They do not have all the calculators, computers, and bureaucrats to figure up the cost of the bill. So they have had to do what they consider to be a proper effort, and that is contacting Members of Congress.

Let us not kid anybody in this Chamber. The best way to scare off urban Members of Congress is to put a $5 billion price tag on a farm bill, and that is just what has happened.

Mr. MUSKIE. Will the Senator yield?

Mr. DOLE. Not right now. I am in the midst of my opening statement.

Mr. MUSKIE. Well, to give the Senator some further basis, enlarging on the point he is making.

Mr. DOLE. I believe we will have a chance to do that later.

But CBO estimates our cost for this bill at $5.3 billion. That ought to scare most anyone. It scares a lot of farmers because they are consumers, too.

What they have done is indicate that everybody is going to participate to the maximum to get that figure, going to participate at the 50-percent set-aside level, disregard the payment limitation which is still part of the law, and they assume that prices will be very low.

So it is the worst possible case to get the highest possible price tag. I think it is rather tragic.

If we use just the moderate figures, or 35 percent participation, and take into account the payment limitation and assume that farmers will get an average price at least equivalent to current prices, because they will set aside some of their production, the cost will be reduced to about $2 billion—$2 billion.

Now, what does the administration say they are willing to do? Nothing, except raise the target prices for wheat from $3.10, under certain conditions, to $3.40.

They will do nothing for feed grains. They will do nothing for cotton.

So I just suggest we ought to start the debate on the right foot. We are not arguing the merits of the program. We will never consider that in the next 2 hours.

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

Mr. DOLE. Two additional minutes.

We will never consider the plight of the farmer in the next 2 hours. We will talk about the cost, trying to scare certain Senators on this floor, that we cannot vote for this because it will cost so many billions of dollars.

I just think the American farmers gathered today by the hundreds and thousands in Washington should understand how the process works.

We have been told it is a cruel hoax by some in this Chamber opposed to the bill. Are they opposed to helping farmers?

I think the record should be made very clear. The administration through the President said, "We will veto everything except the 30-cent rise in the target price for wheat."

So it makes no difference whether it is flexible parity now on the floor, or the Talmadge land retirement, or some other modification. The President says, "I will veto everything."

I think it is unfortunate the farm bill comes just a day before the President is about to make an inflation statement. Why not single out the American farmer and make him the whipping boy for inflation? And the probable answer tomorrow, "I will veto the farm bill if we can't defeat it in the Senate or if it can't be defeated in the House."

Mr. President, I just want the record to show there will be very little attention paid to the merits of the bill. All the time and focus will be scare tactics, based on the cost of the program. We will probably hear statements saying that we will run out of wheat, cotton and corn, everything that might frighten the American people and frighten the American consumer.

This Senator thinks that is the wrong way to go.

We worked week after week after week, under the leadership of the distinguished chairman (Mr. TALMADGE), who has done more for farmers than anybody I know in this city, and finally we have come to grips with the problem.

I hope sometime in the next 2 hours we will take 30 seconds to discuss the merits.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. TALMADGE. Mr. President, I ask unanimous consent to have printed in the RECORD a letter addressed to me dated April 10 from James C. Webster, Acting Director, Department of Agriculture, Office of Government Affairs.

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

APRIL 10, 1978.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In compliance with our commitment to you at the April 4 session of the Senate/House Conferees on H.R. 6782, we are enclosing a copy of the directive providing authority for county ASC committees to adjust 1977-crop acreages of feed grains, cotton, and wheat in cases where individual producers were prevented from planting acreages of such crops in 1977.

Sincerely,

JAMES C. WEBSTER,
Acting Director.

[From the U.S. Department of Agriculture]
FOR ALL STATES AND COUNTIES (EXCEPT HAWAII)

1977 RECORDED ACREAGE

Approved by: Acting Deputy Administrator, State and County Operations.

1. Background:

Procedure in subparagraph 139C, 5–PA, now provides for recording without adjustment in the 1977 planted acreage of feed grains, upland cotton and wheat on ASCS–156, including volunteer acreage harvested for grain but excluding acreage reported as planted and used specifically for cover or green manure. The restriction on adjustments is being changed.

2. Change:

A. Increase the recorded 1977 cotton acreage to the extent that a change from cotton skip row in 1977 to solid planting resulted in an NCA increase authorized in subparagraph 31A5, 5–PA.

B. Increase the recorded 1977 cotton acreage to the extent 1977 prevented planting for cotton was approved for payment.

C. The recorded 1977 acreage of a feed grain or wheat crop may be increased for a significant acreage prevented from planting in 1977 under the following conditions:

1. A prevented planting claim for a significant acreage is filed on ASCS–574–1. Publicize in the fastest and most effective manner that such credit for 1977 prevented planting may be requested.

2. If an ASCS–574–1 is already on file for the farm and crop for 1977, credit may be given for the acreage recorded on the farm which was approved by the COC and STC representative. This acreage may exceed the acreage for which a prevented planting payment was made in cases where payment was limited by the 1977 allotment.

3. For new ASCS–574–1's filed, record and document all available information needed to make a COC determination. Limit approvals to the acreage that was not planted to the crop solely because of a condition beyond the producer's control.

4. All adjustments shall be approved by STC representative.

3. Effect of 1977 increase:

A. Will be used to determine eligibility for 1978 deficiency payments on all acreage planted for harvest.

B. May increase the maximum feed grain and upland cotton acreage for 1978 voluntary diversion purposes.

C. Shall NOT increase the farm NCA.

D. Shall NOT increase the acreage eligible for 1977 prevented planting payment or change 1977 deficiency payments.

E. Shall NOT affect feed grain and wheat yields established for 1978.

4. Effect of 1978 prevented planting:

Credit prevented planting approved for 1978 in the same manner as for 1977. No voluntary diversion payment will be made for prevented planted acreage.

Mr. TALMADGE. Mr. President, I yield 5 minutes to the distinguished Senator from Alabama (Mr. ALLEN).

Mr. ALLEN. Mr. President, I thank my distinguished chairman, the distinguished Senator from Georgia (Mr. TALMADGE) for yielding to me.

Mr. President, I endorse this conference report on H.R. 6782. the emergency farm bill of 1978, and urge its approval by the Senate today.

Respectfully, I must take exception to critics who have charged that this legislation was hastily drafted in an atmosphere of emotion and confusion. The record will show, Mr. President, that this legislation is the result of more than 10 days of extensive hearings—from February 23 through March 10—by the Senate Committee on Agriculture when more than 150 witnesses from the agricultural sector presented their views and recommendations to us. The record further shows that the committee spent 2 days in business sessions marking up this emergency legislation.

Furthermore, the record will show that this emergency legislation was debated on the floor of the Senate for more than 6 hours on March 21, and that the conference committee spent the better part of 2 days in resolving the differences prior to agreeing on this report. I must add that during the time I served as a conferee I saw no emotional instability or emotional outbursts from my fellow conferees.

While to some it may appear this legislation was hammered out in haste, to our farmers and their families who have stood by anxiously awaiting our action it must have seemed a painfully slow and agonizing process.

The late President Franklin D. Roosevelt once said:

> The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those that have too little.

If that is the test with respect to the economic well-being of our farmers, Mr. President, we have failed. USDA itself, in releasing figures as to the farmer's share of the consumer's food dollar, reveals that the farmer receives 31 cents out of every food dollar today compared to 32 cents in 1967. That is 1 cent less out of the food dollar today than 10 years ago, a 3-percent decline from 1967 through 1977. With the ever-increasing cost of necessary inputs, it is no wonder that our farm economy is in such dire straits.

That an emergency in the agricultural sector exists cannot be denied. An emergency existed in January when the farmers first visited us. That same emergency exists now, only a more serious one. While we have worked at legislation, while the administration stonewalled the pleas of our chairman and the committee to implement the authority given them in the 1977 farm bill, the situation grew steadily worse. Time has run out, now. Once again the farmers are caught in the middle. If this conference report is defeated, they are the ones who will suffer. It is planting time right now, bank notes are due, creditors are demanding payment, and here we sit actually debating whether we shall approve this report.

As I see it, our purpose here is to restore the farm economy, not wreck it. We are toying with the future of many of our young farmers here today. If we do not act and act quickly many of them tell me they are finished. I am speaking of young farmers just out of college with degrees in agricultural economics, husbandry, and agronomy. Some of Alabama's young farmers, hard hit by last summer's drought, are unable to get loans from SBA or FmHA because they have no previous record in farming. If there is anything our agriculture sector sorely needs over and above the emergency assistance we propose to give them at this time, it is the infusion of young, intelligent, well educated, aggressive, and dedicated farmers into it. But young men and women will not be enticed into farming if there is no incentive to farm.

As usual, the scare tactics along with one-sided editorials and cost estimates have been unleashed against this legislation. They have been joined by the alarmists who predict food scarcity at home and abroad. They have neglected to say that this is only a 1-year bill designed to give immediate and temporary relief. This is no multiyear bill. True, its payments will spill over into fiscal year 1979. But the Senate Committee on Agriculture, knowing that some type of emergency farm legislation would reach the floor during this session, recommended in its budget review session on March 8, that $6 billion be added to the agricultural sector of the fiscal year 1979 budget to cover any emergency legislation which might be passed. Mr. President, we envisioned emergency help for our farmers. We did not act precipitously or irresponsibly.

Yes it will cost as does any emergency relief act. It will cost the Treasury and it will cost the consumer. Estimates run from 2 billion up as to what it may cost the Federal Government. If prices of agriculture commodities increase as they should, there is the possibility it may cost the Government nothing in deficiency payments. It may cost the consumer from 1.5 percent to a 4 percent increase in the cost of food. But to do nothing at this point would prove to be the costliest course of all. The Congressional Budget Office estimates that this legislation may increase the cost of food for a family of four $36 to $46 over a 12-month period. To insure a reliable source of food supply, to assure that the family farm survives and to further assure that agricultural production does not inevitably wind up in the hands of a few corporate farms the increased cost is not unreasonable. We just cannot continue to ask our farmers to sell their crops at prices lower than their cost of production.

Farmers are consumers, too. They buy trucks, tractors, combines, cotton pickers, plows, clothes, stoves, and houses. If the depression currently confined to the farm sector spreads, other sectors of the economy will experience similar depressions. Our current national unemployment rate has just been announced at 6.2 percent; but a continued decline in the farm income will affect steel, autos, equipment manufacture, and agri-

business, and there will be an increase in the number of farmers and farm employees looking for jobs, at a time when unemployment among nonfarmers is just beginning to show improvement.

USDA figures reveal that last year the average income per farm was only $7,885 compared with a peak of $10,529 in 1973. To insure that our farmers continue to produce abundant food and fiber supplies for Americans and the world it is imperative that this legislation become law.

Our basic problem is one of excess supply. We need to bring supply and demand into balance and this flexible parity concept will do it. There are carry-over stocks of 1.2 billion bushels of wheat, 1.1 billion bushels of corn, and 5.8 million bales of cotton. This 1-year bill, allowing the farmer to select the amount of his production and the corresponding target price will help correct the situation. Some have raised fears that such a plan will result in reduced exports. We'll still have plenty to export. Besides, it's not fair to ask a farmer to continue to produce for export if he must sell every bushel and every bale abroad at less than the cost of production.

Other critics of this bill have incorrectly observed that it will concentrate payments in the hands of large farmers to the neglect and exclusion of the small family farmer. Such is just not the case. The payment limitation of $40,000 as provided for in Public Law 95–113 is still in effect. This legislation does not alter that provision one iota.

As usual, there is the customary argument from the bureaucracy that this legislation will be too difficult to administer. The Senator from Alabama has in his tenure in the Senate heard that same argument from every agency in the Federal Government when faced with a progressive and new idea. The bureaucracy is always afraid of anything different for fear it might just work. Even if it proved to be difficult to administer, there are enough career civil servants at USDA without enough to do to provide adequate administration. I learned long ago that when you do not want to do anything, one excuse is as good as another.

Finally, Mr. President, let us once and for all deliver the farmer from a "bum rap." For too long he has been accused of being the cause of inflation. To the contrary, he has been placed in the financial bind he is in because of inflation. Citizens of this country spend a smaller percentage of their income on food than any industrialized country in the world. It is the farmer who has seen the cost of his tractors, farm implements and machinery, fertilizer, seed, feed, fuel, and land double in price while the prices he has received have either remained constant or have declined. When wheat sold in excess of $5 per bushel a few years back there was only about 6 cents worth of wheat in a 1-pound loaf of bread. Now that wheat is down to less than $3 per bushel with only about 3 cents worth of wheat in a 1-pound loaf of bread I have not seen the price of bread decline. No, Mr. President, it is not the farmer who is the cause of inflation. He has been and is the victim of inflation.

It is not fair to require the farmers to be the only economic group in our country which is not allowed to make a profit. If we are going to hold down inflation it must not be done by holding down the farmer.

These provisions in this conference report before us today will remedy the problems of overproduction, excessive carryovers, and depressed prices.

I was one of the original cosponsors of this legislation and a cosigner of this conference report. I urge my distinguished colleagues to vote for it and my friends in the House to approve it. I respectfully request my President to sign it.

Mr. TALMADGE. Mr. President, I yield 3 minutes to the distinguished Senator from North Dakota, who is an able member of our committee.

Mr. YOUNG. I thank the chairman.

Mr. President, I support approval of the Senate-House conference report on the farm bill.

The conference report as now constituted has, as its major provision, the Dole flexible parity bill. Its provisions are new and unique, and it is obvious that this flexible price support concept is very appealing to a good many farmers, especially grain producers.

If they decide to cut their acreage and reduce production, to reduce our huge price depressing surplus, especially of wheat, they would be paid on the basis of the amount of acreage they take out of production. This is fair and equitable and over the long term would be less costly to the Federal Government.

If the surplus were reduced to a manageable supply, the cash farm price would be more fair and equitable, and without the necessity of continuing subsidy payments.

Mr. President, I cannot help but be concerned by the charges of Secretary of Agriculture Bergland—and even by our Senate Budget Committee staff—that the price to consumers would be sharply increased.

Such statements do not take into account the fact that grain prices have been far below the cost of production for a year or more. They seem to think that farmers should continue to produce at a loss, so that there would be no increase in consumer prices.

The Carter administration seems to be far more concerned about high farm prices than about low farm prices.

The average consumer, I am sure, wants farmers to receive at least the cost of production. This is in the consumer's long-term best interest, as it would enable many farmers, who otherwise would have to quit, to keep on farming—thus assuring consumers of an adequate supply of food and fiber in the future.

Mr. Ray Fitzgerald, administrator of ASCS, when testifying before the Senate Subcommittee on Agriculure Appropriations last week, stated that the carryover of wheat at the end of the marketing year on May 31 is expected to be 1.2 billion bushels.

That is more than twice as much as would be needed for domestic human food consumption this next year. There will be no shortage of wheat, as some have claimed. In fact, there will be a sizable surplus.

The total production of wheat for the past 2 years has been in excess of 2 billion bushels. Even with the present farm program, production will be at least three times our domestic needs.

If this farm bill is vetoed, we undoubtedly will continue to have a price depressing surplus of wheat. The average farm price of wheat is considerably less than claimed by Department of Agriculture officials.

Bismarck, N. Dak., is in the heart of the Hard Red Springs wheat producing area, and the price of a bushel of 15-percent protein wheat there on March 27 was $2.53; on March 28, $2.57; on March 29, $2.50; on March 30, $2.57; and on March 31, $2.57.

This is premium wheat, not low-grade wheat. Since the conference adoption of the Dole bill, prices did rise rather sharply the latter part of last week. They are still far less than the cost of production.

Mr. President, the biggest complaint against this farm bill seems to be its effect on wheat prices and how much it will add to the cost of food to consumers. Actually, the price of wheat has little to do with the price of bread.

The total farm price of wheat in a 1-pound loaf of bread at the end of February of this year was 2.9 cents—which is 1 cent less than a year ago. The price of that loaf of bread is now 36 cents, compared to 35.5 cents a year ago. The price of bread in the past 2 years has increased, while the farm price of wheat is down sharply.

Mr. President, there would be some additional costs to the Government from the Dole flexible parity bill if it becomes law, but these costs would be far less than claimed by the Budget Committee and the Department of Agriculture.

Winter wheat, which comprises about 75 percent of all the wheat production, has long since been planted and has attained good growth. Hard Red Spring wheat will be planted soon. Thus, the total production of wheat, because of the lateness of the Dole bill being passed by Congress going into effect, means there would not be a very sizable participation by farmers and the resultant drop in production.

Thus, the estimated cost by the U.S. Department of Agriculture and the Budget Committee is at least two or three times what the actual costs of this bill would be.

If we do nothing, a great many farmers—and particularly young farmers—will have to leave the farm. The approval of this bill would largely prevent that exodus of farmers. Thus, the effect on our whole economy would be far less than the additional cost which may occur.

Mr. President, I hope this bill will be approved by the Senate and House and signed by the President.

Mr. TALMADGE. Mr. President, I yield 2 minutes to the distinguished Senator from Montana.

Mr. MELCHER. I thank the chairman.

Will the Senator from Maine yield me 2 minutes, in addition?

Mr. MUSKIE. Yes. I am happy to yield 2 minutes.

Mr. MELCHER. I thank the Senator.

Mr. President, the farm bill conference report that is to be voted on today, if accepted by the Senate, will face an uncertain future in the House. President Carter's promise to veto it may well pressure the House to reject the bill. If the President's opposition to the bill causes its defeat, I hope that the House will immediately take up the proposal with some amendments that will solve at least part of the agricultural producer's dilemma. It is essential that Congress enact, and the President sign, a bill that improves agricultural commodity prices this spring.

But there are weaknesses in the conference report that water down the loan rates for grains after the Senate passed this bill on March 21. Particularly weakened was the loan rate for wheat, which was reduced from $2.85 to $2.55 per bushel. The loan rate is the basic mechanism in our farm law that protects our agricultural producers by giving them the opportunity for a floor price by Government-backed loans. The loan rates become the floor price in the marketplace to protect grain farmers from even lower prices. In times of surplus it is extremely important that farmers have such floor price protection.

When the bill passed the Senate, an amendment I offered on the floor set the loan rate at $2.85 per bushel of wheat. I would prefer to have it higher. Wheat farmers' average cost of production is over $3 per bushel, but at least raising the loan rates to $2.85 was a 60 cents per bushel increase and a desirable step in the right direction.

This needed improvement is not just important for wheat farmers but also is very important for the country as a whole. We try to sell over a billion bushels of American wheat abroad each year. When we sell American wheat or other grains to other countries at prices below the cost of production, we are selling out too cheap, and it is one of the reasons for deficits in our balance of payments.

I would like to use an example of our sales of wheat to Japan, which is our best regular customer for American wheat. In 1976 we sold Japan 3,311,000 metric tons of wheat for which they paid an average price of $4.29 per bushel totaling $522,294,000. In 1977 we sold them 4 million metric tons more of wheat for an average price of $3.07 totaling $374,490,000. This illustrates one problem we are having with our balance of payments with Japan. They get 4 million more metric tons of wheat from us, but paid us $148,804,000 less.

Consumers live in fear that food prices will rise dramatically. Those fears are not warranty by the facts concerning wheat. When wheat is selling for $2.25 per bushel, there is 2.6 cents worth of wheat in a 1-pound loaf of bread. If wheat is at $2.85 per bushel there would be 3.3 cents worth of wheat in that same 1-pound loaf of bread. And so the modest increases we are looking for in loan rates are not to be feared by consumers.

Wheat farmers have another serious problem with the conference report as presented today. The provisions only cover the 1978 crops and the increased target price would only apply to wheat harvested this year. Then without further legislative action, the target price for next year's crop would be lowered to $3.10. Winter wheat planting for next year's crop will start in September—less than 5 months away—and the wheat farmers will be in a quandary wondering how much winter wheat should be planted faced with that kind of a lowered target price.

There is still much more work to be done on these two points to protect wheat farmers. If this conference report is turned down by the House at the urging of President Carter and the House, then amends the bill and sends it back to the Senate, I shall offer amendments at that time to set an equitable loan rate and target price for 1978 and 1979 wheat crops.

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

Who yields time?

Mr. TALMADGE. Mr. President, I yield 3 minutes to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the conference report on H.R. 6782, the Emergency Agriculture Act of 1978.

I wish to commend the able chairman, Mr. TALMADGE; the able ranking Republican member, Mr. DOLE; and other members of the conference committee for recognizing the urgency of the current farm crisis and promptly reporting out this emergency legislation.

I am pleased that the committee has adopted the flexible parity proposal over other land retirement proposals. Flexible parity provides a mechanism under which farmers can collectively control production and under which each individual farmer can select a target price and set-aside that best applies to his farm situation.

I am further pleased that the committee has recognized the need to increase the loan levels for wheat, corn and cotton and has increased the borrowing authority of the Commodity Credit Corporation by $10.5 billion.

I regret that the bill does not contain a provision for soybeans, and sincerely hope that this can be contained in a bill for another year.

There is concern about the effects this bill will have on the budget. I do not think there has been any Member of the Senate who has stood more for economy than the Senator from South Carolina. However, this is a time when we must help the farm segment of our population if they are going to survive.

Mr. President, I ask, is $5.3 billion too high a price to pay to insure the survival of the family farm? I shudder to think what the cost of food and fiber will be when the family farm has disappeared. Our Nation's food and fiber will then be produced on large corporation farms, and the consumer will pay much higher prices if this happens.

Mr. President, is $5.3 billion too high a price to pay when an urban oriented department such as the Department of Health, Education, and Welfare last year misspent between $6.5 billion and $7.5 billion of our taxpayers' money through waste, mismanagement, and fraud. This is equal to $19 million per day. HEW has asked for an identical increase of $7 billion in its upcoming budget.

Mr. President, is $5.3 billion too high a price to pay when the Federal Government can afford to pay $13 million per month during January, February, and March for food stamps to striking coal miners. This is $39 million to workers who voluntarily stayed away from their jobs.

Mr. President, the total net income of United States farmers dropped below $20 billion in 1977, the lowest since 1972. This was 10 percent below the 1976 level. Declining farm product prices have led to renewed appeals for a return to 100 percent parity prices. At the present time farm prices are only 66 percent of parity.

Farm debt, on the other hand, is one of the most accurate barometers of farm distress. Farm debt is on the rise. Farm indebtedness increased rapidly in the past year, rising a record 16 percent. Farm debt now totals nearly $120 billion, twice as much as in 1970.

Farmers may need more credit, but mainly they need better prices.

I think it is in the interest, not only of the farmers, but in the interest of the consumer and in the interest of all the American people, that we take action to help the farmer during this period of crisis. Therefore, I urge my colleagues to support the conference report on H.R. 6782.

Mr. President, in closing, I just want to say that I am pleased that the Senate is finally taking action to help our farmers. Their very survival is at stake. I am very proud that action has been taken today.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Who yields time?

Mr. TALMADGE. Mr. President, I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield myself 5 minutes.

Mr. President, the distinguished Senator from Kansas, my good friend, suggested—maybe the suggestion was not directed to me personally—but he did clearly suggest that there is some objection to the fact that so many farmers from around the country are visiting Washington and are visiting Members of Congress in their offices and in the corridors of the Capitol.

I want to assure the Senator from Kansas I have no such objection. I think they are welcome here. I think maybe it is about time they recognized that this is an opportunity for them to influence the legislative process, and I welcome that even though we may not always agree.

But the distinguished Senator from Kansas made another observation in connection with that one, which I cannot believe he really means. He suggested

that, although the farmers are welcome, the members of the Budget Committee, the Congressional Budget Office, and the President of the United States are somehow out of order in undertaking to influence the result of this vote.

I remind the distinguished Senator that I was given a specific charge as chairman of the Budget Committee to enforce this discipline and I will not yield that responsibility simply because a number of Americans who may disagree with my point of view are visiting us in Washington. I want to make that clear.

The second point the distinguished Senator from——

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

Mr. MUSKIE. I would have been happy to engage in this colloquy earlier. Now I wish to finish my side of it, but I will yield in due course.

Another point that the Senator made was that CBO's estimates, the cost, the inflationary impact of this bill are based on worst case analysis. I challenge that, but before I do I point out that the Senator from Kansas himself is engaged in worst case analysis of the position of the Budget Committee, the Congressional Budget Office, and the administration.

I listened to his description of our position, I listened to his description of the President's position, and if I ever heard a worst case analysis, a strawman analysis designed to give him an attractive target to hit, for the purposes of his supporters in the galleries, that was it. I did not recognize it, and I doubt that the President would.

So now I wish to get to the merits of this issue and the procedural questions that are involved.

Some of this I hope may be of interest to citizens in the gallery who are concerned about the state of this country's economy not only from the point of view of their own livelihoods but from the point of view of the economy as a whole because it is that with which I am charged. The Budget Committee is not the Agriculture Committee. The Budget Committee has been created to exercise discipline with respect to the whole $500 billion of Government spending which can come from only one place, the taxpayers' pockets. My friends in the galleries are taxpayers as well as farmers.

That is our responsibility and it is our responsibility to give the Senate our best judgment even when that best judgment runs counter to the popular tide of a current popular issue.

If the Budget Committee were to bend with the wind every time the wind from the grassroots says, "Senator, we need more money," there would be no budget process. There would be no restraint on spending. And instead of a $500 billion outlays ceiling for the next year we would have something closer to $530, $540 billion.

If there is any doubt on the part of anyone in the gallery on that point, I would be glad to give them as much exposure as they need to the pressures that are brought upon the Budget Committee to provide more money, more money, for this, that, or the other.

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

Mr. MUSKIE. I yield 5 additional minutes.

Mr. President, President Carter has advised us that if Congress passes this conference report he will veto it. My good friend from Kansas has said, "Does the President not care at all about farmers?" He has said he will veto it because it could drive food price inflation to double digit levels and add as much as $6 billion to our Federal deficit. My good friend from Kansas challenges that $6 billion figure as being an inflated worst case figure.

I remind my good friend from Kansas that that number is supported by our own Congressional Budget Office which was created to give us independent analyses, the CBO's analysis is based upon a projection of normal weather, not worst case weather, normal weather.

Mr. DOLE. Mr. President, will the Senator yield there?

Mr. MUSKIE. I would like to finish.

Mr. DOLE. I just wanted the Senator to tell us how he got that figure.

Mr. MUSKIE. I would be glad to provide that analysis from CBO, but I cannot do it within the constraints of the time I want to devote to this particular part of the debate. But that figure was produced by the CBO in the same way CBO produces every figure that the Budget Committee and the Congress use to reach judgments independent of that of the President and the executive branch to keep spending under control.

If we are willing to trust CBO's judgment and capability and objectivity for $500 billion of spending surely their judgment is equally objective and sound when it relates to a program in which a particular Senator may be interested at a particular moment in time.

What do we do? Bring in a new estimating authority whenever our own authority somehow does not fit our personal desires or our personal wishes? Obviously, that is not the road to budgetary discipline.

Mr. President, the President also said that this conference report will damage our livestock industry by sharply increasing seed prices.

That sort of thing has happened before, Mr. President. This is not a new perspective or perception of the interrelationship of feedgrain prices and cattle-raising costs. This is the warning flag. It has happened within the last 3 or 4 years. The President says it could happen again under this conference report.

The President said it will undermine our competitive position in world agricultural markets. Is that in the farmers' interest, if true? If the President and his experts believe it to be true, if CBO believes it to be true, is that a warning that ought to be ignored not only by the rest of us but by American farmers?

Finally, Mr. President, the farmers will get no help from a bill that the President vetoes.

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

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

THE WHITE HOUSE,
Washington, D.C., April 6, 1978.

To Senator EDMUND MUSKIE:

Sixteen months ago, I asked Bob Bergland to join with the Congress to help restore a sense of direction and purpose to the farm and food policies of this nation. The extreme volatility of farm and food prices of recent years has not been in the best interest of either our Nation's farmers or consumers.

When we took office, farm income was in sharp decline. We undertook to reverse this trend and return stability to the nation's farm economy. Working with you and other members of the Congress, we developed the most sweeping farm legislation of the past 40 years. Using the authorities of that law, we have moved to improve the incomes of America's farmers.

This policy is working. Our agricultural economy has improved markedly in recent months. To further strengthen this recovery, we announced last week:

An expansion and liberalization of the farmer-held grain reserve.

Paid diversion of 7 to 9 million acres of excess cropland.

And other steps which, in combination with the reserve and the acreage diversion, will add up to $4 billion to crop producer income.

These are carefully considered measures. They will provide decent farm incomes, protect consumers from precipitous price rises, enhance our reliability as a major agricultural exporter, and allow us to meet our humanitarian food aid commitments.

Yesterday a conference committee of the Congress reported H.R. 6782, legislation that was hastily drafted in an atmosphere of emotion and confusion. Should that legislation reach my desk, it will be vetoed.

No one who understands our farm economy should be deceived about the impacts of this measure.

It would increase food price inflation to double digit levels.

It would add as much as $6 billion to the Federal budget.

By sharply reducing production and increasing prices, this bill could seriously undermine our competitive position in world markets.

The higher feed prices that result would adversely affect our own livestock industry.

It would require vast new layers of bureaucracy to administer the complicated and confusing schedule of eligibility requirements and payments.

And, this bill would direct the vast majority of its benefits to a small number of the very largest of our farmers, rather than those in greatest need of help.

This Administration is committed to a strong and prosperous farm economy and one that is able to compete successfully in international markets. We now have a policy to accomplish this objective. I call upon you and other members of Congress to join with me in supporting this policy and in defeating this conference committee bill.

Sincerely,

JIMMY CARTER.

Mr. MUSKIE. Mr. President, I ask unanimous consent that there be included in the RECORD following his letter a Department of Agriculture briefing paper dated April 3, 1978, which describes the President's nine-point program to deal with this issue. I do this in answer to the Senator from Kansas' suggestion that the President does not care.

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

NEW FEATURES OF FEDERAL FARM PROGRAMS

BACKGROUND

The world has harvested two consecutive large crops. U.S. farmers have harvested three.

Declining commodity prices and farm incomes in 1977 were the result of large worldwide supplies of grains, oilseeds, and fibers and an increasingly large proportion of stocks accumulated in the United States. Liquidation of the domestic cattle herd because of unprofitable feeding and poor pasture conditions caused by drought also took their toll.

Realized net farm income in 1977 declined to $20 billion—in real terms, equivalent to 1971. The result of this overall situation was severe cash-flow and debt-repayment problems for many farmers. The severity of these problems varied greatly by commodity and by region of the country.

Realized net farm income for the first half of 1978 is at an annual rate of $23 billion, or about $3 billion higher than last year. Foreign demand for the major crops points to a record volume of agricultural exports in the current marketing year.

RECENT MARKET DEVELOPMENTS

Most commodity prices have shown appreciable increases in recent months from earlier lows:

Wheat at Kansas City from $2.30 last June to $3.20 now;

Corn at Chicago from the fall low of $1.80 to $2.43;

Cotton at Memphis from 48 cents at the turn of the year to 56 cents;

Soybeans at Chicago from $5.50 in October to near $7.00;

Rice from $6.87 at mid-year to $11.40 in February;

Choice steers at Omaha from $37 last spring to over $50;

Hogs from $36 last April to $48 now.

Even though commodity prices have shown these increases because of the farmer-held reserve, improved export markets (particularly for oilseeds), increased livestock returns, and some improvement in general economic conditions, some farmers still are experiencing severe problems.

ADMINISTRATION INITIATIVES

On March 29, 1978, The Vice President and the Secretary of Agriculture announced nine major actions with the objectives of dealing with these problems, further strengthening farm income, and continuing the steady growth in agriculture:

1. To ensure better crop prices and thwart runaway food price inflation caused by the weather, the farmer-owned reserve is being expanded and the terms liberalized. Grain placed in reserve will not be subject to interest charges after the first year. The reserve programs will be used to remove excess 1978 crop production.

2. To take excess 1977-crop corn and grain sorghum off the market, both crops can be put into the reserve program starting May 1.

3. To ensure that the United States can meet its food aid commitments in times of short supply and to support market prices, the government will purchase wheat in the market to build an emergency reserve of 220 million bushels, including wheat accumulated from CCC loan forfeitures.

4. To adjust wheat production downward, producers who participate in the 20 percent set-aside may graze out their wheat or harvest hay on up to 40 percent or 50 acres (whichever is larger) of the total acreage of barley, corn, grain sorghum, upland cotton, and wheat intended for harvest in 1978, and receive a payment of 50 cents a bushel or the wheat deficiency payment rate, whichever is higher.

5. To bring feed grain production in line with potential demand, producers who participate in the feed grain set-aside may divert additional acreage equal to 10 percent of acres planted to the crop and receive a payment of 20 cents per bushel for corn or 12 cents per bushel for sorghum or barley on the normal production from planted acres.

6. To adjust cotton production down, producers may divert acreage equal to 10 percent of the acres planted in return for a payment of 2 cents per pound on the normal production from the planted acres.

7. To balance soybean loans with competing crops, the loan for 1978-crop soybeans is being established at $4.50 a bushel, up $1.00 per bushel over the 1977 loan.

8. To compensate for increases in costs, loan and target prices for 1978-crop rice will be increased, according to law. Preliminary data indicates a loan of $6.40 per cwt. and a target price of $8.53 per cwt. There will not be a set-aside program for the 1978 crop.

9. To improve credit access for farmers and ranchers with serious debt-repayment problems, we are urging the Congress to pass our proposals for an Economic Emergency Loan Program.

IMPACT OF INITIATIVES

The reserve gives producers the opportunity to hold their crops off the market at low cost to await higher market prices, protect consumers and livestock producers against severe price increases in the event of a poor harvest, and ensure our credibility as a reliable supplier of farm products.

The diversion and grazing payments will:

Provide additional economic incentives for participation in the farm programs;

Give immediate cash assistance and potentially provide crop producers a $3–4 billion increase in net returns;

Strengthen market prices by bringing supplies into better balance with demand; and

Conserve energy and natural resources; while providing an accessible land reserve for use when needed.

GRAZING AND HAY PROGRAM

Section 1004 of the Food and Agriculture Act of 1977 authorizes the Secretary to administer a special wheat acreage grazing and hay program.

A producer who decides to participate must designate the specific acreage on the farm that is to be used for grazing or hay (cut immature for green chop, hay or silage). Acreage included in this program must be in addition to set-aside acres and be within the normal crop acres of the farm.

The payment rate will be at least 50 cents a bushel or the deficiency payment rate, whichever is greater. The total payment will be determined by multiplying the established farm wheat yield, times the number of acres in the program, times the payment rate.

Producers will receive a 25 cent per bushel payment at signup.

This initiative is expected to result in an additional 1 to 1.5 million acres being grazed or hayed, with a 30–50 million bushel reduction in 1978 production from current estimates.

Wheat prices will likely be slightly higher (3–5 cents) and net budget outlays will be slightly lower because of a reduction in deficiency payments and loan and inventory outlays.

FEED GRAIN DIVERSION PROGRAM

Section 502 of the Food and Agriculture Act of 1977 authorizes the Secretary to make land diversion payments to producers to adjust the national acreage of feed grains to desirable goals.

The 10 percent voluntary land diversion program for feed grains is in addition to the 10 percent set-aside for feed grains.

To receive diversion payments, producers' 1978 plantings cannot exceed 1977 plantings for each of the crops, or exceed the normal crop acres for the farm. The diverted land must also be put into an approved conservation use.

The payment rates for the voluntary diversion of feed grains are: 20 cents per bushel for corn and 12 cents per bushel for barley and grain sorghum. The payment will be determined by multiplying the payment rate times the established crop yields for the farm, times the 1978 acres planted for harvest.

At signup, producers will receive an advance payment of 10 cents per bushel for corn or 6 cents per bushel for sorghum or barley.

Estimates are that 10 million acres will be placed in set-aside or land diversion. Approximately 7 million acres will be corn, 1.5 to 2 million acres will be grain sorghum, and 1 to 1.5 million acres will be barley. Six of the 10 million acres will be in set-aside; four will be in land diversion.

The impact of this diversion program will be to reduce feed grains by 5 to 7 million acres from current estimates with a 4–6 million acre reduction in corn and a 1 to 2 million acre reduction in soybeans.

Feed grain stocks are expected to be reduced about 335 to 450 million bushels (corn equivalent) over current estimates. Diversion payments for this program will likely total about $625 million: $540 million for corn, $50 million for grain sorghum, and $35 million for barley.

Corn prices for 1978 are expected to strengthen 15–25 cents a bushel from current estimates, with increases to other feed grains in relation to corn.

Net government outlays are expected to be minimal because of a reduction in deficiency payments and loans and inventory outlays.

COTTON DIVERSION PROGRAM

Section 602 of the Food and Agriculture Act of 1977 authorizes the Secretary to implement a paid diversion program for 1978-crop upland cotton.

Participants would divert cropland equal to 10 percent of the 1978 planted cotton acreage and also limit 1978 cotton plantings to not more than 1977 cotton plantings. The payment will be determined by multiplying the 2 cents per pound rate times the farm yield times the cotton acreage planted for harvest; producers will receive a 1 cent/lb. advance at signup.

Planted acreage is expected to be reduced 500,000 to 1 million acres from current estimates with no diversion.

Farm prices will likely increase about 3 cents per pound; net returns would be increased $50–60 million. Consumer prices of goods made from cotton will be slightly higher as a result of slightly higher cotton prices; the price of a $15 cotton shirt would go up about 9 cents.

Diversion payments will likely total $100 million, and be offset by a reduction in deficiency payments and loan and inventory costs.

EXAMPLES OF PAYMENTS

For Wheat:

Assumptions: A farmer has 300 acres of wheat and will graze all of it and also plant cotton and sorghum. The normal crop acreage (NCA) is 1,000 acres. The farm yields are: 30 bu./acre (wheat), 500 lb./acre (cotton), and 40 bu./acre (sorghum). Also 1978 planted acreage will not exceed 1977 acreage.

EXAMPLE

	Acres
Wheat to be grazed out	300
Required set-aside (20 percent)	60
1978 planting intentions for cotton	300
Diversion required (10 percent)	30
1978 planting intentions for sorghum	250
Required set-aside (10 percent)	25
Diversion required (10 percent)	25
Balance to other NCA crops	10
Total	1,000

The payment for the 300 acres grazed out is: 30 bu./acre × 50 cents/bu. × 300 = $4,500.

The payment for the cotton diversion is: 500 lb./acre × 2 cents/lb. × 300 = $3,000.

The payment for the sorghum diversion is: 40 bu./acre × 12 cents/bu. × 250 = $1,200.

NOTE.—The farmer can graze out all of his wheat because it is not more than 40 percent of his NCA total of 1,000 acres.

For Feed Grains:

Assumptions: A farmer has a normal crop acreage (NCA) of 400 acres. He decides to plant 100 acres of corn this year. His 1977 planted corn acreage was 105 acres. His farm yield for corn is 100 bushels per acre.

Remember that 1978 planted acreage cannot exceed 1977 planted acreage in order to obtain the diversion payment.

EXAMPLE

	Acres
1978 planting intentions for corn	100
Required set-aside (10 percent)	10
Voluntary diversion (10 percent)	10
Acreage that can be planted to other NCA crops	280
Total	400

The payment in this example is: 20 cents/bu. × 100 bu./acre × 100 acres = $2,000.

For Cotton:

Assumption: A farmer has a normal crop acreage (NCA) of 500 acres. He is planting 100 acres of cotton this year. His 1977 planted cotton acreage was 100 acres. His farm yield for cotton is 500 pounds per acre.

Remmeber that 1978 planted acreage cannot exceed 1977 planted acreage in order to obtain the diversion payment.

EXAMPLE

	Acres
Cotton planting intentions for 1978	100
Required set-aside	0
Voluntary diversion (10 percent)	10
Acreage that can be planted to other NCA crops	390
Total	500

The payment in this example is: 2 cents/lb. × 500 lb./acre × 100 acres = $1,000.

Mr. MUSKIE. He may disagree with the program, but the fact that the President does not care is another point entirely.

Mr. President, the Senate must meet its responsibility to return this bill to conference in order to produce a bill which meets the farmers' needs with minimum possible cost in increased inflation, deficit, and grain shortages.

At this point I would like to make some parliamentary inquiries to put in perspective a parliamentary issue the Senate in one way or another will have to resolve today.

Mr. McGOVERN. Mr. President, at the appropriate time will the Senator ask for an additional time to yield so we can have a little colloquy on some of the points he is raising about the impact of this bill on the budget, on the Federal deficit, and also on consumers, the issues that he raised here this morning, and also in his letter to Members of the Senate?

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

Mr. MUSKIE. You see what the time problem is, may I say to the Senator. I will be glad to try to engage in as extensive a discussion as my hour time limit permits.

Mr. McGOVERN. Maybe 5 or 6 minutes.

Mr. MUSKIE. I do have some priorities that relate to that time concerning my responsibility as Budget Committee chairman.

Second, I am not an agricultural expert so I am not in the same position as the Senator from South Dakota is, perhaps, in discussing some of the substantive questions.

Mr. McGOVERN. It is really the budget matters I wanted to discuss. That is why I asked the Senator to request additional time.

Mr. MUSKIE. I cannot promise the Senator. I have made some commitments as to time, but I will do the best I can.

Mr. President, with respect to the parliamentary inquiries: Is it not true that conference reports such as the pending legislation are amendments and, therefore, subject to the procedures of section 303 of the Budget Act?

The PRESIDING OFFICER. Will the Senator state the parliamentary inquiry again, please?

Mr. MUSKIE. Is it not true that conference reports such as this one are amendments and, therefore, subject to the procedures of section 303 of the Budget Act?

The PRESIDING OFFICER. Did the Senator say is it not true that they are amendable——

Mr. MUSKIE. That they are subject to the procedures of section 303 of the Budget Act.

The PRESIDING OFFICER. The Senator is correct. Section 303 has been interpreted to include amendments made in conference that contain new matter not previously considered by the Senate.

Mr. MUSKIE. The second inquiry: Is it not true that this conference report provides new spending authority within the meaning of section 401(c)(2)(C) of the Budget Act which is to become effective on October 1, 1978? I understand these questions were reviewed with the Parliamentarian earlier so that we will not be springing any surprises on him.

The PRESIDING OFFICER. The Chair would have to examine the conference report in order to answer the parliamentary inquiry.

Mr. MUSKIE. Well, I guess I have been misinformed as to the scope and thoroughness of the prior review. I will pass over this matter for the moment while counsel for the committee consults with the Parliamentarian so that we will not waste my hour. I understand it had been thoroughly reviewed.

But instead of putting parliamentary inquiries at this point I will make the point, which I hope to reinforce later with a ruling from the Parliamentarian, so that we can proceed. I do not want to use an hour debating this technical question.

The PRESIDING OFFICER. The answer is yes to the second parliamentary inquiry.

Mr. MUSKIE. The answer is yes.

Now, third, is it not true that under section 303(a) of the Budget Act this legislation, on the basis of the two previous answers, cannot be considered until after the first budget resolution for fiscal year 1979 is adopted?

The PRESIDING OFFICER. That is correct.

Mr. MUSKIE. So that if that answer is correct, this conference report, since it is pending before the Senate prior to the adoption of the first concurrent resolution for 1979, is subject to a point of order?

The PRESIDING OFFICER. The Senator is correct.

Mr. MUSKIE. I thank the Chair and the Parliamentarian. Mr. President, I will now comment upon the answers I have received.

It is not difficult to understand why this provision, section 303, was inserted in the Budget Act. That provision says that when we are dealing with the next budget year all spending decisions are to be considered together in the first concurrent budget resolution so that when we begin to authorize spending for the next budget year we do so having in mind all of the spending pressures and demands we are being asked to consider.

What we are being asked to do here is to give preference to this particular bill and this particular proposal over all others, $500 billion worth of them, which the Budget Committee is at the present time considering, with a view to reporting first concurrent budget resolution to the Senate on April 15. That is the point.

Once we abandon it, and especially if we abandon it in the way that Senator TALMADGE proposes, to suspend the Budget Act altogether, to suspend it altogether, what we are saying is we do not even care about the procedures.

There was a procedure available to the conference to deal with section 303. They could have applied to the Budget Committee for a waiver of section 303, and that could have been done last week. But, no, the Agriculture Committee and the conferees find that too inconvenient. They have not asked for a waiver, they have not asked the Budget Committee for a waiver.

They have not tried to make a case in the Budget Committee for a waiver, but instead they come here and say, "That Budget Act is too inconvenient, so I am going to move," the distinguished floor manager says, "to suspend the Budget Act."

Well, if we are going to suspend the Budget Act every time it is inconvenient, every time it is uncomfortable, every time it stands in the way, every time it requires us to follow a certain procedure to assure that the provisions of the act are safeguarded, then it becomes meaningless. If at some time, then, our friends in the gallery are concerned about another form of Government spending, and they say, "Why do not the Budget Committee and the Congress stop that," how are we going to stop it if we have already undermined the procedures for controlling and disciplining Government spending? How are we going to stop it? Do you think we can turn it on and off like a faucet of water?

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

Mr. MUSKIE. Not yet. How are you

going to observe a procedure if you get rid of it, throw it away, suspend it every time it becomes inconvenient?

So, Mr. President, it is not difficult to understand why this provision was inserted in the Budget Act. As reported from conference, the bill carries an October 1, 1978, effective date. It contains fiscal year 1979 farm entitlement provisions, which are to be considered before the Budget Committee has had an opportunity to establish national spending priorities in our first budget resolution for fiscal year 1979. It is therefore subject to a point of order under section 303(a), and because the floor manager of the bill understands that, he wants to avoid the point of order by moving to suspend the Budget Act.

Mr. President, this bill fails to comply with the requirements of the Budget Act, and disregards orderly budget procedures. That means that the Budget Committee is forced to draw up its resolution under pressure to include a specific program, without retaining the responsibility to establish spending priorities for fiscal year 1979.

It would appear, Mr. President, that if this bill indeed exists in circumstances that are extraordinary, the Budget Act, by providing a waiver procedure, anticipates the abiilty to respond to extraordinary and unanticipated emergencies. But, no, we do not use the waiver. We do not use the procedure. We just push the Budget Act to one side, and then do what we will.

That is the way we used to operate, and it looks to me as though that is the way we are going to continue to operate in the future, if we have more precedents like the one before us in the Senate today.

Mr. President, if the budget process is not strong enough to moderate constituent pressures and focus congressional deliberation on the Nation's problems in an orderly and deliberate way, then the budget process is not worth the paper on which it is written. If the budget process is only to total the interest on the public debt, or to serve as an accounting mechanism to add to the cost of proposals from the authorizing committees, then we might as well go out of business. If that is the will of the Senate, so be it. I and my 15 colleagues have other interests we could pursue, and other committees on which we might focus our attention. If, indeed, we have been wasting our time for the past 4 years working on budget resolutions and advising the Senate on the budget implications of all major legislation, then we might as well close our doors.

Indeed, for the past week, Mr. President, our committee has been working 15 hours a day, late into the evening, to prepare the first budget resolution for fiscal year 1979. We have been trying to review the 19 functions of the budget and to set national spending priorities.

By forcing the Senate to consider this 1979 spending bill in advance of congressional action on the budget resolution, the Agriculture Committee is saying that farm spending must go ahead of every other important national issue, from defense through income security to interest on the national debt.

Mr. President, this kind of conduct is not consistent with the Budget Act; and so, in due course, if the motion of the Senator from Georgia is defeated, I will raise the point of order against the conference report.

May I say to my colleagues that the Parliamentarian advises me that the effect of that would be the same as a motion to recommit to the conference. If the point of order is sustained, the bill will go back to conference, and the conferees will have another opportunity to work their will on this bill and report it to the Senate. That is the purpose of the point of order.

Mr. DOLE and Mr. McGOVERN addressed the Chair.

Mr. MUSKIE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. ZORINSKY). The Senator has 32 minutes remaining.

Mr. MUSKIE. At some point I would like to get into that part of what I want to say that addresses the merits of the conference report, and I am prepared to do that, if the distinguished floor manager is willing.

Mr. McGOVERN. Mr. President, will the Senator yield to me to discuss the budget impact of this bill, since I think that is the matter which most concerns him, and also the impact of the bill on the consumers? Those are the points that he has raised in the letter he sent to us.

Mr. MUSKIE. I have not yet raised those points this morning, and I am about to do that. I simply would inquire of the Senator from Georgia if he wishes me to continue using time at this point.

Mr. TALMADGE. If the Senator will proceed, that is fine with me.

Mr. MUSKIE. All right; then I will proceed, and I will try to yield to the Senator from South Dakota at the appropriate point.

Mr. President, as my colleagues will recall, the Senate version contained several contradictory set-aside programs and new farm subsidy provisions which carried extremely high costs to the Government and the consumer. Moreover, this program would have made our Nation vulnerable to future crop failures. So contradictory were the various provisions of that measure that CBO was unable to come up with a cost estimate for the entire bill, and we have never been able to get that cost estimate for the entire bill from the CBO because of the contradictory provisions. So this is one proposal to which I have no answer, to which the CBO has no answer, and under which we have no way to estimate the budgetary costs.

I suspect that many of my colleagues voted for this bill because of assurances they received from the chairman of the Agriculture Committee that the conference would produce a more responsible piece of legislation. I regret that the majority of Senators voted for this measure, which they knew to be unsound economic and agricultural policy.

The conferees have succeeded in adding insult to injury by compounding the inflationary and ill-conceived economic policies contained in this bill.

Mr. President, let us take a look at what the conferees have brought back to this body for our consideration and approval.

First, they have accepted the flexible parity concept proposed by my colleague from Kansas and, at the same time, have increased the target and loan price schedule for the commodities covered in this bill.

Mr. DOLE. Mr. President, will the Senator yield for a correction?

Mr. MUSKIE. I yield.

Mr. DOLE. I would just point out that the loan rates in the conference report are lower than those passed by the Senate. In fact, the Senator from Montana was just complaining about that action by the conference.

Mr. MUSKIE. I understand that the target prices are higher than your provision in the Senate.

Mr. DOLE. No, the target prices remain the same under flexible parity, except that the first jump was higher. From that standpoint, that is accurate.

Mr. MUSKIE. All right; I accept that correction.

Second, the conferees rejected every substitute to these inflationary measures. They rejected a substitute by Representative FOLEY which would have made a permanent change in the 1977 farm bill for target prices and loan rates for wheat, feed grains, and cotton. CBO analyzed the Foley substitute and concluded that it would be significantly less inflationary than the bill reported by the conferees.

The conferees also rejected the administration's recommendation to modify the conference report to reflect recently announced administration initiatives. As you know, between the time the Senate passed H.R. 6782 and the beginning of the conference the administration set forth a nine-point program which would, as I have stated earlier:

Provide greater economic incentives for participation in farm programs;

Give immediate cash assistance yielding crop producers approximately $3–4 billion in new returns;

Strengthen market prices by bringing supplies and demand into better balance;

Conserve energy and natural resources while providing an accessible land reserve for use when needed.

But, again, Mr. President, the conferees cast caution to the wind and went far beyond these more reasonable alternatives.

Even the Foley proposal, I should note, would have carried a high price tag in terms of budgetary costs. At least, however, economic impact might have been somewhat more equitable since its impact on food prices would have been less severe. Food price inflation is the cruelest kind of tax—a regressive tax. The burden of this bill will be carried disproportionately by the poor and middle-income citizens.

Mr. President, we should recognize by now that Federal programs which aid farmers cannot create money out of thin air. Sooner or later, unless dramatic changes occur, those dollars which are added to farm income must come either from U.S. taxpayers in the form of higher

spending or from consumers in the form of higher food prices. In either case, it is the American people who must foot the bill.

Certainly the American consumer will not be fooled when he sees his food bills increase by nearly 3 percent in the upcoming fiscal year. Over $5 billion will come out of the pocketbooks of American consumers to finance this legislation. In other words, the average American family of four will end up paying about $100 a year more for food when this bill is added to the recent administrative actions.

As for the inflationary impact of this legislation, CBO estimates that the fiscal year 1979 food component of the consumer price index will increase approximately 2.5 percent over January current policy projections, adding approximately 0.5 points to the overall rate of inflation.

However, this is merely the first-round effect. Wages and long-term contracts tied to the CPI will also be adjusted upward, and as a result prices will rise throughout the economy.

By 1981, the first round plus the secondary and tertiary effects flowing from this legislation, plus USDA action, will have added a full point to the overall consumer price index.

In terms of budget impact, CBO estimates that this legislation will require approximately $5.7 billion in outlays over current policy estimates in fiscal year 1979.

Mr. President, I ask unanimous consent that the tables including CBO estimates be printed at this point in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 6, 1978.

Hon. EDMUND S. MUSKIE,
Chairman, Committee on the Budget, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of March 31, we have supplied the Budget Committee staff with estimates of the budget and economic impact of H.R. 6782, the Emergency Agricultural Act of 1978, as agreed to by the House and Senate conferees on April 5. This letter provides some of the highlights of these estimates.

Table 1 summarizes the 1978 and 1979 estimated budget costs of H.R. 6782 and the effect of the administrative actions announced March 29 by the Department of Agriculture. We estimate that the effect of H.R. 6782 would be to lower 1978 estimated outlays for Commodity Credit Corporation price support programs by $375 million, and to increase 1979 estimated outlays by $5.7 billion. The estimated effect of the administrative actions announced March 29 and other technical adjustments is to lower 1978 outlays by $302 million, and to lower 1979 outlays by $1.7 billion.

TABLE 1.—CBO ESTIMATE OF THE BUDGET IMPACT OF H.R. 6782

[By fiscal years; in millions of dollars]

	1978		1979	
	Budget authority	Outlays	Budget authority	Outlays
CBO current policy base (February estimate)	1,628	7,420	7,257	6,511
Administrative actions announced Mar. 29 and other changes [1]	−302	−302	−1,696	−1,696
H.R. 6782 conference agreement	−375	−375	+5,930	+5,699
Total CCC price support programs [2]	951	6,743	11,491	10,514

[1] Includes technical reestimates, primarily for dairy price supports.
[2] Includes administrative expenses and excludes National Wool Act.

The estimates assume that 90 percent of the wheat producers, 80 percent of the cotton producers and 50 percent of the feed grain producers will choose the 50 percent set-aside program provided by H.R. 6782. Other specific assumptions underlying these estimates have been provided to the Budget Committee staff.

Table 2. provides our estimates of the direct effect of the enactment of H.R. 6782 on prices. The ultimate effect on the total CPI may be approximately double the initial impact because of cost-of-living wage adjustments.

TABLE 2. *CBO estimate of the price effects of H.R. 6782*

Increase in 1978/1979 season average farm prices:	
Wheat (dollars per bushel)	.26
Corn (dollars per bushel)	.20
Barley (dollars per bushel)	.17
Sorghum (dollars per bushel)	.19
Corn (dollars per bushel)	.20
Soybeans (dollars per bushel)	1.25
Upland cotton (dollars per pound)	.19
Initial percentage increase in price levels (fiscal year 1979):	
CPI, food	1.1 to 1.5
CPI, all items	0.2 to 0.3
Increase in food bill for typical urban family of four (January 1978 dollars)	$46 to $63

Other details concerning the estimated impact of H.R. 6782 on production, domestic consumption, ending stocks, and volume of exports have been provided to the Committee staff.

Sincerely,

ALICE M. RIVLIN,
Director.

Mr. MUSKIE. We have a costly and dangerously inflationary bill before us—a bill that will hit the pocketbook of every American taxpayer and consumer.

Apparently, my colleagues have not heeded the early warning signs that inflationary pressures are on the rise. The recent surge in consumer and wholesale prices is largely attributable to sharp increases in the price of food which have already taken place. Are we to make double-digit food inflation a permanent feature of our economy?

If we now pass this bill which will accelerate food price inflation, we will raise the underlying inflationary momentum in the economy. As I have pointed out before, inflation is sustained by the determination of every individual in every sector to catch up with inflation. This process is sustained in large part by the administration and the Congress, as we take economic policy decisions which have large inflationary effects. The list of culprits include increased agriculture price supports, higher payroll taxes, the increase in the minimum wage, import restrictions, and certain regulatory activities, to name only a few. I believe we are discovering that one of the most serious problems in an underemployed economy is the pressure it creates to adopt policies to protect incomes which add fuel to the inflationary cycle.

I had hoped that the congressional budget process would provide us with a mechanism for resisting these pressures for politically expedient action. Mr. President, I confess that legislation such as this undermines my faith in the ability of Congress to act responsibly on tax and spending legislation.

H.R. 6782 is but another glaring example of ill-conceived economic policy. In a headlong rush to respond to the strident voices of one segment of our farm population, we have ignored the impact this measure will have on the dairy, poultry, and livestock producers, and the agricultural sector as a whole. The bill reported by the conferees would aid grain producers while severely hurting livestock producers. The price of corn, a staple feed grain, is projected to rise to $2.45 a bushel in fiscal year 1979 under this bill, as opposed to $2.25 without it and $2 before the administration acted.

Furthermore, within the farm sector, only 5 percent of all farms, the largest ones, will reap approximately one-third of 1 percent of the benefits from this program. This same group averaged approximately $50,000 in net income last year—a bad year for grain farmers. Clearly, these agricultural executives are not in need of additional Federal assistance at the expense of American consumers and taxpayers and other farm producers.

Ironically, 60 percent of all farmers—those small farmers facing the most serious financial difficulties—will reap only a small portion of the benefits from this program. I am sure many of these people have been told that this bill will provide them with relief. The hard facts reveal the absurdity of such assertions. I sympathize with these farmers. I believe they, and the rest of us, have been sold a phony bill of goods.

We should recognize that the financial squeeze now being felt by some farmers stems from ill-timed investments they made in land and machinery when prices for grain were exceptionally high. Has the time arrived for Government to rescue all of us from our mistakes? Is it time to bail out every small and large businessman who makes an unsound investment? Is that our free market system, our economic system of reward for initiative and risk taking?

Finally, I think we are just beginning to see the effects of the 1977 farm bill in agriculture. For 1978, net farm income is already approximately $3 billion higher than last year, even without any new farm entitlement program.

As I indicated earlier, agricultural prices are now rising substantially. This ill-conceived legislation is designed to fight the last war, not the real economic battle we face this year, which is the battle against inflation.

Mr. President, we must also recognize that this bill will adversely impact on U.S. grain reserves. Bad weather combined with the set-aside program could reduce U.S. grain stocks to dangerously low levels. Wheat and feed grains stocks

could fall to levels of the 1974–75 levels, when we had exceptionally high prices. CBO estimates that under this provision carryover stocks could fall 24 percent below its January current policy estimate. The administration's initiatives would have reduced stocks only about 7 percent under current policy. The 2.2 billion bushel grain reserve estimated under the conference agreement is a dangerously low level which could be wiped out by any number of unforeseen circumstances, including the weather and changes in world grain demand.

I think it is not prudent to play Russian roulette with the American and world economy. A healthy reserve is essential to economic stability.

Do members realize the possible consequences of this foolhardy policy? In 1973–74, we ran short of reserves, we had double-digit food inflation, followed inevitably by restrictive anti-inflationary monetary policies and by deep recession. We got nearly 9 percent unemployment. We got the massive weakening in both U.S. and foreign economies which is still with us. And from this we got the economic budget deficits we have faced since that time.

The next time it will be worse. Accelerating inflation will lead to tighter monetary policies—Chairman Miller has already told us that. Another similar recession will produce our first $100 billion dollar budget deficit. Is that what the Congress wants to vote for today?

H.R. 6782 is not the answer to the financial problems facing American farmers.

Mr. President, perhaps it is expecting too much in an election year for Congress to act responsibly on controversial spending and tax legislation. And, of course, there is always that temptation, in times such as these, for us to shirk our responsibilities and leave the difficult decisions up to the President. As chairman of the Budget Committee, I am deeply disappointed that we, as a legislative body, have failed to live up to high expectations in our deliberations on major economic decisions. In this case, we have clearly acted recklessly in adopting an extravagantly expensive farm bill, which could have tragic consequences for our economy. Indeed, we have acted so hastily in this instance that we have not had the benefit of cost and budget information on the consequences of this bill.

Mr. President, the responsible thing to do at this stage is to reject the conference report and not leave it up to the President to veto the bill.

We should also realize that certain politicians will surely exploit the discontent of frustrated farmers to further their own political ambitions. To these people I would like to point out that no one gains under this legislation: not the U.S. farmers—not the U.S. consumer—not the U.S. economy—not Congress—and not the President.

We all lose.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 25 minutes remaining.

Mr. MUSKIE. Mr. President, I have agreed to yield 15 minutes to other Senators. The Senator from South Dakota would like to put some questions.

I will be happy to yield 5 minutes of my time to listen to the questions of the Senator from South Dakota.

Mr. McGOVERN. Mr. President, I thank the Senator from Maine.

I believe Senators appreciate the conscientious way in which the Senator from Maine is discharging his duties as chairman of the Budget Committee. I do not know of any Senator who wants to do away with the excellent work the committee has done. There are times, though, and I know the Senator from Maine recognizes this, when even the most carefully laid plans have to be revised to meet difficult circumstances.

I would like to suggest to the Senator from Maine that I am just as concerned as he is about respect for the Federal budget. The Senator knows that whether we do anything at all for farmers this year we are estimated to run a $60 billion Federal deficit. We cannot blame that on this farm bill or any other bill pending here for farmers. That deficit is projected by the Senator's own committee whether we vote yes or no on this bill.

We also know——

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

Mr. McGOVERN. I yield.

Mr. MUSKIE. We have no estimate as to the deficit for fiscal 1979 at this point.

Mr. McGOVERN. The Senator was at least sure enough of it so that he said in his letter to Members of the Senate that the coming year's deficit is already estimated at $60 billion or more.

Mr. MUSKIE. It is estimated by the administration, that is correct. We have the administration's estimate which is now $61.5 billion. We have not completed our work. We hope to come in under that number. This bill, of course, would make it much more than that.

Mr. McGOVERN. Let us take the word of the Congressional Budget Office that this bill in this current fiscal year will save $375 million, but that in fiscal year 1979 it will cost $5.6 billion. I do not know whether those estimates are right or not, but I am willing to accept them.

Mr. MUSKIE. May I make an observation?

Mr. McGOVERN. Let us round it out to $6 billion and say for purposes of argument the bill will cost the Treasury $6 billion.

Mr. MUSKIE. The Senator's question reminds me of another point which I think is very important. There ought to be another point of order. The conference eliminated all additional 1978 spending under the bill, but it provided the provision on page 3 of the conference report, section 103. This provision is designed to get around the Budget Act, to avoid a point of order which would have been in order if there had been additional 1978 spending. But instead this provision makes it possible for farmers, after next October, to renegotiate their contracts on the 1978 crop, and to renegotiate them on the basis of the new target prices. We do not know what that bill will be. We do not know at all. Part of that cost is included in the estimate of 1979 and it is really a 1978 cost. So the conference has further confused the question of cost by that kind of legislative legerdemain. I think it is important to make the point.

Mr. McGOVERN. If the Senator will just let me accept for purposes of argument whatever he thinks the cost of this bill is——

Mr. MUSKIE. I am concerned not only with cost but with this kind of device designed to avoid facing up to the cost under the budget discipline.

Mr. McGOVERN. Let us estimate that it is somewhere around $6 billion in cost, which seems to be in the neighborhood of what the Congressional Budget Office is recommending. I would like to suggest to the Senator that there is a way to handle that without adding one penny to the Federal deficit this year or next year. That is for us to reduce the proposed $25 billion tax reduction by that amount. I think the administration is mistaken in any event in recommending a $25 billion tax cut at a time when we have urgent needs of the kind which now face American agriculture. We have very serious needs in the cities. We have a desperate need to be moving ahead on the development of solar energy and other forms of renewable energy.

At the appropriate point in this session, I am going to move—and I hope other Senators will join in this effort—that instead of the $25 billion tax cut we reduce that figure by whatever is necessary to cover the cost of the farm program.

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

Mr. McGOVERN. Will the Senator yield further?

Mr. MUSKIE. Why do I not yield to Senator CLARK at this point to be sure he gets his time and then I will be back. I would like to yield myself one more minute to make a point.

The kind of trade-offs the Senator is talking about are supposed to be made first in the Budget Committee as it deliberates the first concurrent budget resolution. This whole procedure undermines that. This cannot be done on the floor of the Senate. It can be done later after the budget resolution comes in and the Senate debates it. The trade-off the Senator is proposing may very well be a reasonable trade-off, but it should not be made here. The Senator is assuming that if we look at the whole picture, certain trade-offs that the Senator prefers could be made. Maybe his preference would be in the majority position and maybe it would not be. But the place to do it is under the provisions of the Budget Act. This bill torpedoes all of that.

Mr. McGOVERN. As the Senator knowns, I appeared before his committee to tell him what I had in mind in terms of the tax cut.

Mr. MUSKIE. I understand that.

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

Mr. McGOVERN. I must say that I was very surprised that the Senator's Budget Committee increased the President's military budget by almost $2 billion.

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

Mr. MUSKIE. I will respond to that in a moment. When the Senator wanted to present those issues, we welcomed him before the Budget Committee. We held a special hearing for him. We are always willing to do that. But that is the place to do it.

Mr. McGOVERN. That is why I appeared before the committee.

Mr. MUSKIE. But this bill is not there. It is here. This conference report has never been before the Senate Budget Committee. The motion of the Senator from Georgia is to suspend the Budget Act so that it does not have to go there. That is the point I am making to the Senator. He can have his own priorities. I have mine. Sixteen members of the Budget Committee have theirs, and 100 Members of this body have theirs. It is for the purpose of organizing and handling those in a deliberate, rational fashion that we adopted the Budget Act. The Senator cannot persuade me that considering this bill here today is consistent with procedures of the Budget Act.

Mr. McGOVERN. The Senator knows that, in the last analysis, 100 Senators have to decide everything that we decide. It is not just my priorities. I am willing to take my chances with what the Senate will do here today, but there is no way we can devise a budget procedure that ought to foreclose action on this floor to modify it and react to it. The Budget Committee can make its recommendations.

If I understand that act properly, we always have the recourse, as Members of this body, to modify the action of that committee. That is what this debate is all about today.

Mr. MUSKIE. We have a procedure to apply to the Budget Committee for a waiver. That has not been done. The Budget Committee acts on the waiver and listens to the case made. That has not been done.

The Budget Committee reports the waiver to the floor, where the Senate can consider it. That has not been done. So I am not impressed by the Senator's argument. The procedures of the Budget Act have not been followed.

Mr. McGOVERN. We moved just as quickly as we could on this bill, I say to the Senator.

Mr. MUSKIE. You have had 3 days to apply for a waiver.

Mr. McGOVERN. It is remarkable, in my judgment, that we were able to complete action on it and bring it to the floor as quickly as we have. If I had ever thought that the Budget Act would foreclose this kind of procedure for us to deal with an emergency situation of this kind, with a major part of our economy facing a crisis that is going to have a much more serious impact on the budget than anything we do here today if we reject this legislation—the Senator needs to keep in mind, too, that if we have several million farmers going bankrupt in this country, that has an impact on the budget, too. It is a loss of revenue, it is a loss of purchasing power, it is a loss of our basic food producing industry. Those are considerations that we need to be looking at as well as these technical procedures.

The PRESIDING OFFICER. The Senator from Maine has 15 minutes.

Mr. MUSKIE. I shall use 1 minute, and I shall not yield on this minute.

The staff of the Budget Committee asked the staff of the conference last Wednesday to submit a waiver. We repeated that request later in the week. We got no response. What the Senator from South Dakota regards as a mere technicality is an important procedural safeguard to insure that the fundamental problems of farmers, defense, consumers, and everybody else are protected.

If the Senator from South Dakota chooses to say that once he decides that the Budget Act is an inconvenience, we ought to set it aside casually, I cannot go along with that.

I yield 10 minutes at this point to the Senator from Iowa.

Mr. CLARK. I thank the distinguished Senator for yielding.

Mr. President, the issue here today, in my judgment, is not really the Dole flexible set-aside bill, although we are here to debate the conference report on H.R. 6782—and that report is now a modified version of the earlier Dole flexible set-aside proposal.

The real issue today is whether or not the Congress leaves farmers with nothing at all in the way of additional economic protections for 1978.

It is clear to everyone that the Dole proposal cannot be passed into law. A vote for that measure is a vote for no additional economic protections for farmers for this year. Mr. President, I do not want that to happen, and I hope my colleagues in the Senate will not permit it to happen.

The President has promised—unequivocally—to veto the Dole bill. In his letter of April 6 to Senator TALMADGE, chairman of the Senate Agriculture Committee, the President says:

> Should that legislation reach my desk, it will be vetoed.

That statement is unequivocal. Nothing could be more clear.

Some have said that the President is bluffing, and that he will sign H.R. 6782 into law if Congress will only pass it. Such an action is unimaginable after the letter the President wrote to Senator TALMADGE.

Others say that a veto can be overridden. No one can say for sure about such things, of course, but I am convinced that the President would veto this bill, and that it would have little chance of overriding a veto—particularly in the House. I conclude that the flexible set-aside proposal cannot now be passed into law.

So, the issue here is whether we can provide some increased price supports for farmers this year, or whether they are to be left with prices below costs of production for 1978.

I do not want to see farmers left with no additional protections for this year. I believe that would be the final development in a long and cruel hoax played against our farmers. It would mean that we participated in 3 weeks of hearings this spring with more than 150 witnesses and worked through 4 major emergency proposals, including the McGovern bill; the Dole bill; the Talmadge bill; and the Eagleton bill; and then refused to work with the White House and the administration to find a compromise that could actually be accepted.

Mr. President, I will not vote to send to the President a bill that I know he must and should veto at the expense of a chance of working out some measure that will give farmers stronger prices this year—a measure that would be acceptable to the President, the Congress, to the country.

Mr. DOLE. Will the Senator yield?

Mr. CLARK. I shall yield at the end of my time.

That measure would be acceptable to the President and to the Congress and to the country.

The administration has indicated that they will accept a proposal that would increase target prices for wheat significantly, by around 50 cents.

[Disturbance in the galleries.]

The PRESIDING OFFICER. There will be order in the Senate.

Mr. CLARK. I suggest that a similarly moderate increase in supports for feed grains also might be acceptable to the administration. This would greatly increase the attractiveness of the administration-announced set-aside programs. It would not cost much money, given current market prices. Mr. President, I would hope that the Congress will instruct the conferees to reexamine the proposals contained in H.R. 6782 and attempt to produce a bill that will increase price supports, and that the President will sign.

I would think that even the strongest supporters of the Dole bill would prefer an increase in target prices such as the President has indicated that he will accept rather than press for a veto and no increase in price supports at all for this year, which is exactly what we are going to get if we press this proposal.

Mr. President, farmers still face two very real and immediate needs. The first is to reduce the acreage planted for the 1978 crop. The second is for additional price supports and income to offset a very serious cost-price squeeze this year. Very simply, grain prices are below costs of production.

The administration's new initiatives are a very positive step. In my judgment, for feed grains, at least, the proposal to pay farmers to set aside up to 20 percent of their acres in 1978 will help. I believe there will be significant participation in that program, even though it was announced too late. And the administration deserves criticism for the lateness of that announcement.

That program increases the odds that farmers will not overproduce this year. But it does not give them the protections they need against price disasters—protections to help them cover their costs of production in the event that good weather does cause overproduction once again.

Both the administration and the Congress promised farmers programs that

would protect prices at the average cost of production. The President said so in Des Moines in his campaign. The Congress has promised it over and over again. We do not have those protections now and farmers are losing money because we do not.

We still have a chance to provide those protections. By voting down the pending motion we can return this bill to the conference and then the conference can combine the best features of the McGovern bill, the Talmadge bill, and the Foley compromise. I believe the President would find a combination of the best features of all three proposals very difficult to reject.

Mr. President, there have been a number of arguments made against the Dole bill in recent weeks on the grounds that it would cost the Government an additional several billion dollars over the next 2 fiscal years, and on the grounds that it would add additional points to our inflation.

I do not know the exact figures, but they are not the most serious weaknesses in this very bad bill, in my judgment.

Its most serious shortcoming, I believe, is that it mobilizes producers of wheat, cotton, and feed grains against all the rest of agriculture. It authorizes very great incentives for producers of those grains of cotton to divert large amounts of land. But it has no protections at all for producers of hogs, cattle, soybeans, or for dairymen or poultrymen. It would very likely lead to sharp increases in costs for those farmers, and to sharp drops in their incomes.

I will never advocate cheap corn, Mr. President. I know that low corn prices such as those we have had this year are bad for livestock producers and grain producers, as well. Low feed prices overstimulate the livestock sectors and lead to overproduction and prices break later on. Corn prices have been too low, and I would certainly like to see them higher for the reasons I have just stated about feed grains.

But feed grain prices that are too high also would be a very serious problem for the hog feeders and the cattle feeders of my State. They oppose this bill. And, the Dole bill could lead to very high corn prices and very sharp increases in cost for all livestock producers and dairymen. USDA estimates that this proposal could lead to a reduction in feed grain acres on the order of 24.6 million acres—a reduction that would lead to corn prices in the $4 range if we had anything less than a bumper crop. It could mean even much higher prices than that if weather were bad.

Four-dollar corn means that hog producers must have $60 hogs just to break even—but we cannot expect $60 hogs this year. Corn as high as $4 would mean a disastrous economic shock to every part of the livestock economy that depends on feed grains—especially so, if the increase came very rapidly as it might, given the very large acreage diversion authorized in this bill.

Cattle feeders' costs could be increased still another way under this bill. The incentives to set aside corn land are so great that many soybean farmers would be expected to declare soybean land to be intended for corn production and set aside the maximum number of acres. We could easily end up with 6 million acres less in soybeans this year under the Dole bill, than under current programs.

Soybean prices are fairly strong now, and should be around $7 for the year. A large acreage reduction would send them through the roof. That would be very good news for our Brazilian competitors, but bad news for our livestock feeders who must buy soybean meal—and bad news for our customers in Japan and Europe, and ultimately for soybean producers. We could even see embargoes again if weather were unusually bad.

Mr. President, what farmers need are programs that work equitably to support prices at fair levels. We need to reduce production this year—we need a set-aside program that works, and we need price supports that cover average costs of production. I believe that we very badly need to strengthen our current programs in that regard.

The Dole bill is far too drastic, at least as regards the diversified Corn Belt farmer. It contains incentives that could lead to huge production adjustments for our crops, and cause extreme economic dislocation for our livestock economy—and for our customers overseas—upon whom we are very dependent.

Mr. President, the debate on this emergency farm bill has been long and it has been emotional. Many farmers came to town and emphasized their point that they need more protection than the 1977 bill contains. I think they made that point very well, and that there is now broad agreement that those programs should be strengthened. I believe the administration's announcements and initiatives over the last few days indicate that they also are now convinced that changes should be made. Farmers here have helped us to get those changes.

I believe that the time has come to put the emotion and the politics of this debate behind us. I believe that we must recognize the concerns of all participants, rather than just a few—the President's concerns about costs and inflation—the Budget Committee concerns—the livestock producers' and dairymens' concerns about their costs—our foreign customers' concerns about reliable supplies—and, most of all, farmers' concerns about low prices and low incomes. The time has come to recognize all these concerns and to develop a bill that would do all that, and pass it and send it to the President so that we can have the protections we need for this year.

I suggest that can still be done. I believe that the conferees can go back and combine the best features of the McGovern bill, the Talmadge bill, and the Foley bill, and come up with a bill the President will accept. I hope my colleagues will join me in voting to recommit H.R. 6782 and ask the conference to come back with such a proposal.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. TALMADGE. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Georgia has 22 minutes.

Mr. TALMADGE. And the Senator from Maine?

The PRESIDING OFFICER. The Senator from Maine has 4 minutes.

Mr. TALMADGE. Mr. President, I wish to compliment the Senator from Maine, not only for his argument, but on the way he has handled his job as chairman of the Committee on the Budget.

I do take exception to the idea the Budget Committee is the parent of the Senate and not vice versa.

My motion to suspend the rule here is in the very language of the act creating the Budget Committee.

I was a very strong supporter of the creation of the Budget Committee. In fact, in conference I made the motion it be agreed to and I have tried to support it consistently.

We are acting under the terms and under the language of the act creating the Budget Committee itself to suspend the resolution at this particular time in order that we can act on an emergency basis.

Mr. President, my motion to suspend section 303(A) of the Congressional Budget Act with respect to the Senate's consideration of the conference report on H.R. 6782 is not made casually or frivolously. The conference substitute adopted by the committee of conference is emergency farm legislation that is important to the entire agricultural economy. It is imperative that the Congress act on the legislation as soon as possible.

As I stated a moment ago, I was one of the original supporters of the Congressional Budget Act. I am strongly in favor of the act. I do not want to do anything that would weaken the act. I think it holds great opportunities for us to bring Federal expenditures under control.

In moving that section 303(a) of the Congressional Budget Act be suspended for purposes of allowing the Senate to work its will on the conference report on H.R. 6782, I am simply asking the Senate to exercise a procedural right under section 904(b) of the act that enables the Senate to say—"we are going to take up the conference report, notwithstanding the point of order that can be raised under section 303(a) of the act." That is not a waiver of the procedures. It is an exercise of the rights that the Senate has under the procedures.

Section 303(a) of the Congressional Budget Act provides that a point of order may be raised in the Senate with respect to the consideration of "any bill or resolution (or any amendment thereto)" that provides new spending authority described in section 401(c)(2)(C) of that act that is to become effective during a fiscal year if the first concurrent resolution on the budget for that year has not been agreed to.

H.R. 6782, as amended by the committee of conference, increases the loan rates and target prices for the 1978 crops of wheat, feedgrains, and upland cotton, and is deemed to be new spending authority within the meaning of section 401(c)(2)(C) of the Congressional Budget

Act. The increases are effective October 1, 1978, and the first concurrent resolution on the budget for fiscal year 1979 has not been adopted.

In my opinion, it is arguable whether section 303(a) of the Congressional Budget Act applies to conference reports. There is language in other sections of the act making specific reference to conference reports—they are not encompassed by the terms "any bill or resolution (or amendment thereto)." I believe that the better interpretation is that section 303(a) does not apply to conference reports. However, I understand that the parliamentarian is of the opinion that a point of order could properly be made under section 303(a) with respect to the consideration of the conference report on H.R. 6782, and would so advise the Chair.

The question, therefore, becomes: "What means are available to waive or suspend section 303(a) in order to permit the Senate to consider this conference report?" Section 303(c) provides a waiver procedure for any "committee of the Senate" that reports a bill or resolution subject to a section 303(a) point of order. That procedure involves the reporting of a waiver resolution, which is referred to the Committee on the Budget.

The argument has been advanced that when a committee of conference submits a report containing a bill that is subject to a point of order under section 303(a), the Senate committee which originally considered the measure must report a section 303(c) waiver resolution for referral to the Committee on the Budget.

I find this argument unconvincing for several reasons: First, section 303(c) specifically applies to committees of the Senate and not conference committees, which have never been considered as committees of the Senate; second, the Senate conferees represent the Senate and not the members of the committee that originally considered the bill; and third, the Congressional Budget Act specifically provides an alternative procedure in section 904(b) under which section 303(a) may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate. I understand that the parliamentarian has advised the Chair that section 303(a) of the Congressional Budget Act may be waived or suspended under section 904(b).

The waiver or suspension of section 303(a) of the Congressional Budget Act under section 904(b) is, in my view, entirely proper in this case. I state again that the legislation we are considering is emergency legislation. When this legislation (in another form) was originally considered by the Senate, the increases in 1978 loan rates and target prices would have been effective upon enactment. Under section 401(b) of the Congressional Budget Act, a point of order could, therefore, have been raised with respect to the consideration of the legislation. The same point of order could have been raised with respect to the amendment offered by the distinguished Senator from South Dakota (Mr. McGOVERN) and the amendment offered by the distinguished Senator from Kansas (Mr. DOLE).

However, the distinguished Senator from Maine (Mr. MUSKIE) did not raise any point of order, and I think it was entirely appropriate that he not do so, and I thank him. The Committee on Agriculture, Nutrition, and Forestry cooperated fully with the Committee on the Budget with respect to H.R. 6782 and S. 2481 prior to reporting the measures to the Senate. We filed the requisite waiver resolutions, and agreed to offer floor amendments to meet their concerns.

I think that the Committee on Agriculture, Nutrition, and Forestry has an excellent relationship with the Committee on the Budget. I want to see that relationshhip continue. Our objectives are the same: We want to see the Congressional Budget Act succeed.

However, if the farmers are to get relief this year, time is of the essence. It is already late. Much of the Southeastern crops are in the ground. Much of the Southwestern crops are in the ground.

I would have preferred a different vehicle, but this is the only one before the Senate at the present time.

Mr. MUSKIE. Will the Senator yield for a moment?

Mr. TALMADGE. I yield.

Mr. MUSKIE. I do not want to interrupt the present thought of the Senator's discourse, but I thought it might be useful to indicate for the record that section 904, which is the section to which the Senator refers, providing suspension of the Budget Act, was not designed as a routine act. It was designed to avoid depriving us of the opportunity to change the Senate rules, and if we had not had that provision written in the Budget Act into law with respect to the Senate rules, our hands might be tied.

That is why section 904 was written in, not as a routine way to put the Budget Act aside, but it had a very specific purpose.

The Senator is free to make his argument, of course, but I thought that legislative history would be important.

Mr. TALMADGE. Of course, the Senator is entirely correct.

We work with the Budget Committee and the Budget Committee works with the Committee on Agriculture, Nutrition, and Foresty. I appreciate that relationship.

But when time is of the essence, when the emergency is upon us, when relief is needed today, it is time for the Senate to act, and the Senate is the parent of the Budget Committee, not the other way around.

That is the reason I made the motion under the terms of the act creating the Budget Committee, so we can act today.

We have had a lot of talk about inflation and inflation is a reality. But where is that inflation, Mr. President?

About 33 cents of the housewife's food dollar goes to the farmer and about 66 cents plus goes to everyone else, those dealing with transporting, manufacturing, processing, and selling agricultural commodities.

The truth of the matter is that agricultural income for farmers today is about 65 percent of parity. That is the lowest it has been since the depression years of the 1930's. That is the reason we see farms going on the auction block throughout the country, because they cannot pay their debts. That is the reason we see farmers crying for emergency aid and disaster funds, because throughout the length and breadth of this country they are selling commodities below the cost of production.

This shirt I have on is a cotton shirt. Do you know what it cost, Mr. President? About $20. Do you know how much cotton it has in it? Less than 50 cents worth.

The Senator from South Dakota and the Senator from Kansas pointed out that a loaf of bread that sells for about 75 cents has only about a nickel's worth of wheat in it.

How can we expect farmers to carry the whole burden of inflation? Inflation has hit farmers harder than any other segment of our society.

Fuel oil that cost 15 cents a gallon about 4 years ago is now about 45 cents a gallon. Fertilizer, machinery, insecticides and pesticides, and everything else the farmer buys have gone up accordingly.

We hear a great hue and cry that we cannot do anything to help farmers, because it will create more inflation. But the inflation, Mr. President, is not on the farms, the pressure is on the farmers themselves.

Tractors that cost $2,000 and $3,000 4 or 5 years ago now sell for $7,000, $8,000, $9,000, and $10,000.

The same thing is true of all the other agricultural equipment.

Mr. McGOVERN. Will the Senator yield?

Mr. TALMADGE. Yes. I yield to my distinguished colleague, the able Senator from South Dakota.

Mr. McGOVERN. Mr. President, is it not a fact that most foods are not price supported at all, they are not under the price support program?

Most things we buy in the supermarkets have nothing to do with the support of grain and wheat.

Mr. TALMADGE. The Senator is entirely correct.

Mr. McGOVERN. Sometimes it might leave the impression that we are supporting everything. We are not. That is a very small part of the total food budget. It has nothing to do with most of the things we buy in the supermarket.

Mr. TALMADGE. The Senator is entirely correct.

Mr. President, at an appropriate time, I will ask for the yeas and nays on my motion to suspend. We have nine Senators in the Chamber. I ask the aides to check the cloakrooms and the corridors to see if they can produce a few more Senators on the floor, so that I can get the yeas and nays.

We have enough Senators now. I ask for the yeas and nays on the motion to suspend.

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

The yeas and nays were ordered.

Mr. TALMADGE. Mr. President, how much time does the distinguished Senator from Kansas desire?

Mr. DOLE. If possible, I would like 10 minutes at the close of the debate.

Mr. TALMADGE. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Georgia has 16 minutes.

Mr. TALMADGE. And the Senator from Maine?

The PRESIDING OFFICER. Four minutes to the Senator from Maine.

Mr. DOLE. Does the Senator from Maine wish to take his time now?

Mr. MUSKIE. I will reserve my 4 minutes.

Mr. TALMADGE. I yield 5 minutes to the distinguished Senator from Kansas.

Mr. DOLE. I thank the distinguished chairman.

Mr. President, since most of the thrust of the attack has been against the bill that bears my name—and I might add that it bears the names of 21 other Senators, Democrats and Republicans, including the distinguished Presiding Officer at this moment, the Senator from Nebraska (Mr. ZORINSKY)—I want to set the record straight very early that it is not a partisan effort by Senator DOLE. It is an effort by 22 Senators, Democrats and Republicans, about equally divided, who are concerned about the American farmer.

I say to my distinguished friend from Iowa, and my distinguished friend from Maine that I checked the record, and I note that both voted for the Emergency Act of 1975. That was called inflationary by then President Ford. He indicated to the Senate that if it came to him, he would veto it, and he did. But I did not hear the Senator from Iowa make a speech that we should have low farm prices, because President Ford might veto that bill. The Senator from Iowa said a few moments ago that he would not vote for a bill if the President said he would veto it. Well, the Senator voted for that bill in 1975.

So I remind my distinguished colleague, who apparently is satisfied with low farm prices, that that is a choice he can make.

There have been some comments that the Dole bill would take out all this production in States such as Iowa. According to CBO estimates, which we are asked to accept as the gospel in this Chamber, title II, which was the Dole bill, would take out about 22 million acres, as compared with so-called title I, the retirement bill, which would take out not less than 31 million acres.

I predicted at a quarter after 9 that someone would stand up and say that this bill is going to cost $6 billion. They never told us where that figure came from, and we have not heard yet where the $6 billion figure came from, how it was arrived at. That is just for press consumption. That is so the press will understand that this $6 billion——

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

Mr. DOLE. I yield.

Mr. MUSKIE. The Senator overlooks the fact that I put in the record a table of CBO estimates which produced this in the RECORD. If I had more time, I would be glad to read the table. It is in the RECORD.

Mr. DOLE. We will not have the RECORD until tomorrow.

Mr. MUSKIE. I would be glad to send a copy to the Senator now.

Mr. DOLE. What about the other 98 Senators?

Mr. MUSKIE. I am sorry. We have a unanimous-consent agreement, to which both sides agreed, which limits each side to an hour. By definition, it limits the scope of the argument. I am sorry that I did not happen to touch the particular point, but the Senator did not touch a lot of points I would like him to discuss.

Mr. DOLE. I am going to do it right now.

Mr. MUSKIE. The Senator has not succeeded yet.

Mr. DOLE. The Senator from Maine had an hour. The Senator from Kansas has had 8 minutes so far.

Mr. MUSKIE. I yielded some of my time to the Senator from Kansas and the Senator from South Dakota.

Mr. DOLE. I appreciate that.

Mr. MUSKIE. I did not use the hour.

Mr. DOLE. The Senator from Maine had control of an hour.

I want to be accurate, because we are dealing with the Budget Committee, and they are always very accurate. I serve on that committee, and I know they are accurate. But I know how you arrive at assumptions. If you are against a proposal, you use the worst possible case.

The CBO figures say there is going to be 90 percent participation by farmers setting aside 50 percent of their wheat production. I do not accept that. But you have to use that low figure to make the costs so bad. The costs, based on CBO estimates, is about $6 billion. You passed that out to the public and the press, who wrote editorials about it.

The USDA has now released some new figures on the cost production for selected crops. The range for production cost on wheat is $3.66 to $3.92 a bushel. The range on cotton is up to 66 cents a pound. The range for corn, I say to the distinguished Senator from Iowa, is now $2.54 to $2.71 per bushel.

Mr. President, I think we should set the record straight for once, because many Senators are very troubled by this bill. The administration is working very hard—the President, the Vice President, and there are lobbyists all over the Capitol—trying to figure a way to defeat this bill in conference, to avoid sending it to the President, because he does not want to have to veto it. So the best way is to kill it in the Senate or in the House.

We should not be flourishing figures of $5.7 billion when there is no proof. We have been told by the Budget Committee that it will cost $5.7 billion, and there is nothing to support that. The same arguments can be raised against the milk bill, too.

Not long ago, a poll was taken of 1,259 adults, and 5 out of 6 were for raising the prices farmers are receiving. This was not a farmers' poll. It was conducted by the Harris organization.

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

Mr. DOLE. I ask for 2 additional minutes.

Mr. TALMADGE. I yield the Senator 2 additional minutes.

Mr. DOLE. Mr. President, it seems to me that we have to make a choice, as the chairman just indicated. We did not have the luxury in the conference of a 1-year bill, a 2-year bill, or a 3-year bill. We were confined to 1 year.

We understand some of the problems raised by the Senator from Montana (Mr. MELCHER). We understand some of the concerns expressed by the Senator from Iowa. But I think the record is very clear. It is not what we are going to do in conference. It is what we can do in conference. The President has made it clear that he will do one thing and one thing only, in addition to the so-called nine initiatives. He will raise the target price of wheat to $3.40. When Secretary Bergland suggested that it should $3.50, he got in trouble, and that has been all over the papers for the past few days.

It seems to me that as we close this debate, we should know that the cost is not $5.7 billion. We should understand what it costs the American farmer. He is a consumer, too. The American consumers are willing to pay more. We figure that this bill, for a family of four, would add between $40 and $65 a year to the grocery bill. Some would rather take it out of the Treasury, because that does not upset the consumer, and that was advocated in the conference. It was said:

> We don't like the Dole bill, because it comes out of the marketplace. It is easier to send the farmer a check.

The farmer does not want to be on welfare. He does not have a welfare mentality. But he has a budget. He does not have a budget committee, but he has a budget, and he is going broke. The bankers are foreclosing. Yet, scare tactics are being put forth, together with some figures which are not even proved.

I stood on this floor in 1975 and supported the act then, and my President vetoed it. I could read a lot of speeches made by my colleagues about that veto, what a terrible thing it was. If an emergency farm bill was needed in 1975 to help farmers, it certainly is necessary in 1978 to help farmers.

I would be glad to put somebody else's name on the bill, but keep in mind that there are the names of 22 other Senators. I see some in the Chamber: The distinguished Senators from South Carolina have actively supported this bill, as have those from Alabama, Arkansas, North Dakota, Nebraska. They are all sponsoring this approach. It is not a Republican proposal.

I say to my Democratic colleagues: Do not take it out on the American farmer, because the bill has my name on it. Simply because it has a Republican name on it, do not punish the American farmer, because it also has the names of Democrats and other Republicans and Independents.

The farmers want to stay in agriculture. It seems to this Senator that we have an opportunity now. If we fail, it is our responsibility. If the President fails, it is his responsibility.

Mr. TALMADGE. Mr. President, I yield 5 minutes to the distinguished Senator from South Dakota.

Mr. McGOVERN. Mr. President, first of all, I shall make a brief comment on reports that I heard circulating over the weekend that the Secretary of Agricul-

ture, Mr. Bergland, is considering resigning. I hope very much that those are nothing but rumors. I happen to think that Bob Bergland, who served for a number of years as a Member of the Congress of the United States, is personally totally dedicated to the best interests of American agriculture.

We know that every Secretary of Agriculture has to operate within certain constraints. They have to operate within the guidelines that are laid down by the President and by the Budget Bureau.

I am convinced in my own mind that if the Secretary of Agriculture had been permitted to do everything that he might personally have wanted to do to assist the farmer we might not be here today faced with the crisis that we have. But I hope farmers who get impatient with the slow pace of response to their needs will not blame that on the Secretary of Agriculture, specifically on Bob Bergland, and I hope he will stay on the job and continue to fight within the councils of the administration for the strongest possible farm program.

The program now before us is not exactly the kind of bill that I wish we were voting on today, but it is one that I can support. It is a program that has the merit of literally coming out of the grass roots of this country. I think Senators, regardless of what State they come from, must have great admiration for the way in which this legislation was brought to our attention. It really grew out of the efforts of the farmers themselves. I think it does have some limitations to it. It does have some problems. But, on balance, it is addressed at the very serious crisis that faces us in rural America today, and that is the absence of enough income to keep our family farms operating.

We had a little colloquy here on the floor earlier with the chairman of the Budget Committee, who is rightfully concerned about the impact of anything we do on the Federal budget and on the Federal deficit, but I suggest again here the point that I tried to make earlier that there are other options open to us, to keep the budget limitations in line.

We are going to be faced with a vote on a $25 billion tax cut, and when that time comes I intend to move, and I hope other Senators will join with me, to reduce that tax cut by whatever amount we need to cover the cost of this farm program. I do not want to see the cost of the legislation added to the Federal deficit. And that is the reason I intend to oppose at least part of this tax cut. There are other aspects of that tax cut that ought to be proposed to free up funds that we need for other purposes.

I also think, Mr. President, that we need to look very critically at other aspects of the budget that are coming to us. I thought frankly when the President submitted a $126 billion military budget to Congress this year, which is about $10 billion above what we were spending last year, that that offered some opportunity for a modest cut in the President's budget that we could have diverted to agriculture or to the creation of jobs in our cities. Instead of that, it is my understanding that the Senate Budget Committee added almost another $2 billion on top of the Pentagon request as it came to that committee.

When that bill comes back to the floor we will have an opportunity to look at it and to perhaps transfer some of those funds to cover the cost of this bill.

I also want to speak very directly to the point that Senator TALMADGE was making here earlier about the impact of this bill on consumers. We need to keep in mind that if Congress fails to act to deal with the crisis that now confronts the family farmers of this country, those farmers in a very short period of time are going to be replaced with corporations and then we will see inflationary food prices. We know what has happened to the energy prices in this country over the last few years when they quadrupled in considerable part, because of the monopoly control that a few major oil-producing countries and major oil companies have over that industry. I do not want to see that happen to America. We now have more than 2.5 million commercial farmers competing with each other in a largely free economy to give us the most abundant low-priced supply of food that exists anywhere in the world, but if these farmers go broke and the small businessmen up and down the main streets who depend on them go broke we are taking one huge step in the direction of monopoly control of farm and food pricing that is going to be a dagger aimed at the heart of every consumer in this country.

So in a very real sense, a bill that is designed to put a reasonable price floor under the production of our family farmers is a bill designed to protect the consumers of this country. Even if one were to accept the estimates of the chairman of the Budget Committee that this bill will cost the average family of four $100 in increased food bills next year, and I am not sure those figures are right, that comes out to about 27 cents a day that the families of this country would be asked to pay in order to give justice to the American farmer. I cannot imagine any family that would begrudge the food producers of the country another 27 cents a day on their food bill, if these estimates are right, in order to save these families that work so hard on the land.

Mr. President, when I consider how hard farmers work, when I consider the gambles they take with the weather, with the market, with pests, with export and import changes, and with all the hazards that face our food producers on the land, it is enough to make a person weep about the difficulties that face them. So I am very hopeful that the Senate will recognize that we are acting in a perfectly proper way in the procedure that has been outlined by the chairman of the Agriculture Committee here today and that we will act on this legislation to bring some measure of justice to the food producers of this country.

THE FARM BILL, THE BUDGET, AND THE CONSUMER

Mr. President, I am, along with the rest of the Senate, generally reluctant to push for expenditures which exceed the budgetary recommendations of the Budget Committee. My feeling is that whenever possible we should try to remain within those limits necessary to retain a reasonable hold on the deficit.

However, there are no decisions we make that are not and indeed should not be subject to review and amendment when extraordinary circumstances alter the assumptions under which we made our original decision.

I believe such is the case with the conference report now before us. While it may not be the final form I would have preferred, it is one I can support. The severity of the farm situation has been brought home to all of us in the last several weeks. This legislation is necessary if our food producers are to receive an adequate return on their investments. We must act to protect our own long-term food needs as well as those of the millions in the world who rely upon us for their sustenance.

But, Mr. President, the special point that I would like to make this morning is that this legislation need not add 1 cent to the national deficit.

If we adopt a proposal that I will make in greater detail shortly, this legislation and several other measures absolutely vital to the long-term economic health of our country will be paid for in lieu of the $25 billion tax cut proposal that the President has made. The tax cut will not do the job we need done. It is painting with a broad brush a structure that needs three coats in some spots and no paint in others.

Mr. President, we can invest that same $25 billion in a much more specific and useful way. There are sectors of our economy that are in desperate straits and deserve our focus. A simple tax cut, intended to lift the entire economic picture and thereby lift along with it the lagging sectors, will no longer do. Stagflation is a new phenomenon and requires new imaginative remedies. The tax cut was always just one tool in our arsenal, and a useful one, but it never alone sufficed, and certainly cannot be expected now to do the whole job of picking up our economy.

My proposal would be called the Economic Defense Act of 1978 and would take the $25 billion intended to be thrown into the entire economy and earmark it for the following specific purposes:

First, $6 billion to pay for the first year of the agriculture measure now before us and and to expand our Food For Peace program. Polls show the willingness of the American consumer to support the farmers in a way that allows them to meet their production costs. This bill will do that. The tax cut will not.

Second, $7 billion to pay for the social security program, instead of increasing a regressive payroll tax that would dampen both consumer power and business profits. The joint economic committee reported earlier in the year, and I quote, "increasing payroll taxes will lead to slower economic growth, higher unemployment, and faster rates of inflation than alternative means of financing". I voted against against the payroll increase approach, and many have come to the same conclusion in the intervening weeks. But the social security system is absolutely integral to our

economic and social well being, and must be reinforced immediately. We can legislate this support, and in turn keep alive and healthy a program that tens of millions absolutely need. The tax cut could not do the same.

Third, provide the $12 billion necessary to meet the problems of structural unemployment, inadequate shelter, the lack of reliable and accessible transportation in our cities, and to develop a job-creating, inflation-fighting solar energy program. The President's urban policy proposal is an adequate beginning. But it is severely undercommitted in these areas. The cities cannot be ignored without all of us losing in the end. Beyond this the total commitment of funds to solar, wind and biomass development is now only a meager 3 percent of the Department of Energy Budget.

At the same time we have to put the country to work, not only because work is the most basic of rights, but because economic recovery will never happen without full employment. The surest long term answer to inflation is full employment. We have many underutilized sectors of the economy, but the most glaring is the still too ample supply of unemployed labor in all categories.

The tax cut cannot be targeted on the groups that need jobs. Further, the creation of one job through a tax cut costs the Government four times more than creating one public service job. Obviously a tax cut will not make the optimum use of scarce resources and maximize the cost/benefit of our investment. We will create just as many jobs in the private sector by taking the same amount and investing directly in a program of job creation, and do the whole economy more good at the same time. That is an incredible imbalance—one we cannot allow to continue. We cannot hope to rise from the quicksand of stagflation unless we use the sun and the wind to lift us. Nuclear development is not the only answer. There is not only much organized opposition to it, but its development creates relatively few jobs or trade possibilities. No tax cut can address this national priority.

What can be in the greater long term interests of all Americans, a quick heating up of an already overheated economy, or the development of a true energy independence, creating millions of new jobs in the process? A national initiative to develop and utilize our renewable resoures is totally consistent with the administration's stated energy goals, but it will not happen without an investment. The fact that we can ease unemployment, reduce the trade deficit, and dampen inflation should make such an initiative automatically part of a new public agenda, one that will in the future make it unnecessary to resort to continual tampering and halfway measures, each of which must be repeated each year, with dwindling returns.

Mr. President, the conference report we are considering today as well as the other measures I have mentioned can be accomplished without increasing the Federal deficit.

Indeed, unless we get to full employment, allow our food producers the freedom to meet their costs, reduce the payroll taxes of the working person, put people to work, and develop safe, clean, and reliable sources of alternative energy, the Federal deficit will grow, inflation will increase, business confidence will erode, and future generations will be faced with permanent and overwhelming problems. I believe this kind of new public agenda is the more prudent approach.

We do not need to transfer a little bit of money to everyone, when the same amount more thoughtfully earmarked would do each of us more good in the medium and long run. I believe the American people want and are willing to pay for an economically secure future. It is our job to help them get it.

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

Mr. TALMADGE. Mr. President, I yield one-half minute to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. MORGAN. Mr. President, I am very distressed by this conference report and the general political atmosphere that dominates recent discussion of farm policy.

Let me begin by saying that I voted for flexible parity along with the approaches offered by Senators HERMAN TALMADGE and GEORGE MCGOVERN. I supported flexible parity because I wanted to give the conferees wide latitude in their efforts to make a workable emergency farm bill.

I am deeply worried about this bill's implications for feed supplies and for our export markets. In my home State of North Carolina, we have strong poultry, pork, and dairy industries. These farmers must have adequate supplies of feed.

On the other hand, we have price depressing surpluses. Flexible parity gives the individual farmer the opportunity to decide how much land to set-aside in return for a payment level that is sufficient for his operation.

I believe that flexible parity will help reduce supplies. I can only hope that this will happen without damage to our feed supplies or to our export markets.

There is little question that our Nation's farmers are in serious financial straights and that something must be done to reverse this situation.

If not, agriculture will suffer. And since agriculture is the backbone of this great Nation, our Nation will suffer.

While I am troubled in the conference report, I must have confidence in the judgment and experience of the distinguished chairman of the Committee on Agriculture, Nutrition, and Forestry, Senator TALMADGE.

Mr. President, we must also remember one other point of deepest concern, the rising age of American farmers. As we know, the average farmer today in this great country is 53 years old. We must do something to attract the young and able to enter farming and take on the risks of weather and pests.

Clearly, our current farm programs do not provide adequate inducement for the young to take up this risky enterprise.

We have heard that the President will veto this measure. This troubles me greatly, but I see no program that offers the necessary movement forward. If the President vetoes this bill, I hope that he is ready to bring up a program in its place.

Mr. BELLMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine has the floor.

Mr. MUSKIE. Mr. President, I have 4 minutes remaining. I yield those minutes to my good friend from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 4 minutes.

Mr. BELLMON. Mr. President, I thank my friend from Maine.

Mr. President, I have been a Member of the Senate since 1969. When I came here I was appalled at the very wasteful methods the Senate used in spending taxpayers' dollars. I had come from being Governor of a State where we had a requirement that we have a balanced budget. It was hard to believe how careless we were here in the way we spent the billions of dollars at our disposal. Since I have been here we have added another $350 or $400 billion to the national deficit and, partially due to the action of this body, we have seen inflation rise to the double-digit level, and this kind of activity hurts everyone in the country, farmers as well as consumers, country people as well as city people

The one hopeful sign that has developed during these years has been the development of the budget process. It is the only effective means, as has been brought out, that might some day bring our Federal spending processes into line and cause us to be more responsible in the way we spend our taxpayers' money.

The process has worked fairly well, whether it has been dealing with welfare, defense, housing, or any other function. But this is the first time it has been frontally attacked and threatened by a motion to suspend the budget process and, in effect, put the law into abeyance.

I would strongly oppose this new development. It will refuse the opportunity for us to give careful consideration to the full impact of this bill, and it will cause, I think, a return to the old free spending days of the past.

As many in the Chamber know, the authorizing committees have made recommendations this year that would result in a budget deficit not of $60.6 billion, as the President recommends, but more like $80 billion or $90 billion. If we allow the authorizing committees to bring this legislation without budget consideration, it is going to get us into an even worse inflation and worse budget position than we have been in.

Mr. President, I ask unanimous consent that Brad Gungoll of my staff, Jim Range of Senator BAKER's staff, and Bill Stringer and Bob Boyd of the Budget Committee staff be granted privileges of the floor during the consideration of this bill.

The VICE PRESIDENT. Without objection, it is so ordered.

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

The VICE PRESIDENT. The time has expired.

Mr. LEAHY. I understand there was another minute and a half remaining. The Senator from Oklahoma was told he had 4 minutes for his speech, and he has used 2½ minutes of it.

The VICE PRESIDENT. The Senator is correct.

Mr. PERCY. Mr. President, I ask for half a minute.

Mr. LEAHY. If the Senator from Oklahoma will yield a minute——

Mr. BELLMON. I am happy to yield 1 minute to the Senator from Vermont and a half minute to the Senator from Illinois.

Mr. LEAHY. Mr. President, I listened to the Senator from Kansas (Mr. DOLE) say that the Harris poll showed that the majority of farmers favored this farm bill.

I hope the Senator will also recall that the Harris poll shows that the majority of Americans are in favor of the Panama Canal Treaty.

Mr. President, since joining the Senate I have been a consistent and strong supporter of the American family farmer. My record on the Agriculture, Nutrition, and Forestry Committee is evidence of my commitment to the farmers. Therefore, it is with regret that I must vote against this farm bill. I do this knowing that quite possibly Senator CLARK and I will be on the only Agriculture Committee members to oppose it.

The reason I oppose this "farm bill" is not because I am changing my convictions in any way. I am opposing this price support bill because I believe it is the wrong approach. H.R. 6782, the so-called flexible-parity bill, is directed toward reducing grain supply by paying farmers higher deficiency payments for growing less grain.

I object to this approach of supporting farm prices. I have deep philosophical problems with any measure which pays farmers to idle their land. I believe my view opposing paid set-aside is shared by a great portion of the American people. The American public is committed to supporting the farmers of the Nation. They will support us in our efforts to provide a fair return to the farmer for his goods. However, I fear they will not understand paying for not growing and will be less willing to support any farm program in the future.

In addition to my philosophical objections, I believe that massive paid set-asides are too much of a gamble to take. The reduction of stocks by the quantities foreseen in this bill leaves us very vulnerable to the vagaries of weather.

If after such a large cutback of planting we have a major crop shortfall here in the United States or anywhere in the world, the food and feed prices will skyrocket.

In such a situation a dollar or two a bushel jump in prices is conceivable. Such an increase in so short a period of time would be devastating for our livestock and poultry industry. In addition, the inflationary impact would be seriously disruptive to our economy.

Such diminished resources would have the greatest impact in human terms. If we have a serious shortfall after reducing our stocks, it would be painfully felt by those in greatest need—the hungry and malnourished of this country and the world. Finally, the cost of the bill to the U.S. Treasury is enormous.

Opposing any paid set-aside does not mean I oppose income supports for farmers. It merely means I support a different approach, an approach that could be followed out through the present legislation that we have, legislation that has not been given an opportunity to work.

I support measures to provide a farmer a reasonable return for his crop. I believe we should raise farm target and loan supports so they more accurately reflect the cost of production and I have supported these higher levels.

I support the paying of higher deficiency payments because they do not affect our buffer stocks. If we experienced a serious shortfall, we might have sufficient stocks to see us through without serious disruption to the other segments of the farm sector and to our economy.

Therefore, Mr. President, because the flexible parity bill would pay farmers not to grow, would significantly reduce our stocks and make us vulnerable to the vagaries of weather, and would be highly costly and inflationary, I plan to vote against the measure.

I agree with President Carter's intention to veto this bill because we have not given the legislation on the books adequate opportunity to work.

The VICE PRESIDENT. The Senator from Illinois.

Mr. PERCY. Having spent 3 years together with Senator Ervin and Senator Muskie helping to create the Budget Act, and having observed its workings and its ability to put a hold on inflation in this country, the promise of it would be destroyed, I think, if we went ahead with this farm program.

In 1974 we passed the Congressional Budget Reform Act—an achievement I consider to be one of the most important actions taken by the Congress in many years. The hope of those of us who were active in the budget reform process' creation was that it would lead to priority setting for expenditures and also holding down spending. Although in absolute terms, one cannot say that the new process has reduced Government spending, I certainly think a good case can be made that Government spending would be considerably higher without the rigorous analysis that the new process puts proposed expenditures through.

However, disturbing signs began to set into the process last year and may be continuing this year. That is, the Congress seems to be willing now on an increasing basis to vote for waivers of the Budget Act, thus placing the major tenets of the process in jeopardy. We must all support the budget process to the fullest extent possible, as only through this process can Congress really set priorities, hold down spending, and thus hold down inflation. The budget process is our most important congressional tool to set national priorities and control inflation—we must preserve its sanctity.

Mr. President, on Tuesday, March 21, the Senate passed by a substantial margin the Emergency Agricultural Act of 1978 to help farmers through the financial squeeze they are presently facing. At that time, I felt Senator TALMADGE's "land diversion" provision, which would have provided incentives for farmers to withdraw additional land from production, was the best piece of legislation the Senate could have passed to help farmers and yet still protect consumers from increasing food costs.

I favored the Talmadge 1-year provision despite the fact that I do not generally favor setting aside land from production because I believed a set-aside program is needed for the 1978 crop year so that we can get the supply and demand of our grains back into balance.

I was disappointed when the Senate decided to attach the McGovern amendment and the Dole "flexible parity" amendment to the "land diversion" bill. I opposed these amendments to the Talmadge bill. Despite the fact that the McGovern and Dole amendments were attached to the Talmadge bill I voted for final passage of the Emergency Agricultural Act of 1978 in order to give the House-Senate conferees as much leeway as possible to formulate and report out a rational, well thought out farm bill.

Unfortunately, contrary to expectations, this was not the result. The conference committee has reported out what I consider to be an irresponsible, inflationary, multibillion-dollar farm bill. The conferees eliminated the original 1 year "land diversion" provision and kept the costly and inflationary Dole "flexible parity" provision intact.

According to the Congressional Budget Office, this legislation will add at least 2 percent to retail food costs on top of the projected 6 to 8 percent under current policy. The administration estimates this bill will cost $6 billion more than the more modest land diversion plan President Carter put into effect last week to to firm up farm prices. Finally, the Consumer Price Index will rise an additional 1 percent as a direct result of this legislation.

Not only is the conference bill costly and inflationary, it drastically increases Government intervention in farm programs, jeopardizes our foreign agricultural export program which is so vital to the country, as well as to farmers, and interferes with the competitive free-market system that I believe Illinois farmers prefer. Mr. President, it is my philosophy that the best way to improve farm income is by creating and expanding domestic and foreign demand for our agricultural commodities. We should avoid increased Government regulation that could make American farm product prices uncompetitive in world markets. Our goal should be to double farm exports from $24 billion to $50 billion over the next few years and strengthen, not weaken, our position as a reliable, stable source of farm products to the world.

In addition to the inflationary nature of this bill, I oppose it because it makes no sense to me to totally restructure the whole 4-year Federal farm program enacted only 7 months ago. The Sec-

retary of Agriculture has the authority to implement the measures included in the Talmadge bill. The new program announced by the Secretary last week is a good start and I urge the administration to improve upon it.

For these reasons I will vote against waiving the Budget Act and against the conference report. If this legislation is sent to the President, I trust he will veto it and I will vote to sustain that veo.

Mr. HANSEN. Mr. President, I support the conference report on the Emergency Agricultural Act of 1978. I do not think there is any question about the fact that farmers and ranchers in this country are in serious trouble. In my state of Wyoming, the seriousness of the problem is illustrated by the fact that net income per farm plummeted from $14,788 in 1973 to a paltry $241 in 1976. Moreover, when farmers and ranchers are hurting as they have been in recent years, their problems become the problems of the communities which depend on a healthy agricultural industry for existence. I believe farmers and ranchers deserve some help.

This legislation undoubtedly is not perfect, and it is not the kind of program I could support on a long-term basis. It is a temporary, 1-year program designed to help farmers and ranchers get back on their feet. And it is a vastly better approach than that taken by the administration, which has fiddled around and twiddled its thumbs, failing altogether to do anything to deal with the problem.

Congress gave the administration authority in last year's farm bill to take certain steps that would have helped relieve the problem, but did the administration use this authority? No. It sat idly by, doing nothing. Then, at the 11th hour after the Senate had already passed a farm bill and the conference committee was about to act, the administration announced revisions in its farm program. The day after the newspaper carried stories about the administration's new farm policy, a member of my staff telephoned the Department of Agriculture's Congressional Liaison Office for details of the program. None was available. We asked for information about the administration's new program so that we could respond to questions from farmers. Information was promised, but as of right now, it still has not been received.

Further, Mr. President, I am most annoyed and disturbed by recent reports that the Carter administration's answer to inflation is to take steps to force down farm prices. The farmers' conviction that Washington is out to get them certainly is not diminished by rumors that the administration wants to bring in more foreign meat to push down domestic prices. The livestock industry has just gone through a 3-year period of the worst prices since the depression years. And now that things are looking up a bit, what happens? The bureaucrats start talking about bringing in more imports. Livestock producers have not asked the Government for subsidies, but they do ask that Government refrain from deliberately ruining their chances for economic recovery by inviting in cheap foreign competition.

The recommendation that more foreign meat be imported to depress domestic livestock prices came from Barry Bosworth, Chairman of the Council on Wage and Price Stability. A few days ago, Mr. Bosworth sent me a copy of the Council's quarterly report on the state of our economy. The report had this to say about food prices:

> The importance of imported food items is also evident in the sharp swing in food prices between the first and last half of 1977. In the first six months the inflation of total food prices returned to double-digit levels, while the prices of domestically produced food rose by a more modest 7.4 per cent at annual rates. Imported food prices increases accounted for over half of the 14.3 per cent rise in prices for food consumed at home.

The report goes on to say that for the 10-year period between 1967 and 1977, "Retail prices of imported foods rose substantially more than prices of domestically produced farm products—11.1 versus 6.2 percent annually."

Mr. President, the Carter administration intends to make agriculture the whipping boy for inflation, and I, for one, intend to do everything I can to see that the President does not get away with it. Farmers are not responsible for inflation. They are victims of it. Let the President launch the battle against inflation in the Federal bureaucracy where opportunities for cutting costs abound. Let him make good on his campaign promises to cut down on the size and cost of the Federal bureaucracy and the expense of Federal rules and regulations.

● Mr. McINTYRE. Mr. President, I intend to vote against the conference report on H.R. 6782, which I regard as an inflationary, expensive and possibly even unnecessary measure. I do so with mixed feelings, for I have listened to the farmers who have visited here since the start of this year and I can sympathize with their frustration and concern for the future. Although New Hampshire is not now a primarily agricultural State, farming and agriculture run deep in the roots of the history of my State and of the heritage of its residents.

Nevertheless, I cannot in good conscience vote for a measure as irresponsible and potentially dangerous as this one. This bill, if enacted into law, could add nearly $6 billion to the Federal budget, not to speak of its impact on the food budgets of working people. It would further accelerate food price inflation, which is already moving ahead at twice the rate of the rest of the economy, to double-digit levels. With the planting season almost upon us, this bill also opens the door to considerable confusion among farmers trying to decide what and how much to plant this year. Significantly reduced production this year could also lead the way to food shortages and severe price inflation in future years in the event of a drought or bad weather of the sort that we have experienced more and more often in recent years.

Finally, recent agricultural data supports the administration's contention that last year's farm bill is working. Farm income is up and has increased during each of the past 6 months. Let us give these programs time to work instead of rushing in to spend billions of dollars which may not be needed.

This is a well-intentioned bill but, nevertheless, a bad one. I am going to vote against it and, if it is approved by both chambers of Congress, I will urge President Carter to veto it.●

● Mr. PAUL G. HATFIELD. Mr. President, the Senate should approve the conference report for the following reasons:

First, economic: Farmers need a shot in the arm. Despite the fact that prices have gone up a little in the last few months, farm income is down a third since 1973. No other segment of the economy has had to undergo such duress.

When income to farmers is increased, the multiplier effect is felt throughout the country like no other economic stimulus. In Montana there are about 25,000 farms. Assuming four people per farm, there are 100,000 people who make their living directly from farms. In Montana, at a rough estimate, another three to four jobs depend directly on the farmer. That is another 75,000 to 100,000 jobs, and at four people per family, another 300,000 to 400,000 people dependent on farm income.

In the United States there are some 2.75 million farms. If the same statistics hold true for the rest of the country, there are some 40-plus million people who depend directly or indirectly on farms in this country. That is a lot of people who would get a big boost in income from a relatively small investment.

Second, equity: In 1973 farmers received a record $30 billion for their products. This year it will be in the neighborhood of $20 billion. In 1973, for the first time in many years, farmers began to get their heads above water and were able to start reinvesting in equipment and land. No longer are these opportunities available. People in rural areas deserve a reasonable standard of living, too.

This is a 1-year program. It is not perfect. It can be amended next year. But it is needed now, for this year, if it is to do any good.●

● Mr. BAKER. Mr. President, I rise in opposition to the conference report on H.R. 6782. I believe that opposition to the report is in the best interests of the farm community both in Tennessee and throughout the Nation.

I am sure each of us in the Senate have talked with and been visited by many farmers in the last few months. Most of these farm groups made a simple and realistic request: First, that the Congress promptly approve legislation addressing their immediate economic plight and second, that Congress as expeditiously as possible begin work on longer term agricultural legislation that would prevent similar crises in the future.

The conference report we are asked to approve today attempts to address the first of these requests but in my opinion fails to do so. Mr. President, it should be apparent that if the Congress seeks to provide short-term emergency relief, the legislation to achieve this goal must

be straightforward and easily implementable and have a relatively predictable impact on the farm situation. The legislation before us today, however, is extremely complex and judging from studies I have examined will have a practically unpredictable impact. In addition to these flaws, the conference bill, if it is to be effective at all, should have been passed months ago. The present conflict over this legislation virtually assures that all the crops affected by the terms of this legislation will have been planted before the date of enactment. This of course means that even if the President were to approve this bill it would be almost humanly impossible to administer it in time to do much good for our farmers' short-term problems.

Finally, there seem to be two other disturbing impacts of the "flexible parity" bill. It has been estimated by the Agriculture Department and our own congressional budget office that the cost of this emergency bill could be phenomenal, possibly adding as much as $6 billion to our already strained Federal budget. CBO also reports that this legislation could cost the average American family from $100 to $200 during 1978. This will most certainly create undue hardships on certain classes of consumers who are themselves in a budget squeeze already.

Mr. President, I oppose the flexible parity concept as a short-term solution to our farm problems when this measure was initially on the Senate floor a few weeks ago. I did, however, vote in favor of final passage of a combined farm bill in the hope that the conference committee would devise an easily implementable, effective short-term farm program from the options available to them. The legislation we are asked to approve today does not meet these expectations either for my farmers in Tennessee or for those of the Nation.

Since the time left in which to help the farmers during this session is short and since the Congress is likely to approve only one piece of short-term legislation, I urge the conferees to reconsider this report and to work with the conferees from the other body to design a bill that will reasonably address the immediate plight of our farmers.●

● Mr. TOWER. Mr. President, the Senate has the opportunity today to offer needed incentives for our agricultural sector. When we considered the 1977 farm legislation, I felt that we did not provide ample stimuli for that sector of our economy which feeds and clothes the people of this Nation and much of the world. In my view, this is one of the many reasons why we are considering emergency legislation at this time.

During both Senate and House consideration of Public Law 95–113, there were pressures from all sides and at many levels being applied to thwart the desire of the Congress to provide financial stability for our producers of agricultural commodities.

As we consider the conference report on H.R. 6782, once again we are plagued by these same pressures. I commend my colleagues in the Senate for their tenacity in designing comprehensive emergency legislation which will furnish farmers throughout this country with the means to continue meeting the needs of our people.

The flexible parity concept embodied in this legislation represents an embarkation on a new course for agricultural policy, one which may result in forming the foundation for agricultural legislation in the future.

Mr. President, in my view, we have admirably responded to the needs of our Nation's most basic industry. We are on the brink of providing management tools for agricultural producers which they have heretofore not had, but which they have sorely needed. It is my hope that this legislation will not only yield assistance during this year, but that it will strengthen the agricultural sector, and in turn, all other segments of our economy.

I urge my colleagues to lend their support to the legislation which is now under consideration. It is also my hope that serious consideration will be given to designing a long-range agricultural policy which will eliminate the need for emergency legislation on this sort in the future.

Agriculture has a tremendous influence on the economic, social, and political affluence of America and the world. The fate of this legislation will be significant in determining whether we have an adequate supply of food and fiber, and whether adequate resources will be available to produce these needs in the years ahead. Whether or not agricultural producers achieve progress and prosperity with efficiency and equity depends on decisions we make today.●

● Mr. STEVENSON. Mr. President, the Senate should reject the conference report and direct its conferees to return with a sound bill that can be signed by the President. The game the Congress has been playing at the expense of the farmer should end here and now.

When this bill came to the floor 3 weeks ago we could have passed the Talmadge proposal. It was a reasonable emergency measure. It could have been approved promptly and signed by the President. Farmers would have had the assurance of help within days. Instead, the Senate took the easy way, adding the Dole amendment to the Talmadge bill to create a monstrosity.

Unlike the farmers watching from the gallery that day, most Members knew that the bill we were sending to conference could not become law. It was a disaster for the Federal budget, inflationary, damaging to our farm export markets and an unacceptable risk to world food supplies. Perhaps some who voted for the Talmadge-Dole combination were relying on the conference committee to repair the damage. Unfortunately, the conferees declined to perform the surgery. We cannot give this version a clean bill of health.

The President has given fair warning that he will veto the bill in its current form. He will have no choice if the Congress refuses to act responsibly. Moreover, it is doubtful that a veto could be overridden.

Mr. President, some of those who profess the liveliest concern for the plight of the farmer have wasted weeks at his expense. They have raised false hopes and false political heroes and villains. They have constructed a bill that totally ignores economic reality. But they have done nothing for the farmer. While there is still time we ought to reconsider and produce a bill that will serve both the immediate and long-term interests of the farmer in a decent income through reasonable production controls and support levels. The bill should be returned to conference with instructions.

The Congress must then promptly take up a measure to ease credit terms for the farmer caught in financial crisis and to provide export terms that will enable the American farmer to compete successfully in expanding world markets.●

Mr. TOWER. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by Senator BARTLETT on the conference report.

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

STATEMENT BY SENATOR BARTLETT

For months experts in agriculture have been saying that the powers contained in the 1976 Agriculture Act, and other federal statutory authorizations, could be used by the Administration to assist in the recovery of American agriculture.

The individual farmers of this nation asked for help, and waited, expecting positive actions on the part of their government. Because of continuing delays and denials, certain groups began to make proposals and many members of Congress began to seek the Administration's assistance.

The Administration refused, a refusal that echoed the earlier opposition to the 1976 Act. As these refusals continued the farmers became motivated to seek the only alternative left to them, that being a change in the existing statute to force the Administration to assist them.

The problems of the nation's farmers were clear to the Senators from agricultural states, and through the efforts of direct contact by individual farmers with non-farm state Senators, the Senate became increasingly aware of the urgent need to make a change.

The result of the inaction by the Administration, and the direct action by farmers, is the conference report we are considering today. I support this legislation because of the extreme need, and the fact that I believe that it will assist, but I regret to admit that we had to resort to this course of action in the same Congress that earlier passed major agricultural legislation.

It is not the farmers' responsibility to physically come to Washington to get their problems resolved. In this representative form of government, both the legislative and executive branches are supposed to be sensitive to react to problems in various sectors of our economy.

I realize that much of the business community has learned the hard way that they have to seek an "audience" in Washington to have their voices heard. This actually is a failure of our system, and now the failure has spread to the extent that thousands of individual farmers have had to leave their farms and seek assistance from their depressed state by personal efforts in Washington.

The fight is not over for the farmers. The opposition to this legislation is being mus-

tered rapidly, and the Administration continues to pronounce its opposition. The one consolation is that the farmers are also learning quickly, and are not likely to give up their efforts.

Because of the Administration's opposition and inaction, a whole new group of citizens has been trained in the procedures of government, and I do not believe that they are likely to let these lessons go unused.

Mr. President, I would like to again state my support for H.R. 6782, and encourage my colleagues to continue their support.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Georgia to waive the provisions of section 303 of the Budget Act.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CANNON (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished senior Senator from Minnesota (Mr. ANDERSON). If he were present and voting, he would vote "aye." If I were at liberty to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Maine (Mr. HATHAWAY), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT) and the Senator from Pennsylvania (Mr. SCHWEIKER) are necessarily absent.

The result was announced—yeas 49, nays 43, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—49

Abourezk	Haskell	Melcher
Allen	Hatch	Nunn
Baker	Hatfield,	Packwood
Bayh	Mark O.	Pearson
Bentsen	Hatfield,	Randolph
Bumpers	Paul G.	Riegle
Burdick	Hayakawa	Sasser
Church	Helms	Schmitt
Curtis	Hodges	Sparkman
Danforth	Huddleston	Stennis
Dole	Jackson	Stone
Domenici	Johnston	Talmadge
Eastland	Laxalt	Thurmond
Ford	Long	Tower
Griffin	Magnuson	Wallop
Hansen	McClure	Young
Hart	McGovern	Zorinsky

NAYS—43

Bellmon	Goldwater	Muskie
Biden	Gravel	Nelson
Brooke	Heinz	Pell
Byrd,	Humphrey	Percy
Harry F., Jr.	Inouye	Proxmire
Byrd, Robert C.	Javits	Ribicoff
Case	Kennedy	Roth
Chafee	Leahy	Sarbanes
Chiles	Lugar	Scott
Clark	Mathias	Stafford
Cranston	Matsunaga	Stevens
Culver	McIntyre	Stevenson
Durkin	Metzenbaum	Weicker
Garn	Morgan	Williams
Glenn	Moynihan	

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

Cannon, against

NOT VOTING—7

Anderson	Eagleton	Schweiker
Bartlett	Hathaway	
DeConcini	Hollings	

So. Mr. TALMADGE's motion was agreed to.

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

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

The motion to lay on the table was agreed to.

The VICE PRESIDENT. The question is on agreeing to the conference report.

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

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on agreeing to the conference report. The yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CANNON (after having voted in the negative). Mr. President, on this vote I have a pair with the distinguished senior Senator from Minnesota (Mr. ANDERSON). If he were present and voting, he would vote "aye." I have already voted "nay." I therefore withdraw my vote.

Mr. MATSUNAGA (after having voted in the negative). Mr. President, on this vote, I have a live pair with the distinguished Senator from South Carolina (Mr. HOLLINGS). If he were present and voting, he would vote "aye"; I have voted "nay." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from Maine (Mr. HATHAWAY), and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT) and the Senator from Pennsylvania (Mr. SCHWEIKER) and are necessarily absent.

The result was announced—yeas 49, nays 41, as follows:

[Roll Call Vote No. 85 Leg.]

YEAS—49

Abourezk	Haskell	Melcher
Allen	Hatch	Morgan
Bayh	Hatfield,	Nunn
Bentsen	Mark O.	Packwood
Bumpers	Hatfield,	Pearson
Burdick	Paul G.	Randolph
Chiles	Hayakawa	Riegle
Church	Helms	Schmitt
Curtis	Hodges	Sparkman
Danforth	Huddleston	Stevens
Dole	Jackson	Stone
Domenici	Johnston	Talmadge
Ford	Laxalt	Thurmond
Garn	Long	Tower
Griffin	Magnuson	Wallop
Hansen	McClure	Young
Hart	McGovern	Zorinsky

NAYS—41

Baker	Byrd, Robert C.	Durkin
Bellmon	Case	Eastland
Biden	Chafee	Glenn
Brooke	Clark	Goldwater
Byrd,	Cranston	Heinz
Harry F., Jr.	Culver	Humphrey
Inouye	Moynihan	Sarbanes
Javits	Muskie	Sasser
Kennedy	Nelson	Scott
Leahy	Pell	Stafford
Lugar	Percy	Stennis
Mathias	Proxmire	Stevenson
McIntyre	Ribicoff	Weicker
Metzenbaum	Roth	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Cannon, against.
Matsunaga, against.

NOT VOTING—8

Anderson	Eagleton	Hollings
Bartlett	Gravel	Schweiker
DeConcini	Hathaway	

So the conference report was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

COMMENTS REGARDING THE VOTE ON THE FARM BILL

● Mr. GLENN. Mr. President today the Senate voted on legislation designed to assist the American farmer during a period of financial hardship. Farmers find themselves boxed in between comparatively low farm prices and debt servicing payments they are unable to meet, and in many cases farm prices are not sufficient to cover the costs of production.

When debate in the Senate first began last March 21, I was fully prepared to work for and vote for the original proposal by Senator TALMADGE. That was the legislation that farm group after farm group told me they wanted to see become law. I realize that a number of farmers are being squeezed between low farm prices and high debt payments. I wanted very much to help them through this difficult time by passage of legislation that provided immediate assistance through higher loan and target prices, and a sensible set-aside program.

However, during the debate on the original Talmadge proposal, amendments by Senators MCGOVERN and DOLE were added to the original Talmadge bill—escalating the cost of the final legislation several times over the original version and far beyond what the Nation, as both consumers and taxpayers, should be required to bear. I was unable to vote for this final composite of TALMADGE, DOLE, and MCGOVERN, because it violated our budget limits and would have added significantly to the Federal deficit. The cost of that total combined program, as discussed on the floor, was projected at $8 to $10 billion, as compared to the $1.2 billion cost of the original Talmadge bill.

The conference report voted on today suffers the same defect. Costs of that bill were estimated at $5.7 billion—almost $12 billion over a 2-year period—$5.7 billion, when farmers themselves had repeatedly expressed acceptance and adequacy of the $1.2 billion Talmadge program. Even though this second proposal was less expensive than the bill that passed the Senate 3 weeks ago, the vote was much closer—49 to 41 in favor of the

conference report as compared to 67 to 26 in favor of the Senate bill. I believe this means many Senators are becoming more concerned about expensive Federal programs.

President Carter has already announced he will veto this bill, because of its inflationary nature and its bureaucratic unworkability. Thus, by passing a bill which the President will not sign into law, the Senate may delay providing the badly needed assistance which would now be going out to farmers under the original Talmadge proposal, which I supported then, and would still support now.

It is my hope that if the House passes this bill, any Presidential veto message clearly states what kind of a farm bill the President will sign into law. Then the Congress can get to work quickly and still pass reasonable and well thought out legislation in time to assist farmers in making planting decisions in the next few weeks. Together, the Congress and the President can provide needed legislation which will speed assistance to the greatest need.

I will work for and support such a proposal to help the farmer.●

THE PANAMA CANAL TREATY

The PRESIDING OFFICER (Mr. FORD). Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No. 2, which the clerk will state.

The clerk will suspend and the Senate will come to order. The balconies will help the Senate.

The clerk will proceed.

The assistant legislative clerk read as follows:

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

The Senate resumed the consideration of the treaty.

The PRESIDING OFFICER. The Senate will now consider amendment No. 38 by the Senator from Utah (Mr. HATCH).

The Senator from Utah.

Mr. HATCH. Mr. President, the Panama Canal Treaty contains a number of provisions which provide for substantial payments to the Republic of Panama. Article III, section 5 of the treaty provides that the newly formed Panama Canal Commission shall pay the Republic of Panama $10 million per year to reimburse it for providing certain public services in the canal operating area, such as police and fire protection, garbage collection, and street maintenance. Likewise, article XIII, section 4 of the treaty provides that the Republic of Panama shall receive from the Commission certain additional payments "to be paid out of Canal operating revenues."

Mr. ALLEN. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. There is noise in the galleries.

Will the Senator suspend until the galleries have been cleared? The interruption is by the spectators, if the Senator will just bear with me until we have order.

The Senator may proceed.

Mr. HATCH. I thank the Chair.

Three separate payments are contemplated under this provision: First, an unspecified annual payment computed at a rate of thirty hundredths of a U.S. dollar ($0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the canal for which tolls are charged, such payment to be adjusted upwards to reflect changes in the U.S. wholesale price index; second, a fixed annuity of $10 million; and third, a supplemental annual payment up to $10 million, the exact amount to be determined by the amount of surplus revenues of the commission. It is estimated that these payments to Panama will total more than $60 million in the first year of operation, excluding the supplemental payment drawn from surplus revenues.

The language of the treaty does not indicate whether these payments to Panama shall be made in accordance with the legislative processes of Congress. Indeed, representatives of the State Department testifying before Congress have emphasized that the canal will be self-supporting under the treaty, and that all payments to Panama will be derived from operating revenues. In other words, the impression we have been given is that legislative appropriations will not be necessary, because these payments will be made directly to Panama by the Commission.

This impression has been confirmed by the language of the proposed implementing legislation that has been submitted by the State Department. The implementing legislation would amend section 2 of title 2 of the Panama Canal Code by adding a new subsection (H) reading as follows:

(H) Payments by the Commission to the Republic of Panama for providing public services in accordance with paragraph (5) of article III of the Panama Canal Treaty of 1977 shall be treated for all purposes as an operating cost of the Commission.

In other words, Mr. President, these payments are not going to be treated as separate payments requiring an appropriation by Congress, but as part of the operating costs of the Commission, thereby bypassing the legislative process. The implementing legislation drafted by the State Department further provides that subsection (g) of section 62 of title 2 of the Panama Canal Code shall be amended to provide that—

The Panama Canal Commission shall pay directly from Canal operating revenues to the Republic of Panama those payments required under paragraph 4 of Article XIII of the Panama Canal Treaty of 1977.

The obvious objective here is to bypass the appropriations process of the Congress in connection with payments to Panama under the treaty.

Mr. President, this scheme, on its face, is constitutionally and financially defective. In the first place, it violates the Constitution. In the second place, it seems certain that there will not be sufficient revenue to cover all of these payments, and that Congress will have to make up the difference through appropriations anyway.

Article I, section 9 of the Constitution provides that—

No money shall be drawn from the Treasury but in Consequence of Appropriations made by law.

Moreover, article I, section 7 provides that all bills for raising revenue shall originate in the House of Representatives. It is a well-established principle of our Constitution that the treatymaking power of the Chief Executive is limited by Congress' power over the purse. Simply stated—and even State Department representatives acknowledge this rule—a treaty cannot appropriate funds.

TREATIES AND EXPENDITURE OF FUNDS

The Panama Canal Commission, according to article III, section 3 of the treaty, will "carry out its responsibilities" as "a U.S. Government agency," and it "shall be constituted by and in conformity with the laws of the United States of America." Thus the treaty contemplates that a U.S. Government agency will be making payments to a foreign government for the remainder of this century without the consent of the House of Representatives and in derogation of the appropriations processes of the House and Senate. This clearly raises an important constitutional issue. The administration's view is that many provisions of this treaty are self-executing, meaning that they take effect as domestic law without further action by Congress. But are these provisions of the treaty providing for payments by a U.S. Government agency self-executing in the light of article I, section 9, clause 7 of the Constitution, which gives Congress the exclusive power to make appropriations? The answer, I believe, is that they are not self-executing.

It is not disputed that the President's treatymaking power extends to bilateral agreements by which the United States undertakes to make payments of money. One of the first treaties made by the United States after the adoption of the Constitution, the Jay Treaty of 1794 with Great Britain, provided for payments of debts owed by American citizens to British creditors. The treaties with France for the acquisition of Louisiana provided for a payment of 60 million francs. Countless other examples could be cited to illustrate the principle that the Chief Executive has the authority to make treaties which obligate the United States to make payments to a foreign government. But I am not aware that any President has ever made a self-executing treaty providing for such payments.

EARLIER PRECEDENTS

Debate over the provisions of the Jay Treaty requiring the expenditure of funds is instructive in this regard. The Members of the House of Representatives did not question the right of the President to enter into such a treaty. Instead, they debated the issue of whether the House was entitled to obtain copies of the instructions given by the President to the negotiators, and whether the Congress was required to appropriate the funds necessary to carry the treaty into effect. President Washington rejected the

demand of the House for copies of the instructions, but the House adopted a resolution, vigorously supported by James Madison, which provided that—

When a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of the Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such a treaty into effect, and to determine and act thereon, as, in their judgement, may be most conducive to the public good.

Congress subsequently enacted a law making the necessary appropriations. The same principles were recognized and the same procedure was followed regarding subsequent treaties where payments were required.

In the case of Turner against Baptist Missionary Union, a Federal Circuit Court considered the effect of an 1863 treaty with an Indian tribe, which provided for payment of the net proceeds of the sale of 160 acres of land to the owner of the buildings situated on the land.

Said the Court:

A treaty under the Federal Constitution is declared to be the supreme law of the land. This, unquestionably, applies to all treaties, where the treaty-making power, without the aid of Congress, can carry it into effect. It is not, however, and cannot be the Supreme Law of the Land, where the concurrence of Congress is necessary to give it effect. Until this power is exercised, as where the appropriations of money is required, the treaty is not perfect. It is not operative, in the sense of the Constitution, as money cannot be appropriated by the treaty-making power. This results from the limitations of our government. . . . As well might it be contended that an ordinary act of Congress, without the signature of the President, was a law, as that a treaty which engages to pay money, is in itself a law. . . . It [the treaty-making power] cannot bind or control the legislative action in this respect, and every foreign government may be presumed to know that as far as the treaty stipulates to pay money, the legislative action is required. (Fed. Cas. No. 14251 (1852), 24 Fed. Cas. 345, 346.).

In brief, the precedents, both political and constitutional, are well established that a treaty provision for the payment of money is not self-executing but requires an appropriation by Congress.

PAYMENT PROVISIONS OF THE NEW TREATY

This principle has been confirmed and duly respected in all previous treaties between the United States and the Republic of Panama. The treaty of 1903 provided under article XIV for an initial payment of $10 million and an annual payment of $250,000. Article VII of the 1936 treaty increased the amount of the annuity to 430,000 balboas, A third treaty between the United States and the Republic of Panama in 1955 increased the annuity once again to 1,930,000 balboas. In each case, the payments were made under appropriations enacted by Congress; and it was never suggested that any of these treaties was self-executing. The current annual payment ($2,238,000) is shown as one of three permanent appropriations in the Department of State budget for fiscal year 1978.

The present treaty, of course, calls for payments by the Commission and it would thus appear that appropriations will not be necessary because no funds will be drawn from the U.S. Treasury. This understanding of the method of payment, however, ignores a number of important considerations. As I have previously noted, article III of the proposed treaty specifies that the Panama Canal Commission, a U.S. Government agency, "shall be constituted by and in conformity with the laws of the United States." The laws of the United States governing the fiscal management of Government agencies in general are contained in title 31 of the United States Code. Executive departments and noncorporate Federal agencies are subject generally to the provisions of title 31, except the provisions of the Government Corporation Control Act. Wholly owned Government corporations are subject to the provisions of the Government Corporation Control Act and to many of the other provisions of title 31 as well.

Turning to title 31, we observe that it clearly delineates the fiscal responsibilities of Government agencies generally and their dependence on appropriations to authorize the expenditure of funds. The Budget and Accounting Act of 1921, which has been incorporated into title 31, defines "department or establishment" to include "any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government," and the term "appropriations" to include funds and authorizations to create obligations by contract in advance of appropriations or "any other authority making funds available for obligation or expenditure." All moneys received from whatever source for the use of the United States are required to be paid into the Treasury (31 U.S.C. 484). Detailed provisions are made for submission of estimates for appropriations for expenditure by government agenices (31 U.S.C. 581–752Z). Expenditures in excess of appropriations are prohibited, and all appropriations or funds made available for obligation are required to be apportioned to avoid the necessity for deficiency or supplemental appropriation (31 U.S.C. 665).

In light of these requirements, the provision of the new treaty that the payments to Panama are to be made by the Panama Canal Commission is wholly contrary to article I of the Constitution and Federal law, unless it is assumed—and the language of the treaties does not seem to support such an assumption—that such funds must first be appropriated by Congress. Presumably no one would seriously contend that the effect of the constitutional provision limiting to Congress the power to make appropriations can be circumvented by the device of providing in the treaty that a payment without appropriations is to be made by a named government agency instead of the United States.

With respect to article III of the proposed treaty, then, it is abundantly clear, that the Panama Canal Commission cannot pay the Republic of Panama $10 million per annum in advance of legislative appropriations authorizing such expeditures. This is also true of the additional payments made by the Commission "out of canal operating revenues" under article XIII of the treaty. Why article III provides simply for payments and article XIII provides for payments "out of canal operating revenues" is a distinction that apparently has no significance regarding constitutional and statutory requirements. The "canal operating revenues" referred to in article XIII are presumably the "tolls for the use of the Panama Canal, and other charges" which the United States—not the Panama Canal Commission—is authorized to "Establish, modify, collect, and retain" by article III, section 2(c) of the treaty. These revenues, of course, are the same in kind as those that have been derived by the United States from the Panama Canal since it was first opened to commerce and which have been expended under appropriations by Congress since that time.

It may be that the purpose of making the payments "out of canal operating revenues" was to identify such payments as part of the cost of operation, in order to establish rates of tolls. Such a construction necessarily assumes, however, that revenues will be sufficient to cover both the payments to Panama and operating expenses over and above such payments. But this leaves unanswered the obvious question: what if there is a disparity between the amount of revenues and the total of such expenses? Is this deficiency to be absorbed by the U.S. Government by appropriations to cover losses, or by Panama through acceptance of less than the amount of payment stipulated by the treaty? In either case, the provision for payment out of revenues does not appear to affect the constitutional requirement for appropriations to carry these provisions into effect.

Section 4(c) of article XIII, which provides for payment of $10 million "out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission" not only runs headlong into present law requiring the agency operating the canal to pay surplus funds into the Treasury, but also substitutes Panama for the United States as the beneficiary of surplus funds. This would effectively preclude further reduction of the U.S. Government's investment in the canal. Like the provision of article XIII for annual payments based on the aggregate measurement tonnage of ships using the canal during the year, the qualifications introduced by section 4(c) relate solely to the determination of the amount of the payment. Neither provision recognizes nor makes mention of the need for congressional appropriations to authorize payment. To be sure, the payment provisions of the treaty seemingly attempt to provide permanent appropriations for the treaty payments, an objective prohibited by the constitutional rule that only Congress has the power to make appropriations.

In sum, the provisions of the proposed treaty for payment of money can not become effective as domestic law unless

Congress has, in accordance with article I, section 9 of the Constitution, appropriated the necessary funds. Under the treaties with Panama now in effect, which also provide for annual payments to Panama, revenues derived from operation of the canal are treated as public moneys and expenditures of those funds are limited to those authorized by appropriation acts of Congress.

Neither the language of the treaties nor the testimony of State Department representatives, however, offers us any concrete, specific assurances that all of the payment provisions of the treaty will be implemented by appropriations of Congress. Although administration witnesses appearing before congressional committees have freely acknowledged that a treaty cannot appropriate funds, they have continued to insist that this is a self-executing treaty. Herbert Hansell, legal adviser to the State Department, has stated that there is "no ground" for the concern expressed by House Members that the treaty "could be regarded as a means of circumventing that constitutional provision with respect to the payments to be made to Panama under the treaty." Why? Because, he says:

> It is intended that the payments to be made to Panama be financed wholly from projected revenues, so as to avoid any need to resort to general revenues.

Mr. President, in all of the testimony that I have examined in connection with this treaty, I have nowhere seen a flat assertion by any representative of the State Department or the Department of Justice that this is a non-self-executing treaty that will require congressional appropriations in order to implement the payment provisions of the treaty; and the treaty itself is silent on this subject.

For these reasons, I offer this amendment to the treaty which would obviate this difficulty and eliminate all uncertainty and ambiguity about the method of payment to Panama. This amendment provides simply that under article III, section 5 of the treaty, all revenues of the Panama Canal Commission shall be deposited in the U.S. Treasury, and that all payments to Panama shall be based on legislative appropriations. It is necessary because of established constitutional precedents and laws governing Federal agencies.

PROJECTED DEFICIENCIES IN THE CANAL OPERATING COSTS UNDER THE NEW TREATY

Mr. President, it should further be noted, as I have previously indicated, that the future of the Panama Canal under this treaty, in so far as its financial structure is concerned, is rather bleak. In a recent study by Mr. W. M. Whitman, special consultant to the House Committee on Merchant Marine and Fisheries it is estimated that the cost of operating the canal during the first year of operation under the treaty will exceed revenues by approximately $99 million, not counting additional costs to the U.S. Treasury of $7.7 million. Mr. Whitman's analysis is based on a tabulation provided by the Panama Canal Company, and is adjusted to reflect the same elements of costs as those shown in the 1978 budget. It also includes additional treaty costs that are not part of the company's tabulation.

This study shows, Mr. President, it is illusory to think that the Panama Canal will be operating on a self-supporting basis, as the representatives of the State Department have insisted. Additional appropriations have to be made to make up the deficit, and cover the hidden costs of this treaty. This is not to mention the added economic burden, after the tolls increase, that the American people will have to bear under this treaty as a result of higher prices for materials, including Alaskan crude oil, that will be transiting the canal.

The American consumer is going to rue the day that our Senators ratify these treaties, because they are going to pay through the nose from that day forward as a result of the escalation in costs to every consumer in America as a result of these treaties and their ratification.

"If financial viability of the canal is equated to operation as a self-sustaining enterprise," Whitman concludes, "the venture appears to be doomed from the first year after the treaty goes into effect. This was the thrust of the testimony of all the witnesses who urged or suggested the necessity for absorption of elements of the cost of operation by the Treasury through elimination of interest and depreciation or abandonment of the concept of recovery of the investment of the Government in the canal. There may be reasons to support adoption of such expedients, but the policy of operating the canal on a self-sustaining basis is not one of them."

Mr. President, I urge all Senators to read this perceptive study with care, and ask unanimous consent that it be printed in the RECORD, together with my amendment, at the conclusion of my remarks.

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

AMENDMENT No. 38

In paragraph 3 of article III, at the end of the text immediately above subparagraph (a), add the following: "The operating revenues of the Panama Canal Commission shall be deposited in the Treasury of the United States of America.".

In the first sentence of paragraph 5 of article III, strike out "Panama Canal Commission shall reimburse" and insert in lieu thereof "United States of America shall reimburse, only after the amount of such reimbursement has been appropriated,".

PANAMA CANAL TREATY PROBLEMS

The written statements and testimony presented by the various witnesses appearing at the hearing of the Panama Canal Subcommittee on November 30 and December 1, 1977, disclose several clearly identifiable problems of some concern to the Committee and the Congress in the consideration of the Panama Canal treaties and legislation to carry them into effect, assuming they are ratified. Those problems fall into five general categories, namely:

1. The projected deficiency in canal revenues to cover operating costs;
2. The sources of funds to cover the deficiency in canal revenues;
3. The form of the Government agency to be established to operate the canal;
4. Ambiguities in treaty provisions; and
5. Constitutional issues.

1. Canal revenue deficiency:

The negotiators and other proponents of the treaty repeatedly have stressed the proposition that under the treaty the operations of the canal are to be self-supporting and that canal revenues are to be used exclusively for payment of costs of the operation without cost to the U.S. taxpayer.

The treaty provides for annual payments to Panama totalling some $62 million in the first year of operation, exclusive of a contingent payment of an additional $10 million to be paid to the extent canal revenues exceed expenditures. Other provisions of the treaty transferring income-producing property to Panama will reduce the revenues of the Panama Canal by some $130 million, partially offset by a reduction of about $50 million in canal operating costs.

An analysis of Panama Canal revenues and costs in the first year of operation under the treaty in comparison to the estimate provided in the 1978 budget program, which does not include provision for the effect of the treaty, is attached. This analysis is based on a tabulation provided by the Panama Canal Company, adjusted to reflect the same elements of cost as those shown in the 1978 budget and to include additional treaty costs, so far identified, not included in the Company's tabulation. The analysis shows that in the first year of operation under the treaty, Panama Canal revenues will fail to cover costs of operation of the canal and related treaty costs by about $99 million exclusive of additional cost to the U.S. Treasury of $7.7 million. The recovery from canal revenues of operating expenses and all other treaty related costs would require an increase in rates of tolls of more than 60 percent. If the additional costs to the Treasury of $7.7 million, referred to above, are excluded from the calculation, the increase in rates of tolls required would be reduced to 56 percent.

Although the calculations of the insufficiency in Panama Canal revenues to cover expenses summarized above relate to the first year of operation, there is no basis for optimum that the financial results of operation will improve with the passage of time. No detailed analysis of costs and expenses for future years similar to that provided for the first year of operation under the treaty is presently available, but the conclusion to be drawn from the data so far available is that costs will rise at a rate higher than any foreseeable increase in revenues over the period of operation of the canal by the United States under the treaty.

If financial viability of the canal is equated to operation as a self-sustaining enterprise, the venture appears to be doomed from the first year after the treaty goes into effect. This was the thrust of the testimony of all the witnesses who urged or suggested the necessity for absorption of elements of the cost of operation by the Treasury through elimination of interest and depreciation or abandonment of the concept of recovery of the investment of the Government in the canal. There may be reasons to support adoption of such expedients, but the policy of operating the canal on a self-sustaining basis is not one of them.

2. Sources of funds to cover expenses of operation:

The ability of the canal to generate additional revenues required to cover canal operating expenses under the treaty lies in (1) possible increases in traffic, and (2) increases in rates of tolls.

a. Traffic increases. The factor cited most frequently as a partial solution to the financial problems of the Panama Canal under the treaty, is the anticipated increase in canal revenues from shipment through the canal of North Slope crude oil enroute from Alaska to the East Coast of the United States. The increase in Panama Canal revenue from this source has been estimated as high as $30 million a year, but for 1978 the estimate by the Panama Canal Company is $4 million. On the basis of the latter esti-

mate, the deficiency of revenue in relation to costs would be reduced to $95 million or $103 million depending on whether the additional costs to the Treasury, noted above, are considered.

There is general agreement that the increase in revenues resulting from the movement of North Slope oil through the canal will be temporary because of the probability of use of less expensive alternatives such as pipelines. In the near time, the movement of this commodity through the canal will unquestionably improve the financial results of operation of the canal for two or three years, but it will neither eliminate the revenue deficiency in those years nor affect the long-term outlook.

The only other suggestion that canal revenues may increase to offset costs increases, even in part, is based on a presumption that historical growth of the canal will continue at the same rate or at a modified rate in the future. This logic has been rejected by most economists who insist that analysis of future individual commodity movements on established trade routes is the only sound basis for projections of future canal traffic.

b. Tolls increases. As previously indicated, on the basis of the Panama Canal revenue figure projected in the 1978 budget, the increased operating costs resulting from the treaty would require a toll increase of from 56% to 60% to put the canal on a self-sustaining basis.

Assuming an increase in revenue of $4 million from the movement through the canal of North Slope oil in the first year of operation under the treaty, the tolls increase would be reduced to the range of 52% to 57%.

Representatives of the shipping industry have indicated that increases in rates of tolls in the amount necessary to make the Panama Canal completely self-sustaining under the treaty are unrealistic and will price the canal out of the market because of the availability of less expensive alternatives.

Apparently, during the negotiation of the treaty there was no attempt at a systematic analysis of the potential canal revenues available for funding the cost of the various provisions eventually agreed to. The draft environmental impact statement, published by the Department of State in August 1977 (42 F.R. 43466) suggested that the assessment of the economic impact of the treaty was then impossible because of lack of data as to the costs of operation of the Panama Canal after the treaty became effective. The final EIS dated December 1977, states that "An initial toll increase in the neighborhood of 30 percent will be necessary to cover the operating costs . . . of the Canal during the new Treaty period. The exact level of toll increases will depend on such factors as:

The structure of the canal operation under the new Treaty, especially its operating cost requirements, and

The short-term impact on Canal traffic of Alaskan oil shipments." (pages 33, 34)

c. Appropriations or absorption of costs by U.S. If tolls revenues cannot be increased in an amount sufficient to make the canal self-supporting, it appears to be obvious that the deficiency in revenues will have to be made up from the U.S. Treasury, either through absorption of part of the costs or by direct appropriations. While the proponents of the treaty have consistently adhered to the position that one of the objectives of the treaty is that the canal continue to be be self-supporting, they have also simultaneously proposed that substantial costs of operation of the canal be absorbed by the U.S. Treasury through discontinuance of payment of interest on the investment of the United States in the canal, writing off the investment entirely, and treatment of various costs arising from the treaty as obligations of the Treasury rather than of the Panama Canal. Representatives of the shipping industry and others go further and also propose elimination of depreciation as a cost of operation recoverable from tolls, and payment of interest by the United States on Government funds derived from operation of the canal and deposited in the Treasury.

Interest on U.S. investment. At the Panama Canal Subcommittee hearings on November 30, 1977, the testimony of Administration witnesses indicated general unfamiliarity with the history and purpose of payment from canal revenues of interest on the investment of the United States Government in the canal. Interest was described by those witnesses as "profit" and it was suggested that elimination of the interest payment is necessary to keep the Panama Canal Commission "self-sustaining." The Deputy Assistant Secretary of the Treasury described the background of the requirement of interest payments as follows:

"One reason that payment was required in 1951 when the Canal Company was established as a self-sustaining business enterprise was to avoid allowing the users to have a subsidized toll or exclusively subsidized toll by requiring that the cost of capital be included in the toll base. That requirement will no longer be necessary because under the new arrangements, the toll will increase in order to meet the costs and requirements under the new treaty arrangements.

"Tolls will approach a more economic level and a need for interest payment as a device in effect to avoid subsidy will no longer be necessary."

The requirement that the Panama Canal Company pay interest to the Treasury on the net direct investment of the U.S. Government in the Company is found in section 62 of title 2 of the Canal Zone Code. (76A Stat. 8). This provision was originally enacted in 1948 in the legislation incorporating the Panama Railroad Company (62 Stat. 1076) pursuant to the Government Corporation Control Act (31 U.S.C. 841 et seq.), and of course applied to that corporation which had been operated as an adjunct of the Panama Canal since the time of construction of the canal. See *State ex rel Rogers.* v. *Graves,* 299 U.S. 401 (1937).

In 1950, when responsibility for the operation of the Panama Canal was transferred to the Panama Railroad Company, which was renamed the Panama Canal Company, the requirement for payment of interest on the Government's investment in the corporation was continued. (Act, Sept. 26, 1950 (64 Stat. 1041)). The 1950 legislation was based on recommendations of the then Bureau of the Budget, approved and forwarded to the Congress by President Truman. In reference to the requirement that the corporation pay interest to the Treasury, the report of the Bureau of the Budget stated:

"The principle that Federal business enterprises should pay a rate of return on the Government's investment equal to the cost of the money to the Treasury is now well settled. The President recommended in his 1948 budget message that corporations should be required to reimburse the Treasury for the full cost of money advanced to the corporation. There is no reason why the Panama Canal and its adjuncts should be exempted from payment of interest since they are essentially Federal business enterprises." H. Doc. 460, 81st Cong., 2d Sess., p. 8.

At the Panama Canal Subcommittee hearing on December 1, 1977, Leonard Kujawa, a partner in Arthur Andersen & Co., testifying as an expert on Panama Canal finances, confirmed that interest, as the cost of capital invested in a business, is part of the cost of operation of that business. As such, if a business operation such as the Panama Canal is to be self-sustaining, the revenues derived from the operation must be sufficient to cover interest payments on invested capital.

Conversely, as pointed out in the testimony of Comptroller General Staats, if annual interest payments are not made into the Treasury, the cast position of the Panama Canal Commission would be improved "but it would also reduce Treasury receipts and impact on the overall U.S. budget."

The amount of the interest payment to the Treasury in fiscal year 1978, shown in the 1978 budget program, is $19.7 million.

Depreciation. The statutory formula for establishing rates of tolls for use of the canal now includes depreciation as one of the elements of costs to be recovered from tolls.

The discontinuance of depreciation on part of the assets of the canal was another expedient suggested at the hearings for reducing the upward pressure on rates of tolls brought about by the treaty. On the other hand, the Comptroller General pointed out that the property transfers provided by the treaty would necessitate increased depreciation to make possible recovery of the U.S. investment in the canal over the life of the treaty and that "For the proposed Commission to be financially self-sufficient, toll rates would have to be raised to cover these increases in depreciation costs." The Comptroller General also noted that these actions "may not be economically sound, because of the impact on toll rates and possible adverse effect on traffic and revenues." In other words, under the treaty it may no longer be possible for the Panama Canal to be self-sustaining.

The property of the United States in the Canal Zone, to be transferred to Panama under the terms of the treaty, was acquired at an original cost of about $1 billion. The book value of property associated with the Panama Canal, exclusive of military property, is currently $752 million.

Other treaty costs. Costs to the U.S. Treasury resulting from the treaty that are not directly and immediately associated with operation of the canal probably could not be included in the tolls formula for payment out of revenues of the canal. These costs have not been completely identified but they appear to include appropriations required to fund part of the economic assistance program under the separate agreement accompanying the treaty, the cost of the joint study for the need for and feasibility of a sea level canal for which the treaty provides, the loss to the Treasury of the payment now being made in reimbursement of capital appropriations to the Canal Zone Government, and possibly the cost to the Civil Service Commission and military departments of employee assistance programs contemplated by the treaty.

3. Form of Government agency to be established to operate the Panama Canal:

Legislation to be enacted by the Congress must establish the Government agency to operate the canal and provide the ground rules for its operation.

Article III of the Panama Canal treaty provides that the United States will carry out its responsibilities by means of a U.S. Government agency called the Panama Canal Commission "which shall be constituted by and in conformity with the laws of the United States of America." The treaty also provides that the Panama Canal Commission "shall be supervised" by a Board composed of nine members, five of whom are to be U.S. nationals and four nationals of Panama.

From the time of completion of the canal in 1914 until 1951, the canal was operated by an independent agency called The Panama Canal. The Panama Canal was established and functioned in accordance with the laws of the United States generally applicable to all Government agencies, including the various laws governing the financial management of such agencies now largely incorporated in title 31 of the U.S. Code. Under those laws revenues derived from operation of the canal were paid into the Treasury, and costs of operations weres paid from direct appropriations for that purpose.

In 1950, Congress transferred responsibility for operation of the canal to the Panama Railroad Company, a government agency in corporate form that had been used by the United States Government as an adjunct to the operation of the canal from the time of construction of the canal. The corporation was renamed the *Panama Canal Company* and its operations were subject to the provisions of the Government Corporation Control Act as well as other applicable provisions of title 31 of the U.S. Code. Revenues from the operation of the canal and related activities are deposited in the Treasury or depository banks approved by the Secretary of the Treasury, and expenditures are authorized by the Congress in appropriation acts authorizing the use of such revenues for the purposes set out in the corporation's budget program, as modified by the Congress in the appropriation act.

The 1950 legislation transferring operation of the canal to the Panama Canal Company changed the name of the agency known as The Panama Canal to *Canal Zone Government* with the responsibility of providing the various services incident to the civil government of the Canal Zone. No basic change was made in the form of organization of that agency. A brief summary of the history and laws applicable to the operation of the two agencies now responsible for operation of the canal and the government of the Canal Zone is included in the separate study of the relationship of the treaty provisions to the Constitutional power of Congress to make appropriations.

In establishing the government agency for operation of the canal under the new treaty, the Congress could select either the corporate form along the lines of the Panama Canal Company, the non-corporate form, following the prototype of the original Panama Canal agency, or some combination of the two. Some of the advantageous features of the corporate form, such as business-type budgeting and audit by the General Accounting Office, have been referred to by the Comptroller General. On the other hand, the corporate form is particularly useful for business operations that are truly self-sustaining, and if a substantial amount of direct or indirect subsidy is involved, the conventional unincorporated government agency offers the advantages of closer control by the Congress. Of course, if the unincorporated form of agency is selected, the legislation could incorporate provision for business-type budgets and audit by the General Accounting Office.

A related matter of concern is that of providing for the qualifications and method of appointment of members of the Board to be appointed to supervise the Panama Canal Commission. This feature of the legislation will be especially important in view of the provisions of the treaty for division of the membership between nationals of the United States and Panama.

4. Ambiguity of treaty provisions:

a. General considerations. Ambiguities in the language of the two treaties pose serious problems of interpretation that are virtually certain to become the subject of future controversy. Although the U.S. treaty negotiators have offered their explanations of the ambiguous language, those interpretations have often been at direct variance with those published by the Panamanian negotiators. In considering the significance of these diverse interpretations, the United States Government should keep in mind the enumeration of the causes of conflict between the United States and Panama, published by the Government of Panama on the occasion of the rejection by Panama of the new treaties negotiated in 1967. The concluding paragraph of Part I of the document read as follows:

"7. Last, so as not to make the list of causes of conflict interminable, we mention the greatest cause, the constant cause, the cause that has daily contributed to keep alive the resentment of Panamanians and feeds a sentiment of rebellion against the offensive presence in part of the national territory of a foreign Government which acts in an arbitrary, totalitarian and absolute manner, contemptuous toward the presence of the territorial sovereign. We refer to the invariable conduct of the Government of the United States of America of interpreting the clauses of the existing treaties in the manner most convenient to their interests and contrary to Panama's rights and imposing their arbitrary and unfair interpretations with the power in their hands, and that Panama has not been able to counteract to date, of excluding and throwing out of the Canal Zone the official presence of Panama and the enforcement of our laws." Reprinted in *Report on the Problems Concerning the Panama Canal,* Committee on Merchant Marine & Fisheries, 91st Cong., 2d Sess., p. 87.

As the quoted statement implies, the diplomatic relations of the United States and Panama have been characterized by almost continuous controversy over the construction of the language of treaties and agreements that the United States usually has regarded as plain and unambiguous. To cite only one example, Article V of the 1942 Agreement for the Lease of Defense Sites in the Republic of Panama (57 Stat. 1232) provided that the defense sites would be vacated "within one year after the date on which the definitive treaty of peace which brings about the cessation of the present war, shall have entered into effect." In 1947, Panama asserted that the surrender of Japan constituted a "definitive treaty of peace" ending the war. The United States did not accept that interpretation, but eventually yielded to pressure and vacated the sites before the peace treaty was signed. The history of this particular disagreement is set out at length in the Department of State's publication *Foreign Relations of the United States* for the years 1946 (pp. 1095, et seq.) and 1947 (pp. 881, et seq.).

b. Payments to Panama. Paragraph 4(a) of Article XIII of the treaty provides for payment to Panama of an annual amount of 30 cents "per Panama Canal net ton, *or its equivalent,* for each vessel transiting the Canal for which tolls are charged." (Emphasis supplied.) A Panama Canal net ton is clearly defined in existing laws and regulations as the basis for establishing rates of tolls for use of the canal. However, not all vessels are susceptible of measurement in Panama Canal net tons; some ships and other craft, such as warships, floating drydocks, etc., pay tolls on a displacement basis. Whether or not the prhase "or its equivalent" relates to the payment to Panama for ships that pay tolls on displacement rather than "Panama Canal" tonnage is not clear from the treaty provisions. If that is the intent of the provision, there is no criterion provided for determining what is the equivalent of a Panama Canal net ton in computing the payment to Panama. This could obviously become a matter of controversy and should be clarified before the treaty is ratified.

Paragraph 4(c) of Article XIII provides for a payment to Panama, in addition to other payments, of $10 million per year "to be paid out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to the treaty."

This provision apparently contemplates determination of whether or not the payment is due on a cash basis. If so, and if "expenditures" are limited to payments actually made, excluding unpaid obligations, it could create a serious problem for the financial administration of the canal. The theory of the treaty provisions seems to have derived from the statutory provision that now requires the Panama Canal Company to pay into the Treasury annually the amount of funds in excess of the Company's requirements for working capital and for authorized plant replacement and expansion. (2 C.Z. Code 70). However, there are obvious differences between the language of the two provisions, and it is questionable whether the treaty provision would permit retention by the Panama Canal Commission of funds for working capital or plant replacement and expansion.

The precise meaning of this paragraph of the treaty would become a matter of considerable importance to the financial management of the canal under the new treaty, and its meaning should be clarified before legislation is enacted to carry it into effect.

A third ambiguity appears in paragraph 5 of Article III of the treaty which, after providing for payment to Panama of $10 million in reimbursement for certain services, goes on to provide that at three year intervals "the costs involved in furnishing said services shall be reexamined to determine whether an adjustment of the annual payment should be made because of inflation *and other relevant factors affecting the cost of such services.*" (Emphasis supplied.) There is nothing in the treaty or other documents accompanying the treaty that defines what other relevant factors are for consideration in the adjustment of the amount of this payment. It was suggested at the hearing that the actual cost of services provided might be one such factor, but it would appear to be desirable to reach a firm understanding, with appropriate documentation, defining the meaning of the phrase in question.

Implicit in all the provisions for payments to Panama is an ambiguity arising from the absence of any language referring to the indebtedness of the Government of Panama to the Panama Canal Company and Canal Zone Government, now aggregating some $8.5 million. In normal business transactions provision would be made either for set-off of this amount against the payments to Panama or for outright cancellation of the debt. Whichever result is intended, it should be clearly understood by both parties and incorporated in the legislation to carry the treaty into effect.

c. Property transfers. Paragraph 1 of Article XIII of the treaty provides that on termination of the treaty, Panama will assume total responsibility for operation of the Panama Canal which shall be turned over in operating condition and "free of liens and debts, except as the two parties may otherwise agree."

At the end of any year of operation of the canal as a continuing business enterprise, there remain and are carried forward obligations incurred in completed periods of operation, such as unpaid employee compensation, liability for unused leave, and other accounts payable, which aggregated $80 million in 1976, and are estimated at $87 million in 1978.

Whether or not the quoted provision of Article XIII requires the liquidation of these liabilities before the canal is turned over to Panama is not clear, but the ambiguity should be resolved to permit orderly financial planning and management in the period intervening between the effective date and termination of the treaty.

d. Use of the canal by U.S. Government vessels. Paragraph I of Article VI of the neutrality treaty provides that vessels of war and auxiliary vessels of the United States and of Panama "will be entitled to transit the Canal expeditiously." At the hearings on the treaties this provision has been referred to as providing that warships of the United States are entitled to priority in transit in case of emergency, but other

statements in Panama by the treaty negotiators have indicated that no priority of passage is involved.

The statement issued by the White House after the meeting between President Carter and General Torrijos on October 14, 1977, discussed below, confirms that the provision in question "is intended, and shall be interpreted to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the canal rapidly."

e. Defense of the canal. Article IV of the Panama Canal treaty provides that "Each party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack, or other action which threatens the security of the Panama Canal or of ships transiting it." Article V provides specifically against intervention in the internal affairs of Panama by U.S. nationals employed by the Commission. Article II of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal provides that Panama declares the "neutrality" of the canal in order that it shall remain open to peaceful transit of vessels of all nations on terms of entire equality, and Article IV provides that the United States and Panama agree to maintain the "regime of neutrality" established by the treaty "in order that the canal shall remain permanently neutral."

In the light of all these provisions the question has been raised as to whether the United States would be authorized to take appropriate action to keep the canal open if the threat to the operation of the canal originates in Panama. The statement issued by the White House after the meeting between President Carter and General Torrijos on October 14, 1977, states that under the neutrality treaty Panama and the United States have the responsibility to assure that the Panama Canal shall be open and secure to ships of all nations and that each country "shall, in accordance with its constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal." The statement goes on to say, however, that this does not mean nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal "will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or politcal independence of Panama." Administration witnesses at the subcommittee hearing expressed the view that the treaty gives the United States the right to take whatever steps the United States deems necessary to maintain the neutrality of the canal, no matter what the threat may be.

f. Joint statement of October 1977. The statements issued by President Carter on October 14, and General Torrijos on October 18, for the purpose of eliminating the ambiguities in the neutrality treaty are intrinsically ambiguous in themselves.

Apparently the statements were entirely informal. On his return to Panama following his meeting with President Carter, the press reported that General Torrijos emphasized that he had not signed anything on his visit to Washington. Granting that the statement represents the personal interpretation of the treaty provisions discussed on the part of President Carter and General Torrijos, the effect of the informal unsigned statements as amplifications of the language of the treaty is at least open to question.

5. Constitutional issues:

In addition to the financial problems in operation of the Panama Canal under the new treaties, the treaty language poses two fundamental constitutional problems that are of even greater significance to the United States Government, namely, the requirement for action by the Congress to dispose of property of the United States and to make appropriations of public funds. The treaty language purports to convey property of the United States to Panama and to provide for payments to Panama without action by the Congress as the Constitution requires. These issues are addressed at length in a memorandum on the necessity for appropriations to authorize the payments to Panama presented at the subcommittee hearings on December 1, 1977, and in extensive hearings and briefings conducted by the Committee on Merchant Marine and Fisheries in the first session of the 95th Congress. A further hearing by the Committee on the constitutional issues is scheduled in January, 1978.

PANAMA CANAL COSTS—1ST-YR OPERATION UNDER 1977 TREATY COMPARED TO 1978 BUDGET

[In thousands of dollars]

	Budget 1978	1st yr treaty costs
Operating costs:		
Revenues:		
Tolls:		
Commercial vessels	176,083	176,083
Government tolls credits	1,554	1,554
Total tolls revenues	177,637	177,637
Revenues other than tolls:		
Navigation service and control	29,962	26,247
General repair, storehouse, engineering and maintenance service	6,062	3,155
Marine terminals	24,151	1,645
Transportation and utilities	23,950	26,521
Retail and housing	47,169	5,866
Government activities	63,132	115
Other	2,351	3,068
Total revenues other than tolls	196,777	66,617
Total revenues	374,414	244,254
Costs:		
Maintenance of channels and harbors	22,563	22,603
Navigation service and control	40,732	38,316
Locks	24,759	24,759
General repair, storehouse, engineering and maintenance services	8,966	9,108
Marine terminals	19,801	1,659
Transportation and utilities	22,137	25,353
Retail and housing	51,504	6,303
Other	44,367	41,383
General and administrative	26,231	25,662
Governmental activities	85,968	22,097
Repayment of prior year's interest costs	5,273	5,273
Interest	19,706	19,706
Fixed annuity to Panama	519	10,000
Annuity based on Panama Canal net tonnage		42,471
Public service payments to Panama		10,000
Severance pay		6,093
Repatriation		1,350
Plant relocation		2,236
Early retirement of employees		8,400
Training programs		320
Elimination of tax factor in employee pay		463
Rotation of employees		509
Total operating costs	372,526	323,555
Net operating revenue (loss)	1,888	(79,301)
Capital costs:	22,000	19,992
Total operating revenue (loss) and capital cost	(20,631)	(99,293)
Additional costs to Treasury:		
Depreciation on Canal Zone Government assets		2,681
Military assistance loans to Panama		5,000
Total additional costs to Treasury		7,681
1st-yr costs of treaty in excess of Panama Canal revenues:		
Panama Canal Commission		99,293
Treasury		7,681
Total		106,974

Mr. HATCH. Mr. President, I am concerned about the constitutional aspect of these treaties, and I fought very hard last week to try to have the Constitution upheld. I think we should fight very hard to have it upheld this week, and that is the purpose of my amendment.

I think time will vindicate our position. On the other hand, vindication or not, we happen to be right on these issues.

I do not believe the Panamanian Government should be upset if this amendment happens to succeed because of our constitutional processes. They must be abided by, and I do not think this is a particularly difficult problem for them, and it might well avoid the future economic difficulties which could arise which could cause a shutdown of the canal if we are not perceptive and farsighted enough now to abide by the terms of the Constitution.

Mr. President, I yield the floor.

Mr. ALLEN addressed to the Chair.

The PRESIDING OFFICER (Mr. PELL). The Senator from Alabama.

Mr. ALLEN. I thank the Chair.

Mr. President, when the first protests by certain elements in Panama to the provisions of the Neutrality Treaty, approved earlier by the Senate, came to light, I felt that possibly this was a ploy by the Panamanian dictator to assure that no further amendments or reservations would be attached to the Panama Canal Treaty. I thought the dictator was relying upon the exchange of letters between the President and the dictator on March 15, in which the dictator expressed concern about the reservations that he understood were in line for approval in the United States Senate. The President wrote him a letter giving him assurance that whatever was done there would be no departure from the spirit of the agreement into which the President and the dictator entered, which has been called the Memorandum of Agreement.

Since that time, however, the Ambassador, the permanent representative of Panama, to the United Nations General Assembly, Jorge E. Illueca—with whom, I might say, I debated this issue at the University of Alabama some months ago—has written to the Secretary General of the United Nations in which he sets out the Resolution of Ratification. He gives a statement made on the floor by Senator DENNIS DECONCINI and also a statement by Senator EDWARD KENNEDY, ending up with a communique from the Minister of Foreign Affairs of Panama issued on the 27th of March, 1978, in which the closing paragraph reads as follows:

> We recommend to our fellow citizens to study objectively the documents published today in Spanish and English, so that they might assist the government in taking the most patriotic decision which, as stated by General Omar Torrijos Herrera, Head of the Government of Panama, will be taken within the framework of a great national consensus.

So it is obvious, Mr. President, that the Panamanians are seeking to undercut the provisions of this treaty even before notes of ratification are exchanged between the heads of government as provided by law for the approval of treaties.

So, Mr. President, there does seem to

be general concern and general opposition in Panama to the approval of these treaties, and the question I would like to pose is: Why should we approve a treaty that gives away the Panama Canal under the terms under which it is to be given away, both as to the defense of the canal and as to the protection of the American taxpayer, why should we give the canal away when the people of Panama are not satisfied with the terms of the treaty as agreed to here in the United States Senate?

We have been told, Mr. President, as one of the chief arguments for these treaties that they were necessary in order to avoid violence, in order to avoid riots, in order to avoid sabotage of the canal.

But, Mr. President, it looks like just the reverse of that is true. It looks like if we approve these treaties and send them to Panama for ratification, it is going to cause a great national upheaval in Panama. Far from being a good neighbor gesture it apparently is regarded as another effort at colonialism, as another effort of domination of Panama by the United States Government, and as another attack upon the sovereignty of Panama.

So why, Mr. President, should we force this treaty on the Panamanians?

I have prepared an amendment, that I will introduce at the proper time saying that this treaty shall not go into force—and, of course, until it goes into force the Neutrality Treaty cannot go into force, but this treaty, the Panama Canal Treaty, cannot go into force—until it has been approved in a national plebiscite held in Panama.

Mr. President, why should we send to Panama and have approved by the dictator, acting for the Government of Panama, it, of course, being a one-man government, why should we send that treaty down for approval when quite obviously it is opposed by, if not a majority of the people of Panama—and it looks like various business, professional and labor groups there are organizing behind the opposition to the treaty—but why should we enter into a compact with Panama that is not approved by the people of Panama?

So my amendment—and I hope the Members of the Senate will look with favor on this amendment, and I hope the leadership will agree to this amendment—why should we ask the Panamanian Government to agree to a treaty unless we are sure that the people of Panama want such treaty?

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator, since he has mentioned the leadership, yield?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. I will say quickly I do not favor the Senator's amendment. I respect his right to call it up. I certainly respect his right to speak in support of it, and I certainly respect his dedication to the cause of defeating the treaties and, of course, this would be one more amendment by which that rejection could ultimately be brought about.

So I would not want to support the Senator's amendment, I will just say that in advance. Moreover, I think I should state that we have been hearing all along in this debate that the Senate is just acting in the interests of the people of Panama, in the interest of the Government of Panama, acting at the behest of Mr. Torrijos and that the interests of the United States are being subordinated to the interests of the Panamanian Government.

Now, I think it is obvious that there is opposition to these treaties in Panama. There was when the plebiscite occurred down there. But there has been an attempt to obfuscate that opposition.

Of course, there is opposition to the treaties down there. There is opposition to them in this country. But I would urge Senators to keep their eye on the ball and keep a steady hand on the helm, and would urge people at both ends, not only in the United States but also in Panama, to keep cool heads. This is a time to remain cool, in my judgment.

Let us vote on the treaties on the basis of the merits of the treaties, on the basis of what is in the best interests of the United States. I have not seen any indication, at this point at least, that the Panamanian Government intends to refuse to exchange instruments of ratification if and when that time comes.

I think we should go right ahead and do what we think ought to be done in the interests of this country, of our country, and its good relations not only with Panama but with other Latin American countries.

Finally, as to the Senator's suggestion that the amendment which he intends to offer would require a new plebiscite in Panama, it seems to me that the Senate, if it were to adopt that amendment, would be attempting to amend the Constitution of the Republic of Panama. That Constitution requires a plebiscite on a treaty, but I do not know of any requirement of that Constitution that there be a second plebiscite dealing with the reservations, understandings, et cetera, that might be attached to a treaty. So the Senator's amendment, it would seem to me, would be looked upon by the people of Panama as a rather presumptuous incursion upon their constitutional rights.

I want to say finally—and I thank the Senator from Alabama for being so courteous and patient in yielding to me. He has the floor, and I will try to not to be overly long.

Finally, I think we have to recognize that the people of Panama have been patient and long suffering. For 75 years they have lived with a bone in their throats, as they have viewed the 1903 treaty. It has been a continuing source of frustration to them, and a continuing sore spot in our relations with Panama. I think they have been very patient. They have not attempted at any time to abrogate that treaty. They have lived up to their responsibilities and duties under it.

I must say that I think they have also been very patient and forbearing as they have listened to the debate in the Senate on the treaties. This debate goes out on the National Public Radio. It is translated into Spanish, and the Panamanian people have listened to every word of it. I commend them on the equanimity that they have shown as I know from time to time, without any such intention on the part of Senators, the Panamanian people, in my judgment, have probably thought that they were being insulted by some things that have been said, again I would hasten to say through inadvertence and probably misunderstanding on the part of the Panamanian people themselves in the interpretations they have placed on things that are said.

I wish to commend the Panamanian people on keeping their cool and maintaining their equanimity in this situation, in the light of some of the things that they may have interpreted as demeaning on the part of those of us who have spoken here in the Senate. I commend and compliment them.

I thank the Senator from Alabama for his extraordinary courtesy in yielding to me to take the floor at this time, and being so kind as not to interrupt my statement. I have finished, and I express my gratitude to him.

Mr. ALLEN. I thank the distinguished majority leader for his very fine remarks. I am always glad to yield to the majority leader when he has questions to ask, when he has arguments to make, or when he has information that he thinks would be helpful to the Senate.

Now I would hope that I would be permitted to conclude my remarks, inasmuch as the position of the leadership has been so fully stated. I might say, though, Mr. President, that it comes as no surprise to me that the distinguished majority leader should take the position that he is opposed to this amendment, because he has not been for a single amendment that has been offered during the 2 months that these treaties have been before the U.S. Senate, other than two so-called leadership amendments. So it did not come as much of a surprise to the Senator from Alabama. I did express the hope that the leadership would agree to this amendment, but it did not surprise me when my hope was not fulfilled by a statement from the leadership that it would support this amendment.

The distinguished Senator said, as to our putting into the treaty a provision that before the treaty goes into effect it should be approved by national plebiscite in Panama, that whereas there is a provision, he states, in the Panamanian Constitution, requiring a plebiscite for the approval of a treaty, he knows of no provision for a second plebiscite.

I call the attention of the Senate to the fact that apparently the Panamanians feel that this is a different document from the document that was approved in the plebiscite, thus getting back to a familiar argument of mine that Mr. Torrijos jumped the gun in calling for this plebiscite, because he knew the Senate of the United States has the constitutional right and duty of advising the President with respect to this treaty, and that that advice is in the form of amendments to the treaty, shaping the treaty to the views of the Senate in the advice that it gives to the President.

But, Mr. President, it is apparent even from the words of the dictator that there

are tremendous grounds for opposition to this treaty in Panama. So why, Mr. President, should we give away a valuable asset of this country, valuable from the standpoint of our economic well-being and valuable from the standpoint of our military security? Why should we force this treaty on Panama when it is so obvious that a large portion of the people there—it was one-third in the plebiscite, and obviously the opposition is growing.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. I understood the Senator to say he was not going to interrupt me any more.

Mr. ROBERT C. BYRD. I did not say that, but I really did not mean to interrupt.

Mr. ALLEN. Very well; I will yield to the distinguished Senator, then, if he wishes to comment on what I have said. I hate to have my remarks broken up with opposition to each statement that I make, but I will be glad to yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, may I say to the distinguished Senator from Alabama that I did not intend to interrupt him again, but this rhetorical question is very intriguing.

Mr. ALLEN. A rhetorical question is not supposed to be answered.

Mr. ROBERT C. BYRD. Well, in this instance I want to respond. The Senator asks, "Why should we force this treaty on the Panamanian people?"

We are not forcing it on them.

Mr. ALLEN. How are they going to state their opposition, if the dictator does not call another plebiscite?

Mr. ROBERT C. BYRD. They do not have to enter into the exchange of the instruments of ratification. We are not forcing them.

Mr. ALLEN. I did not understand how the Senator says we do not force the treaty on Panama.

Mr. ROBERT C. BYRD. Because the other party to this treaty, as with any other treaty, may decline to enter into the exchange of the instruments of ratification.

Mr. ALLEN. They will not have any opportunity of expressing themselves unless we write it into the treaty.

Mr. ROBERT C. BYRD. The Senator was arguing a minute ago that there was a lot of opposition to these treaties.

Mr. ALLEN. There is not opposition by Mr. Torrijos. He is willing to accept them. But he fears the Panamanian people. He will not submit it to them.

Mr. ROBERT C. BYRD. The Senator is attempting to read the mind or second-guess what someone else might do. But the Panamanian Government is under no obligation to enter into the exchange of the instruments of ratification, if it does not want to. It can exercise the same right that any other party can.

Mr. ALLEN. But Torrijos will keep them from doing it. He will not submit the question to a plebiscite.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. ALLEN. I thank the Senator. We all know, of course, that another chief argument made by the proponents of this treaty is the argument that the treaty is needed to eliminate the danger of sabotage, riots, and violence.

The argument has been made here on the floor that any amendments to the treaty would kill the treaty. Apparently, they are fearful that if a new plebiscite was called in Panama, the Panamanian people would reject it. But if one of the purposes of the treaty was to do a good neighborly act in giving the canal to Panama, paying them, in effect, to take it—we owe $319 million on it now which is to be wiped out under the treaties, and there are other items of expense—if this treaty is going to cause riots in Panama, possible sabotage, does it not indicate that even if the treaty is agreed to, if dictator Torrijos approves it, that that is just going to start the riots, that is just going to start the danger of sabotage, that is just going to start demands for more and more, demands to turn the canal over to Panama prior to the year 2000?

Already they are trying to undercut the provisions of the treaty in the U.N. I do not know what the U.N. has to do with it, but apparently Panama thinks it has something to do with it. I thought this was a treaty between Panama and the United States.

I know on the Neutrality Treaty other nations of the world have a right to endorse the neutrality aspect of it. But by and large and exclusively, for that matter, it is a treaty between the United States and Panama. Why should they be notifying the U.N. of their disapproval of the DeConcini amendment? There is already talk, as announced on national TV, that the leadership or the proponents—the proponents of the treaty, as I do not know about the leadership—the proponents are trying to get up an amendment that will water or soften down the proposals of the DeConcini amendment.

I believe they would be treading on dangerous grounds if they seek to water down the DeConcini amendment in the second treaty. We all know that the DeConcini amendment was the vehicle by which at least two votes here in the Senate were gained for the treaty. Would it be keeping faith with the Senators who voted for the treaty in return for the administration's agreement to the DeConcini amendment, would it be keeping faith with the Senate and with those Senators who voted for the treaty because the DeConcini amendment was agreed to, if we water down the DeConcini amendment in this treaty and say that the DeConcini amendment does mean what it says, that is, the right of the United States to intervene at any time after the year 2000 to keep the canal open?

We were told that the leadership amendment was going to do that, but apparently it is not. The leadership amendment was supposed to give us the unilateral right to intervene in Panama, so why should the DeConcini amendment cause so much trouble in Panama, trouble to the point where it is stated that efforts will be made by the proponents of the treaties to water down the DeConcini amendment?

Mr. President, it is quite obvious to me that if these are to be treaties between the U.S. Government and the people of Panama, that the people of Panama should have a right to express their opinion on the treaties, as modified here in the U.S. Senate.

I think this is the best way to guarantee that we will know if the people of Panama approve of this treaty, by letting them say so. Just having an agreement with Dictator Torrijos is not enough. He has never been elected by the people. Even if he was, that would not give him a right to act for the people of Panama in the face of this strong opposition that is manifesting itself in Panama.

Also, Mr. President, I do not approve of the attitude of the Panamanians. I think it ill becomes the Panamanians to have the Panama Canal given to them, giving them money to take the canal, and merely because the U.S. Senate says we should have the right to intervene in Panama to protect and defend the canal for them to say, "Well, we do not want it on that basis. We want it on some other basis," and for us not to have the right to protect the canal is something that I feel is not well taken, to insist that we merely rubber-stamp these treaties.

Mr. President, the leadership has sought to defeat all amendments to the treaties, and they apparently thought it would not be too bad to let in some reservations.

I am rather of the opinion, Mr. President, that managers of the treaty and the leadership thought that reservations would not have too much force, that they would be innocuous, and they let in the DeConcini amendment as an amendment establishing a reservation to the resolution of ratification, even though they had turned down the language of the DeConcini amendment when it was offered as an amendment to the treaty. Apparently, they misjudged the effect of a reservation, because the DeConcini amendment, so-called, is not an amendment to the resolution of ratification. But they let in a tiger when they allowed the DeConcini amendment to the resolution of ratification to be agreed to with leadership support.

Just the other evening, I heard the distinguished majority leader tell the distinguished Senator from Louisiana that he would support a reservation to this treaty giving us the right, which we do not have in the treaty, to negotiate with any other nation as we see fit for the purpose of building a canal in such a nation. So, apparently, that is going to be a reservation that will be added.

I feel reasonably sure that a reservation will be added saying that the Panama Canal, after we do sign these treaties, will not cause any expense to the American taxpayer. I rather believe that, while that will not be accepted as an amendment to the treaty, it will be passed as a reservation to the treaty.

So, Mr. President, whereas I thought originally that Dictator Torrijos was using these disturbances in Panama to assure that we did not add any further amendments to this treaty, I believe now that he is in serious trouble in being able to get the backing of public opinion for this treaty in Panama. I feel that it is

only right that we ascertain the Panamanian will by calling for a plebiscite in Panama before this treaty goes into effect. Mr. President, it would be unwise for us to ram this treaty down the throats of the people of Panama with there being substantial reason for believing that the people of Panama do not approve of this. If they do not approve of it, they are going to show that disapproval in the years to come.

The managers of the bill have sought to kill and have killed all of the amendments offered to this treaty. They say that it would kill the treaty. That being true, Mr. President, it seems to me that the managers of the bill have cast their lot with Dictator Torrijos and his wishes—that is, no amendments to the treaty. It seems to me, and I resent it on the part of the managers of the bill and the leadership and the administration, that these protests are being made in Panama to such an extent that Panama is trying to undo the work of the United States Senate on this treaty providing for the evacuation of all of our troops by the year 2000 and allowing Panama to go it alone. It seems to me that it ill becomes the Panamanians, to burn the President in effigy in Panama, a man who has staked his political future and the success of this administration on the approval of the Panama Canal treaties. These treaties provide for giving the canal to Panama, reserving some rights of defense.

Why should they object to defending the canal? It takes the burden off Panama. For this great gift to be made to the Panamanian people, the leadership on both sides of the aisle having stuck their necks out to accommodate the Panamanian people, to beat down all amendments to these treaties, and then riot down there to show their disapproval of the treaties, burn the President in effigy, hardly seems to be something that would leave a good taste in the collective mouths of the Members of the U.S. Senate.

I understand Mr. DECONCINI is going to offer the same amendment and, failing in that, a reservation to this treaty, providing for the same right of the United States to keep the canal open. I am hopeful that he will. Certainly, I shall support it, as I supported his other reservation.

These treaties fall far short of their supposed goal of eliminating riots, eliminating violence, eliminating the possibility of sabotage. Did they do it? I submit, Mr. President, that they do not, that the situation is an anomalous situation: to promote riots, approve the treaties; to stop riots, kill the treaties. So it looks like the situation has completely reversed itself. If we want to end the riots, let us kill the treaties.

I might say, Mr. President, that the defeat of the treaties does not mean that negotiations have ended. Negotiations can start again the very next day, just as they are negotiating now, Mr. President, to try to find out how they can blunt or water down the DeConcini amendment, which has been approved by the Senate and which was accepted in order to gain votes for the treaty in the Senate. What sort of action would it be, after having agreed to the DeConcini amendment and obtained its passage and obtained the passage of the neutrality treaty itself, how could we then back up and water it down with a provision in this treaty saying it does not mean anything? I suggest that if the proponents of the treaties come forward with any such amendment, these two or three doubtful Senators—and there are such—I dare say they are not going to see the DeConcini amendment weakened when its approval was what got them to vote for the first treaty itself. So that would be a hazardous course to pursue.

Mr. President, with the Panamanians up in arms about this treaty, why should we force it upon them? This treaty needs more negotiating. With the situation on the parliamentary status of the treaty, we must vote on the 18th unless, by unanimous consent, the treaty is sent back to the Committee on Foreign Relations for further study.

They might come up with some perfecting amendments. They had the treaty before the Foreign Relations Committee for several weeks, or several months, I believe. They did not come up with any committee amendments, however.

I believe they might study the treaties a little bit more and come out with some constructive amendments, some amendments that would cure this impasse that exists now between the American people and the Panamanian people.

I think it is passing strange, Mr. President, that with the people of the United States, as I see it, strongly opposed to these treaties and, apparently, a large percentage of Panamanians opposed to the treaties, why should the U.S. Senate ram it down the throats of the people of Panama and the people of the United States, as well?

I do not believe it makes too much sense. I hope that some Senators who voted for the treaty before, thinking that it met with the approval of the people of Panama as a result of a 2-to-1 vote in favor of the treaties prior to action by the Senate, thinking that the people of Panama approved it by a 2-to-1 vote, will now see that the various elements in Panama that make up the power structure there and the people themselves are rioting against the approval of the treaty.

So should we defy the public opinion of our country and what seems to be the public opinion of Panama by approving this treaty and sending it down to Panama and saying, "Take it or leave it"?

I do not believe we are acting in any good neighborly fashion. I do not believe we are acting, as I see it, responsibly or responsively to the will of the American people.

So this great U.S. Senate, having this treaty in our hand, a treaty that we thought Panama wanted, now finds in all probability that the people of Panama do not want it. I feel that we would be going counter to the public opinion in both countries if we should insist on passing or agreeing to this treaty.

Mr. President, the leadership and the managers of the treaty have adopted the position of no amendments for fear of upsetting the Panamanians. Having adopted that policy, and been highly successful in preventing amendments, why should the Panamanians indicate such displeasure with what has been done in the U.S. Senate at the behest of the administration?

The administration has accepted every single change that has been made in these treaties. Not a one has gone contrary to the wishes of the leadership, the managers of the bill, and the administration. Not a single one.

They have managed the strategy of the treaties. They have used reservations to gain votes—the administration did, acquiesced in by the leadership on the DeConcini amendment.

So who do we have to blame for this impasse that we have come to? It is not the ones here in the Senate who have tried to strengthen these treaties to provide for greater defense rights for the American people, to provide for protection of the American taxpayer. We are not the ones who have brought this sorry state of affairs to culmination, a culmination in riots in Panama in opposition to the treaties, when we were assured that the agreement to the treaties was necessary to stop riots. That certainly is an anomalous situation.

It does look, Mr. President, as if in order to stop the riots, stop the danger of sabotage, let us defeat this treaty, which will have the result of defeating the other treaty, as well, and then go back to the negotiating table.

I see the distinguished Senator from Maryland wishes to speak, so I will yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I know that the Senator from Kansas is to be recognized under a unanimous-consent order, by 1 o'clock to offer an amendment and to speak thereon.

Mr. President, in his great tragedy "Othello," Shakespeare sets out and develops fully one of the more interesting characters in literature—Iago. Iago, of course, would show great solicitude for Cassio, his ambitions to become a captain, and urge Cassio to have Desdemona plead his cause. Then Iago would pass around the other side of the palace and talk to Othello and raise in Othello's mind certain doubts about Desdemona. Back and forth Iago would play this game.

Of course, the result of the game was to enrage Othello, to enrage him, to goad him on, to lead him down a path where Othello in the end committed acts that not only caused him to be seized with remorse, but led him to take his own life.

What Iago did, and very successfully in that play, was to lead Othello to smother his loyal wife and then, as a consequence of that, to stab himself to death.

He was driven to it. He was driven to it by Iago, who so skillfully played first to one emotion and then to another, and he was led to self-destruction.

Now, words, Mr. President, can have a

tremendous impact. Words, after all, are one of the hallmarks of civilized people. But words can also be used, Mr. President, to arouse emotions, to create misunderstandings, to heighten antagonism, to fan anger and passion, to create divisions, to generate hostility. Through history, words, Mr. President, have frequently been used in public issues as they were used by Iago in private matters, to cause people, in effect, to destroy themselves. The treaties before us are not a play. The treaties before us are extremely serious business for this Nation and for Panama and, indeed, are extremely serious business for the peace of the world and for questions as to how the world will develop in the remainder of this century and into the next century. The treaties involve very fundamental questions of our national purposes and our national objectives.

The debate on the treaties has, of course, taken many turns. It should be noted that the debate is being carried in Panama, simultaneously translated into Spanish, so that the words uttered in the Senate of the United States are carried immediately in Spanish in the Republic of Panama. This debate also is being carried on public radio in this country; and as others have observed earlier on the floor, it is being carried very well and skillfully indeed. The debate also is carried in Panama. So the words that are spoken register in both places at the same time.

Those words can appeal to reason or they can appeal to emotion. Words can also appear to show solicitude for the sensitivities of others at the same time they are really exciting emotions of resentment and anger as to what is perceived to be the attitude of one people toward another.

One hopes that the lessons of Shakespeare's great play "Othello" remain in people's minds. One hopes that the impact which words can have is fully appreciated. One hopes that there will be no driving of a people toward a public end comparable to the end of this play, where, as a consequence of Iago's poisonous words and actions, Othello killed his wife and then killed himself.

Mr. President, we have a Panama Canal Treaty before us, and the Senate, as the majority leader has said, has its work to do. It is serious work. It is important work. It involves important questions of our country's national interests, and it needs to be considered with an attitude of reason.

We have our judgments to make here. The Republic of Panama is a sovereign and independent country, and has its judgments to make. They do not make our judgments, and we do not make theirs. We try to work together in such a way that an agreement that protects the interests of both countries can be reached, and there are many who are trying to achieve that. There are many who feel that an agreement between our two countries that fully protects the interests of both countries is achievable. In fact, the proponents of these treaties feel that the treaties have achieved such an agreement.

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

Mr. SARBANES. I yield to the Senator, briefly.

Mr. GRAVEL. I should like to explore something that essentially the Senator from Maryland is doing and saying, and that is the new phenomenon of a Senate debate taking place——

The PRESIDING OFFICER (Mr. ALLEN). Under the previous order, the distinguished Senator from Kansas (Mr. DOLE) is to be recognized at 1 o'clock. The Chair has accorded the distinguished Senator from Maryland 5 additional minutes at this time.

Mr. SARBANES. Mr. President, I ask unanimous consent that the debate be allowed to continue until Mr. DOLE arrives in the Chamber, and we will immediately then bring it to a close.

Mr. GRAVEL. Without the time being charged.

The PRESIDING OFFICER. Will the Senator include the request that it not extend beyond 1:15?

Mr. SARBANES. Yes; not to extend beyond 10 additional minutes.

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

Mr. GRAVEL. My colleague made reference to the fact that these broadcasts are being beamed to Panama and have simultaneous translation. I think we can easily recognize that not all that many Americans are listening to public radio. I believe a number of concerned Americans are. But I think we can justifiably say that most Americans are not all that knowledgeable about the workings of the Senate. In fact, I have had an American occasionally ask me, "How many Senators are from a State?" or, "How many Senators do you have from Alaska?" So it comes down to some pretty fundamental ignorance.

Therefore, I do not think it would be unreasonable to assume that the average person in Panama may not understand all the niceties that exist in this body.

So, when we have a debate such as we have had during the last month, in which we see, day after day, one side taking what it thinks is tactical advantage by repeatedly calling the head of state a dictator, with the vilest connotations, the average Panamanian down there, who knows that Mr. Torrijos has doubled the amount of schools that were in existence and knows that he just completed a road to his farm cooperatives, that he helped set up the cooperatives, does not take too kindly to that.

How does a Panamanian, listening to a lot of the inferences as to their inferiority as human beings, or their capacities, or their motivations with respect to justice and how they would operate the canal—how does a Panamanian citizen who has been listening to the radio and hearing this diatribe react emotionally? I think it will mean very little to him what happens to the treaties, whether they are approved or not. He is going to feel resentment, just as if an Alaskan were to listen, day in and day out, to some official from France or Russia insult him.

So we go ahead and do our work, but the residue that is in the minds of the people will be most damaging.

What I suggest to my colleague from Maryland is that we have an unusual rule in this body, and I think it is one that has great worth, and that is that I cannot stand up and insult the citizens of North Carolina, the citizens of Utah, or the citizens of Alabama. We have had Senators called down for that. Why do we have that rule? We have that rule because we do not want to pit our citizens against each other.

We could stand here and throw gasoline on misunderstandings, inflame things, and do great damage.

For the first time in the history of the Nation we are debating international affairs on radio where foreigners may listen to it. And so what do we do? We wind up insulting them.

I do not think they can appreciate the niceties of tactical advantage. But the end result is going to be the same, and that is that we will stir unusual acrimony in this area.

I suggest that maybe we should have a rule in this Senate that when we debate foreign affairs we cannot insult the citizens of another nation and that we cannot speak disrespectfully against the head of state of another nation, like we cannot speak disrespectfully against each other.

I think that that rule might be a very, very important rule for this Nation and for this Senate to conduct foreign policy.

Mr. SARBANES. Mr. President, I appreciate the Senator's observations.

I, also, underscore that with free speech in the Senate of the United States each of the 100 Members of the Senate is free to make his presentation, to make his case, to make his appeal to reason or his appeal to emotion.

Mr. GRAVEL. But he cannot insult another Senator.

Mr. SARBANES. In any event, I think it is important to understand the free-speech principle that works in the Senate of the United State that each Senator has been elected by his people and is free to make his statements as he chooses to make them.

But I simply wanted to make that earlier reference to Shakespeare's play "Othello" because Iago by his words drove Othello to such extremes of emotion and jealousy that in the end Othello murdered Desdemona and then stabbed himself.

Mr. President, I see that the able distinguished Senator from Kansas is on the floor, and I know that he wants to be recognized to offer his amendment. Therefore, I yield the floor.

AMENDMENT NO. 10

The PRESIDING OFFICER (Mr. LEAHY). Under the previous order, the Senator from Kansas (Mr. DOLE) is recognized to call up amendment No. 10 to article XII, which the clerk will state.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) for himself and Mr. CANNON proposes an amendment numbered 10.

In article XII, strike out paragraph 2. Renumber subsequent paragraphs accordingly.

The PRESIDING OFFICER. The time for debate on this amendment is limited to 2 hours to be equally divided and controlled by the Senator from Idaho (Mr. CHURCH) and the Senator from Kansas (Mr. DOLE).

The Senator from Kansas (Mr. DOLE) is recognized.

Mr. DOLE. Mr. President, before commencing the debate on amendment No. 10, I yield 5 minutes to the distinguished Senator from Utah (Mr. HATCH).

The PRESIDING OFFICER. The Senator from Utah (Mr. HATCH).

Mr. HATCH. Mr. President, I thank the distinguished Senator from Kansas.

I just had to rise to my feet to chat a little bit concerning some of the comments that have been made over the last few minutes by the distinguished Senators from Maryland and Alaska.

I certainly have not heard the demeaning language pertaining in the people in Panama. There has been some language pertaining to the leader of Panama at this particular time, and frankly I think it depends on one's particular point of view whether than language is accurate or not.

I did enjoy the analogy of Othello-Desdemon, et al., in Othello. The important thing to take out of this is precisely what we have been talking about for actually better than a month now that is starting to come to fruition, and that is we said at the beginning of this debate that these treaties are an abomination, that they are not clear, that the Spanish translation means something to those in Panama that the English translation does not mean to us here, and vice versa. And now all of a sudden, after we have been told time and time again by the President, the ambassadors, the State Department, and others, the proponents of these treaties, that everything is going to be wonderful if we just ratify these treaties, that the Panamanians believe exactly the way we do and we believe exactly the way they do, and all we have to do is ratify these wonderful treaties and everything is just going to be a beautiful state here in this hemisphere as a result of it, here we find over the weekend that they do not seem to understand these treaties the same way we do. They have raised the hue and cry not over the language which has been used in the Senate, because I do not know anyone who has demeaned the people of Panama—in fact, I said on the floor of the Senate that I loved the people from Panama and of Panama—but the fact of the matter is that what has been said is that we are not going to have a wonderful state of nirvana because these treaties which were ambiguous, filled with ambiguity, fraught with translation difficulties, and filled with other difficulties are going to create more problems than they are going to solve if they are ratified.

As a matter of fact——

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

Mr. HATCH. I just have to say that——

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

Mr. HATCH. I will finish in a second, and then I will be glad to yield.

I just want to say that I think the events of this past weekend are very interesting ones because the President, the ambassadors and others have told us we would have the unilateral right to intervene, we did not even need the leadership language; so Senator DECONCINI, who I found to be a very studious, hard-working, decent U.S. Senator from Arizona, has been vilified by the press back here because he sincerely brings forth a reservation, not an amendment, because the amendments were shot down and stonewalled, he brings forth a reservation to clarify the matter to make sure no one has any difficulties with that basic concept that we have the unilateral right to intervene to assure the neutrality of the canal. But what do we have but all kinds of disruption and discord because they did not understand it that way.

Mr. GRAVEL. Mr. President, will the Senator not yield for a question?

Mr. HATCH. I am delighted to yield to the distinguished Senator from Alaska.

Mr. GRAVEL. If after we complete our work on the treaties——

Mr. HATCH. I cannot hear the Senator.

Mr. GRAVEL. If after we complete our work on the treaties the Panamanians choose to add reservations, as the Senate has added, to the treaties that were initialed by the head of state in Panama and the President of the United States, that is one step they may take. Now we, the Senate, have added to the Neutrality Treaty something new that the Panamanians were not aware of. Now, they may agree; they may not agree. But certainly it is their prerogative to do that.

Mr. HATCH. If they were not aware of it and were misled by the administration.

Mr. GRAVEL. Not misled. We are adding something new.

Mr. HATCH. We have.

Mr. GRAVEL. Why does my colleague say we have been misled?

Mr. HATCH. Because the President——

The PRESIDING OFFICER. The 5 minutes that were yielded to the Senator from Utah have expired.

Mr. HATCH. Mr. President, will the Senator yield me 2 additional minutes?

Mr. DOLE. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator from Utah has 2 additional minutes.

Mr. GRAVEL. We added something new. The DeConcini amendment is something new to the treaty, so certainly the Panamanians are within their rights to voice an objection if they have one to that.

Mr. HATCH. And I agree with that.

Mr. GRAVEL. That is nothing new. No one has been misled or hoodwinked. We put new language on the table of negotiation, the Senate did, and they may well turn it down. Maybe they will not turn it down. Maybe they will add something new and it will come back to us. Certainly if they did that the Senator would not think that they would be duplicitous or hoodwinking us. This is the process.

If the Senate, in its wisdom, decided to add the DeConcini language, with which I disagree and which I think is horrible, but since we did it, now the Panamanians have every right to stand up and say, "Hey, we think that is bad language. We don't want it."

If I were a citizen of Panama and had to vote on this treaty, the Neutrality Treaty, with the DeConcini language, as a citizen of Panama I would vote "No." I would not take that kind of stuff.

Mr. HATCH. If I might reply, I think the distinguished Senator from Alaska has made my point for me, and I want to compliment him for it.

The basic point is they have not known what our President has been telling us is assured, and what the Ambassador said, and told us time and time again, that we would have the unilateral right to intervene to assure the neutrality of the canal after the year 2000.

Mr. GRAVEL. Our President did not assure them that we in the Senate would violate the U.N. charter, that we in the Senate would not——

Mr. HATCH. Wait a minute.

Mr. GRAVEL (continuing). Violate the U.N. pact.

Mr. HATCH. There is no violation of the U.N. charter here. If you will recall, just 3 weeks ago I stood on this floor and said they would hide behind the U.N. charter, exactly what they are doing now, only they have waited——

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. HATCH. May I have 2 more additional minutes?

Mr. DOLE. Two more minutes.

Mr. HATCH. That is exactly what they are doing. I think many of the things we have talked about on this floor—it is amazing to me—are coming to pass before we even get through with the debate.

I suppose the only citizens, since we are not going to insult citizens of other States, and I appreciate the Senator's saying this, and I do not expect really that any Senator intends to insult any citizen of any other nation, and certainly not the Panamanians who have been our friends for years, I suppose the only people, the only citizens we can insult are the citizens from our own States when we ignore the overwhelming weight of their belief that we should not ratify these treaties, and even that is a question in my mind.

All we can say is what we have been talking about that these treaties are not clear not only to us but to the Panamanians, I think, is coming to fruition over this weekend, and I think we ought to all wake up and realize that to shoot down valid and decent amendments which could make this treaty worthwhile and stand up and not be the future cause of all kinds of difficulties is certainly the better approach, and the approach of the distinguished Senator from Arizona who brought forth a decent amendment and fought for it and got it enacted, one of the few which has been accepted not only by the President but by the State Department, the am-

bassadors and, of course, a majority of our colleagues in the Senate, and I compliment him for it.

I thank the Senator from Kansas. I thank him very much for the time he has given me.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Amendment No. 10 is offered on behalf of the Senator from Kansas, the Senator from Nevada (Mr. CANNON), the Senator from North Dakota (Mr. BURDICK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Texas (Mr. TOWER), and the Senator from Utah (Mr. GARN).

Now, the amendment is very simple. The amendment would simply strike paragraph 2 of article XII from the Panama Canal Treaty. I might say to the distinguished Senator from Alaska I think he has a rather deep interest in this amendment, as I will point out in just a few moments.

In effect, it would remove the restriction that prevents the United States from negotiating with any country other than Panama for the right to construct a new interoceanic canal in the Western Hemisphere.

At the same time, this amendment would eliminate the corresponding provision which purports to prevent Panama from allowing any country other than the United States to build a new canal through her territory.

In just a few minutes I shall explain why the elimination of these two provisions would, in my opinion, be particularly advantageous to the United States.

At the same time, there is reason to believe that the Government of Panama would not object to removing these provisions from the treaty.

At the outset, the Senator from Kansas should say that he personally perceives little prospect for the construction of a new interoceanic canal in the Western Hemisphere during the remainder of this century. I have been among those who believe the present canal is still adequate and vital to our naval defense system. Only 14 U.S. aircraft carriers, a very small percentage of our Navy, cannot transit the present canal. So the need for a new canal during the remainder of this century is not evident to this Senator.

It should be remembered that it was President Carter, not the leader of the Panamanian Government, and not anyone else, who got this controversy underway last August when he suggested during an appearance in Yazoo City that a new sea-level interoceanic canal was under consideration.

So apparently the prospect, at least, exists.

General Torrijos has said, and the Carter administration has admitted, that it was our negotiators who first initiated the proposal found in paragraph 2, article XII. As a matter of fact, General Torrijos gives my colleague from Alaska, Senator GRAVEL, credit for promoting the plan. In a speech on nationwide Panamanian television last October 20, General Torrijos made the following statement with respect to article XII of the Panama Canal Treaty:

. . . there is a great deal of interest in the United States . . .

The Senator from Alaska is the one most interested in this sea-level canal because Alaska has become a great source of petroleum with possibilities that go far beyond the petroleum produced in the continental U.S. territory. The Alaska senator said: Omar, if you sign this letter I can get from the Senate 7 million balboas—

I think he meant 7 billion balboas—

so that jointly with you—when I say I am thinking about who I am going to appoint, I am thinking of the Polytechnical Institute, I am thinking of the best trained Panamanian minds in ecology, in engineering, in canal problems—let us begin to make this study now. This study should cost $7 million: $3 million for ecology, $3 million for engineering and another for something else.

Now, the Senator from Kansas does not agree with the Carter administration that the purported quid pro quo found in article XII, paragraph 2, is advantageous to the United States. This is why I and many of my colleagues believe the provision should be removed to protect our options and flexibility on this score.

After studying the ratifications of this portion of the treaty I have identified three major flaws in paragraph 2. I think, first of all, we ought to understand what paragraph 2 says, and I quote paragraph 2:

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

Now, Mr. President, I believe these commitments are far more advantageous to Panama than the United States, and I must suggest to those who may have an interest that certainly we understand the interest of the Panamanians and this Senator understands the concern of the Panamanian people. But I suggest that our first responsibility is to the people of the United States of America. Certainly we have no right or, as far as I know, any willingness or any desire to insult anyone. But sometimes I think we insult the American people by what we do in this body and what we fail to do in this body, even though we may gloss over it with some high-sounding theory or something about colonialism. But as far as this Senator is concerned, we are still grappling with a very basic issue.

This treaty represents the last chance the American people have on the Panama Canal. This is the giveaway.

Now, some will say that we have never owned it; it is pretty difficult to understand how we can give it away. But this treaty says, "Give the Canal to Panama." It says, "Give them the control, the maintenance, and the operation"—though I assume for the next several years, at least, the American taxpayers will be called upon to spend millions and millions of dollars of their tax money to maintain and operate it.

When I focus on this one provision, I cannot for the life of me understand why it is in the treaty. It certainly is not advantageous to American interests. I hear all the talk about all the effort that has been made in the Senate to somehow denigrate the Panamanian Government or the leader of Panama, or the Panamanian people themselves. Well, I just suggest that as far as this provision is concerned, it is certainly advantageous to the Panamanian Government. It is certainly advantageous to General Torrijos, who is a dictator, there is no question about that. I do not think you insult a man by calling him what he is.

But how are these provisions advantageous to the Panamanian Government?

First, the American commitment is unequivocal: we may not negotiate with any country other than Panama for a new canal site, unless Panama specifically authorizes us to do so. The Panamanian commitment, on the other hand, is imprecise and certainly open to different interpretations. The popular interpretation, promoted by the Carter administration, is that subparagraph 2(a) protects us by preventing any other nation from building a new canal through Panama without our consent. But, strictly speaking, that is not precisely what this section says. I will read it again:

No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this treaty, except in accordance with the provisions of this treaty, or as the two parties may otherwise agree. . . .

The provisions of this treaty, if anything, emphasize repeatedly that Panama shall exercise complete sovereignty and jurisdiction over her own territory. Would Panama, then, feel obligated to get consent from the United States if she were made a tempting offer for a new canal by a third nation? It seems very doubtful.

In fact, there is concrete evidence that the Panamanian Government considers this provision to only give the United States a "first option" for construction of a new canal in Panama. During the same television address on October 20, 1977, General Torrijos proclaimed:

In the treaty we give priority, not exclusiveness—

These are Torrijos' words, not mine, not those of the Senator from Alaska, but those of General Torrijos. He says:

In the treaty we give priority, not exclusiveness, for the building of a sea-level canal.

I continue to quote. He says:

The United States is given the first option.

Not a right, but an option.

Based on this statement by General Torrijos, the Panamanian interpretation is this: If, during the next 22 years, the Soviet Union or Saudi Arabia should offer to build a new canal through Panama, and if Panama agrees that it is a good idea, they will notify the United

States that we have a "first option" to undertake the construction. If we for any reason do not take that option at the time it is offered, we forfeit our right, and Panama may let any other nation construct a new canal.

It should be emphasized—I think this is the key—that we do not have this same "first option" right the other way around. That is, the treaty does not permit us to negotiate with a third country for a new canal if Panama rejects our first offer. So they have the best of both worlds, as they have nearly all the way in this treaty, as far as the Senator from Kansas is concerned.

Mr. President, the second major flaw is this: Even if the United States does decide it wants to build a new canal in Panama during the next 22 years, Panama is under no obligation to permit it. My colleagues should note that article XII does not guarantee the United States a unilateral right to decide to build a new canal in Panama. In such a situation, we are stuck with the fact that we cannot build a new interoceanic canal anywhere other than Panama, and yet we cannot build the canal in Panama because Panama objects.

So we are really boxed in. That is certainly a great feat of negotiation . I do not know how we were able to do it. But of course if you look at the other provisions in the treaty it is understandable.

This very real concern is not without foundation. Panamanian chief negotiator Escobar Bethancourt told the Panamanian National Assembly last August that article XII,

> As you can see, is not even an option to build a sea-level canal. It is an option to promise to study the viability of it. That is the true option. The true commitment is to sit down with the United States to study whether or not it is viable to build a sea-level canal. If the two countries feel it is viable, then they will sit down to negotiate the terms agreed on by the two countries.

Would Panama likely agree to such a U.S. proposal? General Torrijos told a Time Magazine correspondent last August:

> The treaty will say that we will discuss the possibility of a new sea-level canal if it is in the joint interest of the world community to build it. But my personal opinion is that a sea-level canal is not necessary. Such a canal would be excessively costly, and you can't build it in two weeks either. We do not want it—even wrapped in plastic.

This is General Torrijos speaking.

To sum it up, the United States is out of luck, if we decide to build a new sea-level canal, and Panama refuses to cooperate.

The third major flaw is that no other country in the world is bound, as the United States will be, from constructing a new interoceanic canal anywhere it wants in the Western Hemisphere. For example, if a canal route through Nicaragua should look useful for any reason in, say 1990, the Soviet Union or the Arabs could build it—the United States could not because of this commitment in article XII. We would not even have the ability to compete for the construction rights.

Why should we voluntarily bind ourselves in this regard, as no other nation in the world is bound?

I hope that we will have some light shed on this matter, because we search in vain for an explanation; but there is none.

For all of these reasons, the commitment in article XII, paragraph 2—which was promoted by the Carter administration, based on an off-the-cuff statement made by the President at a town meeting in Yazoo City, Miss.—should be eliminated. The committee was made and promoted by the Carter administration, not by the Panamanians. It is detrimental to the interest of the United States, and it should be removed from the treaty.

I think in addition, Mr. President, two other points should be discussed which are relevant to this argument. First, I think most Americans would agree it is ludicrous to even think of building a new canal in Panama, after all the grief we have been given over the present one. We paid for it, we constructed it, we have maintained it, we have operated it, we have paid all the costs, and I think many Americans have had about enough of this kind of diplomacy. We are about to give away property, the replacement value of which is estimated at between $5 billion and $8 billion.

It seems strange that we were debating a bill this morning trying to help the American farmer, and the administration said, "No, no, we won't do anything for the American farmer."

We were met by one objection after another from the Budget Committee. Where is the Budget Committee on the Panama Canal? What inflationary impact will giving away an $8 billion property have on the United States? What about the American consumer? Where are all these arguments that were made against the poor helpless American farmer this morning?

Oh, we went through arm twisting, inaccurate statements, inaccurate charges, heavy lobbying all over the country, everyone in the administration trying to shoot down the American farmer. But where are those people now?

All the American farmer has—it is not a giveaway program as we have in this proposal, but a chance to make a profit in the marketplace.

I will say to the credit of the distinguished floor leader on this measure, the Senator from Idaho (Mr. CHURCH), that he was there with the American farmer. He was supporting the American farmer. He did not listen to the administration. His arm was not twisted. And many other Democrats voted for the farm bill this morning.

You sometimes wonder, as you sit in the galleries and listen to isolated debates, what may be happening in America. If you were there this morning and listened to all the arguments against the farm bill, and all the great alleged costs it was going to put on the American consumer and the American taxpayer, and still there are no voices raised against this giveaway, you wonder which side we are on in this Chamber.

Are we concerned about the American taxpayers, the American consumer, the American farmer? I think it is all very relevant, because we sort of get carried away. We are debating the Panama Canal Treaty now, not the farm bill. Well, we are debating a principle. We are debating a principle of who comes first. In this case it was not the American taxpayer, it was not the American farmer. I assume that everything that could be done was done to defeat the farm bill this morning in the Senate. For what reason? So the President would not have to veto the bill, to protect the President of the United States, who apparently does not want to help the American farmer.

I just suggest, as we get into the final phase of debate on this giveaway program, we ought to take a look at what we are doing for the American people. This provision does not do anything for the American taxpayer, the American voter, the American citizen. I just cannot understand the reason this provision was ever put into the treaty in the first place. We are going to find out quickly, because the Senator from Alaska, apparently, was the initiator of this provision. He should have firsthand knowledge on why President Carter made the statement at Yazoo City, why President Carter made the commitment and why it is in writing, why it is in the treaty. We ought to have the answers to those questions.

It is really difficult to explain why we give Panama the advantage time after time after time. They are a small country and we are a large country. We understand that. We are friends of the Panamanian people and have been for a long, long time. That does not mean we have to embrace Torrijos, the dictator. That does not mean we cannot disagree with Torrijos, the dictator. That should not insult Torrijos.

He is the ruler of Panama, but I do not know of any free elections which have been held there recently. Maybe somebody can enlighten the American people on this matter.

Mr. GRAVEL. They had a plebiscite.

Mr. DOLE. They had a plebiscite, but not on Torrijos.

I will give the Senator ample opportunity to respond, because I am waiting with baited breath to hear him tell us how he got this into the treaty.

We have had an experience in the past few days where it is very obvious that the Panamanian people are upset about the DeConcini reservation. Maybe they should be. It is a tough reservation. The Senator from Kansas offered an amendment which would have done the same thing. I did not offer it in a hostile way. I offered it as a friend, as another step in trying to preserve the neutrality of the canal. I cannot understand this very delayed reaction from Panama, why it took a couple of weeks for any reaction from Panama. Apparently there is not the understanding we have been told there is; there is not the understanding we have been led to believe there is.

I would guess that if the votes had been there, the administration may have fought the DeConcini reservation tooth and toenail, but they needed his vote.

They needed a couple of other votes which may have hinged on the DeConcini reservation.

We understand that there may be two high-ranking Panamanian officials in town right now trying to straighten out the controversy, the misunderstanding. I hope the floor leaders will enlighten us on that. If those officials are here, maybe some of the rest of us would have a chance to visit with them.

I would just suggest that somehow we seem to have our priorities mixed up. I think the American people would share the view that it is rather ridiculous to talk about spending $7 billion for another canal. I do not think many American taxpayers would understand the reason to build another canal, after we have agreed under pressure to give away the old one. I am certain some in this Chamber might think if we are to build a new one we ought to give it away, too. It does not make any sense. Most of us agree it does not make any sense.

Former Secretary of State Henry Kissinger, during testimony before the Senate Foreign Relations Committee on October 14 of last year, commented:

> I, myself, have raised the question whether it is wise to place two canals in the same country—we have enough problems with one of them there—and whether it might not be better to have a sea level canal, if we build it, in some other country.

Suppose even for a moment we did decide to build a new canal through Panama. The simple laws of diplomacy and good business sense tell us our leverage in determining costs and conditions would be severely diminished. Since we have no place else to go to build the canal, we have no bargaining leverage, and Panama has no real incentive to try to accommodate us. On the other hand if the United States were free to join with a third nation—but we are not as that right has been given up in this treaty. Why has it been given up? I do not know, but we hope to find out.

But if we were free to join with a third nation for a competitive enterprise it would be much easier to obtain an agreement from Panama. This is not taking advantage of Panama. It just makes good, common sense. If you want to make some business arrangement, you try to apply the proper leverage. I guess it demonstrates again how foolish it would be to voluntarily bind ourselves in advance, but that is what we have done.

We are going to be hearing the old, tired arguments that we cannot amend the treaty, we cannot change anything, we cannot add one word, because that might mean a new plebiscite. I think many Americans wonder why they have not yet had their first plebiscite. Panama had one and the American people have not had one. We are on the giving end. Panama barely has enough votes to take the $7 billion gift. The American people were not even asked if they wanted to vote to give it away. Panama has a little different form of government, I understand.

I would say, Mr. President, all of the elements of good sense suggest that we should eliminate this provision from the treaty. We ought to do it in a straightforward way so there is no misunderstanding, as we have had in the past.

I know somebody will offer a reservation later on and we will be told how they will take the reservation. That will satisfy someone who objects to this provision. That will keep them in line, maybe, for the final vote. But we have seen what can happen on reservations, how much confusion can spread across the land and into Panama.

Why not, just by simple amendment, delete this offensive provision from article XII? It would be very simple. Just cut it out. Torrijos would understand it, the Senate would understand it, the Panamanian people would understand it, President Carter would understand it, and the American people might understand it. The American people have not been given much opportunity to understand much of this treaty, because they have been hearing, if they listened to the radio:

> We cannot take your amendment. That would do violence to the treaty. It is not necessary. We understand what is best.

One amendment after another has been voted down or tabled, killed, except for the leadership amendment.

Then we got into the crunch of how many votes were needed to actually pass that Neutrality Treaty. Then they made a few arrangements, or a few arrangements were made, to pick up this vote and that vote. Then they had the magic number, with one to spare.

We were told that everything was fine, except for the unexpected assist from General Torrijos who is getting a lot of pressure, I understand, in Panama and finally had to speak out.

It would seem to me that if there is that much confusion, if it is causing General Torrijos that much of a domestic political problem, the best thing we can do to this second treaty is to recommit it to the Foreign Relations Committee, and either clarify the language or let it rest there until there is a meeting of the minds between Panama, the Government of Panama, and the leaders of America on just what we have here.

I am certain that is going to be rejected, too, because we do not want to do anything to clarify the problem; we want to keep it fuzzed up until after we vote next Tuesday. Then we shall try to figure out some way to take care of it.

We have spent a lot of time on this debate. Many of us have learned a great deal. I think we have had adequate debate. The point is now that we have a great misunderstanding.

I say with reference to this simple amendment, it is straightforward, it is effective, it is pretty hard to construe it any other way if we just knock it out. We do not have the problem we had with the DeConcini reservation: the way I interpret it, the way you interpret it. We just take it out. It is out. That seems very simple and straightforward, not trying to deceive anyone.

I, frankly, do not think the Panamanian Government would object. They did not bring it up. It was brought up by this administration. It was not being considered in the previous administration, in the Ford administration. In fact, one way to rehabilitate Torrijos now may be to drop this amendment, because he said, as the Senator from Alaska knows, if we drop this out, he will be a "national hero."

He needs our help and you are one of the leaders in efforts to help General Torrijos. This is your opportunity to cosponsor this amendment, an act of political grace and courage, because General Torrijos has suggested he would be a "national hero" among the Panamanian people if this provision were dropped from the treaty.

Panama cannot accept the DeConcini reservation, because of all it means, all the implications to Panama. Many Panamanians do not like this quid pro quo argument, either. So we are going to get that old, wornout excuse. They are going to say that the amendment is not relevant. We are going to be told this would upset the Panamanian Government. It would not. This is one thing that would probably make the Panamanian Government happy.

I understand the great strength and power and influence General Torrijos has over this treaty, either directly or indirectly. Here is one chance for those who have been voting against every amendment except the leadership amendment. one chance to really do something that the American people understand and the Panamanian people understand. And I hope that we will do it openly, above board, clearly, concisely, and effectively.

It has already been suggested that the Senate leadership may support a treaty reservation to the same effect. I do not know, perhaps we are going to see all those people who are going to stand up later and vote for the reservation trying to beat off this amendment. That is just how absurd the situation has become.

There could be only one possible rationale for doing that. They will argue that a treaty amendment might require a new plebiscite in Panama while a reservation would not. But since when has it been our responsibility, the responsibility of the U.S. Senate, to fret and worry about whether General Torrijos must hold another plebiscite? I do not see that in my oath of office. I do not see that in any instructions I have had as a Senator. I think our first obligation is with reference to the American interest, which does not do violence in this case to the Panamanian interest.

I think the problem is that we are getting down now to where the truth is starting to pinch a little. There is a great feeling, I think, in the Carter administration and the Torrijos administration that they cannot have another plebiscite. The Panamanian people might reject the treaties. So they are going to suggest that we just take this amendment, kill it, table it or do it outright, and do the same thing by reservation. I suggest, based on the experience with the DeConcini reservation, that maybe we are better off with an amendment.

We do not try to fool anybody with this amendment, but you are going to try to fool somebody with a reservation. We are not trying to have it both ways

with this amendment, but you are going to suggest that we can have it both ways with this reservation. This is clean, concise minor surgery. It just takes it out.

I would think the distinguished Senator from Alaska, who has been supporting General Torrijos with great vigor, would support my amendment—as Torrijos says, this would make him a national hero if this is stricken out. It is a chance for any of us who may have said anything to offend General Torrijos on the floor to try to rehabilitate him, if that is necessary, because we shall all vote for it. That would, in effect, if it is necessary, absolve anyone in this body who might have, in the heat of passion or debate, made any reference to anyone that might be offensive. I do not recall any such comments being made.

I say, finally, Mr. President, that I hope that on an amendment of this significance, which the Panamanians do not want, which Torrijos does not want, which is put in the treaty on the basis of an off-the-cuff remark in Yazoo City in a town meeting, we can get an up or down vote. This is certainly one the American people understand.

I hope that we shall have at least five or six up or down votes in the course of this debate. To date, we have only had three up or down votes on this treaty. Out of all the amendments that have been offered, we have only been permitted to have three up or down votes. I think the American people want to see their Senators take a direct, yes or no stance on the issues. I hope we will be permitted a simple yes or no vote on this amendment.

Let me repeat in closing, Mr. President, that this is an amendment that, as I have indicated previously, is easily understood. It strikes out the section the Senator from Kansas referred to. It would do away with some of the flaws that I have referred to. It is clean, it is concise, it does the job, and I think it would take care of what I consider to be a mistake in the negotiations.

I would hope—I do not think—that maybe, with some reflection, the administration might be in a position to accept the amendment. It seems to me that if we are in trouble with Torrijos because of DeConcini, we could trade this one off. If he does not like this one, he would like to get rid of this out of article XII, and it would make him a "national hero." Maybe it would offset the damage that DeConcini has done to Torrijos. The proponents of the treaty could have the best of both worlds by accepting this simple amendment of the Senator from Kansas.

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

Mr. GRAVEL. Mr. President, I want to say that I really relish this opportunity to stand up here and engage in a colloquy, in a debate, with my good friend from Kansas. I have not had that opportunity—we both got elected to the Senate about the same time, and I have not had that opportunity since the early seventies. I have missed it, because he is a very, very gifted and articulate person, who can really express himself. We have not done it in a long time.

In fact, I can recall our last encounter together when he was defending President Thieu, of South Vietnam, and defending our presence and our staying in South Vietnam and how we had to keep fighting there. I can recall the two of us standing toe to toe, when he was defending the Richard Nixon administration over and over again. I have sort of missed those days. Now we have an opportunity to stand up again and relive our past encounters, and I am going to try to do a little bit of that this afternoon.

I do not want to say that he is accurate in his quotes. There is no question that there was no great enthusiasm on the part of the Panamanians for this section of the treaty. I may have been misquoted; I do not think I have ever claimed the power to appoint anybody. The only people I can appoint are people to my staff and I can "unappoint" them. That is the only power I have.

Mr. DOLE. I was just reading a quote by Torrijos.

Mr. GRAVEL. I appreciate that, and my colleague is a very accurate reader. There is no question about that.

I want to say that if there is really an initiator of this section, it is probably me. When I came upon certain relevant pieces of information, I felt it incumbent upon me to protect the U.S. interest, as I saw it, and pressed upon Ambassadors Bunker and Linowitz that they should get something in the treaty to safeguard what I thought was a very important interest to us, particularly so in my State, but not one ounce less to the rest of the Nation or, for that matter, the rest of the world.

So I pressed very hard and we succeeded on our side in making presentations, The Panamanians said, "If you people want something, we want something too, we want a quid pro quo," and that was agreed to.

I might add that my dear friend can read the language any way he wants, but that language is very well balanced.

The Senator is quite right on one point—that what we really agreed to do was study. That is what it is all about.

To talk about doing anything before we have the result from the study is quite ridiculous, because we do not know what we want to do or, if we want to do anything. What is important is to undertake this study.

Several Members of this body have cosponsored an amendment, or a bill, that would put up $7 million or $8 million to go further with this study. I think a lot of people see the wisdom of that. I think Senator GOLDWATER joined as a cosponsor, and Senator ALLEN was a cosponsor on that amendment. It was led by Senator MAGNUSON. That is, to go ahead and spend some money to update the earlier report.

We have already spent $22 million to find the best route—and this is what my colleague really has not focused on when he talks about Nicaragua, and these other options. I have that report in front of me. It is the interoceanic canal study of 1970, a study started in 1964 and completed in 1970, and this was a study that cost the American taxpayer $22 million.

The main accomplishment of the study was to look at all the possible sites for building a sea-level canal. They studied 30 of them, from Mexico to Colombia, and they narrowed down to four, two of which are in Panama, and then they narrowed to one, which is the viable, economic alternative if we are to build a sea-level canal, and it is in Panama. It is 10 miles due west of the present Panama Canal.

So we can say, academically, we need our freedom to be able to negotiate with somebody else. It is preposterous and it is ridiculous. We have already spent the money to study that.

We can say that we do not believe the people that work for us that make these studies. We can be Luddites, and not accept the fact that the choice was made of this location. That is the best economic choice.

We could go and do something uneconomic. That is quite possible. We have made that kind of mistake in the past. That, of course, is really the alternative that my colleague is talking about.

But why would we want to go do something uneconomic, or to another country—my colleague mentions Nicaragua.

It is very interesting that he should mention Nicaragua when he, along with several of our colleagues here, on February 17, 1971, voted to give back the unilateral option of building a canal in Nicaragua. He, along with 65 other Senators, voted for a treaty that gave back to Nicaraguans what they had given us on a silver platter, which was the right unilaterally to build a canal in Nicaragua, for perpetuity, I might add—forever.

We did not have to give that back except that the language of the treaty was so embarrassing that, after we had our economic study, we chose to give it back.

Mr. President, I would like to have printed in the RECORD at this point the convention with Nicaragua terminating the Bryan-Chamorro Treaty of 1914.

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

CONVENTION WITH NICARAGUA TERMINATING THE BRYAN-CHAMORRO TREATY OF 1914

The PRESIDING OFFICER (Mr. WEICKER). The hour of 3 o'clock having arrived, the Senate will now proceed to vote on the resolution of ratification of the Convention with Nicaragua terminating the Bryan-Chamorro Treaty of 1914, Executive L—91st Congress, second session, to be immediately followed by a vote on the Extradition Treaty with Spain, Executive N—91st Congress, second session.

The yeas and nays having been ordered the clerk will call the roll on the first treaty.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. MONTOYA), the Senator from Maine (Mr.

MUSKIE), the Senator from Rhode Island (Mr. PELL), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE), the Senator from Utah (Mr. Moss) and the Senator from New Hampshire (Mr. MCINTYRE) are absent on official business.

I also announce that the Senator from North Carolina (Mr. JORDAN), is absent because of illness.

I further announce that, if present and voting, the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from Maine (Mr. MUSKIE), and the Senator from California (Mr. TUNNEY), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Michigan (Mr. GRIFFIN), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG), are necessarily absent.

The Senator from Hawaii (Mr. FONG) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Colorado (Mr. ALLOTT), the Senator from Oregon (Mr. HATFIELD), the Senator from Wyoming (Mr. HANSEN), and the Senator from South Dakota (Mr. MUNDT) would each vote "yea."

The yeas and nays resulted—yeas 66, nays 5, as follows:

[No. 3 Ex.]

YEAS—66

Aiken, Allen, Anderson, Baker, Beall, Bellmon, Bennett, Bentsen, Bible, Boggs, Brock, Brooke, Buckley, Burdick, Byrd, W. Va. Cannon, Case, Chiles, Church, Cook, Cooper, Curtis.

Dole, Dominick, Eagleton, Ellender, Ervin Fulbright, Gambrell, Gravel, Harris, Hart, Hartke, Hruska, Jackson, Javits, Jordan, Idaho, Kennedy, Mansfield, Mathias, McClellan, McGovern, Miller, Mondale.

Nelson, Pastore, Pearson, Prouty, Proxmire, Randolph, Ribicoff, Roth, Saxbe, Schweiker, Scott, Smith, Sparkman, Spong, Stennis, Stevens Stevenson, Symington, Taft, Talmadge, Weicker, Williams.

NAYS—5

Byrd, Va., Cotton, Gurney, Thurmond, Tower.

NOT VOTING—29

Allott, Bayh, Cranston, Eastland, Fannin, Fong, Goldwater, Griffin, Hansen, Hatfield.

Hollings, Hughes, Humphrey, Inouye, Jordan, N.C., Long, Magnuson, McGee, McIntyre, Metcalf.

Montoya, Moss, Mundt, Muskie, Packwood, Pell, Percy, Tunney, Young.

The PRESIDING OFFICER. On this vote, there are 66 yeas and 5 nays. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. GRAVEL. Mr. President, this Senate has already gone on record—66 votes, I might say—that if our technicians tell us it makes no economic sense in Nicaragua, then we should not keep a treaty in existence which gives us the right in perpetuity to build a canal in Nicaragua. We have already made that decision.

But as happens so often in this body, some people want to go back and reinvent the wheel.

Let me say, we have spent money to look for a possible location of where to build a sea-level canal. That location has been chosen. It is 10 miles to the West of the present canal. The question is, should we or should we not.

My colleague here is very interested in saying somewhat resentfully that we should have the right to go into Panama and build a canal anywhere we darn well please. That would be like saying France, Germany, or the Soviet Union should have the right to go through the United States, or to Kansas, and dig a ditch if they want to. We cannot even do that ourselves as a government. We, at least, have to have an environmental impact statement.

But that is a right some want to reserve for ourselves in Panama.

I think that is most unfortunate because, certainly he cannot mean that. He cannot mean that we would take unto ourselves prerogatives that as human beings we would not allow the Panamanians.

He cannot mean that because, certainly, we want to treat them as equally as we would treat ourselves.

The language in this treaty is balanced. It says that we will study the issue. Part says we cannot go and negotiate with somebody else in our hemisphere for a canal, which really means nothing because our technicians have already told us there is nobody to negotiate with to build a canal, no other location of economic value to build a canal.

So what are we giving up?

The charge was made that this is a giveaway. What have we given up? We have given up the right not to negotiate with somebody else we would never negotiate with, because we could never build anything in their country if we did negotiate with them.

We have not given up a thing.

What have the Panamanians given up? They said in this treaty, "we will study it with you."

I think that is very important. I do not think we should be studying anybody's country without their involvement.

So, they would study it with us and then we would begin to negotiate.

Here is what I would think is an intelligent context of these negotiations. It is very simple. That is, it is their land. We do not have any Bunau-Varilla running around to negotiate a new treaty.

So it is a new premise we start with. It is their land. It is just as if it was American soil and somebody said, "We're very interested in seeing you undertake some type of venture."

We would need their permission as equals.

As far as owning it, I do not think they would let anybody own it but ourselves. They would be foolish. They do not have to.

So they would own it. So it would be for their own interest, and that is very simple. It is a commercial interest.

We presently generate one-third of the present traffic through the canal. So, if the new canal were to be built we could assume we would generate one-third or more of the traffic in that canal. So it would be in our economic interest.

We would go to them, as a result of this study, if the study were affirmative. We would simply say to them, "Well, we are prepared to help you finance this in exchange for a proper toll rate."

We would have what would be essentially a commercial undertaking with the government and with the people of Panama. That is all. It is not terribly complex. We do that now with other countries. With Canada we will have a gas line. It will come down from Alaska into the United States, go through a foreign country. They have not ceded their sovereignty over that land. We just worked out a commercial arrangement that was sanctified by a resolution in this body that will permit shipment of gas from one part of the United States to the other part of the United States.

It is a very simple undertaking when we strip away all of this false emotion that has beset this unusual situation.

Let me touch briefly again on these other countries involved, because we get so upset, some people do, at least, that we would be building a new canal through a country that would have a general at the head of it.

I might suggest that Nicaragua, where Mr. Somoza is in charge, has had a few difficulties of late. Maybe they are advocating, as some do, that Nicaragua is a possibility.

I could go down the list of countries involved. All these countries were party to the agreement between President Carter and Mr. Torrijos. So they all were party to the understanding that probably the best location and the only location for a canal is in Panama. That is what all the heads of state agreed to when they signed along with the treaty on the declaration of Washington, last September.

Let us now go to certain premises of my colleague. He does not foresee the need for a canal in this century.

Mr. DOLE. Mr. President, will the Senator yield for a clarification? I do not want to interrupt his statement.

Mr. GRAVEL. I am happy to yield for a clarification. I tried to clarify the statement of the Senator from Kansas a couple of times, but I would be happy to have him clarify, also.

Mr. DOLE. I did not see the Senator from Alaska standing, to clarify it. It probably needed clarifying.

The Senator from Alaska mentioned that these other countries signed on. It is my understanding that they only signed on so far as the Neutrality Treaty was concerned, not the treaty we are debating now.

Mr. GRAVEL. I believe the declaration of Washington was with reference to the whole package, which consisted of two treaties. They did not actually sign these documents. They had another declaration saying they were essentially in favor of what we were doing with Panama.

Mr. DOLE. They were in favor of it.

Mr. GRAVEL. Yes.

Mr. DOLE. I do not quarrel with that.

Mr. GRAVEL. When my colleague was talking about the defense argument, that 14 carriers cannot go through the canal and that is not a big part of Navy, so far as I am concerned, that is all our Navy. I think the Second World War demonstrated that. The Second World War, at sea, was won with carriers, with aircraft carriers. That was it. If you have no aircraft carriers, you literally have no Navy. So to say that our 14 carriers cannot go through the Panama Canal is saying that the American maritime defense capability cannot go through the Panama Canal. That is what you are saying. Do not kid yourself.

These carriers are the most vital things we have. We are not going to let a carrier run around the ocean without a few destroyers—like 10 of them. That means that whenever you move a carrier around the Cape of South America, you are going to move 10 destroyers to protect that carrier, which is still vulnerable because it will not have its entire task group with it.

So I hope my colleague will be a little more accurate and a little less cavalierish about our defense posture, because I know he has a distinguished record in this regard, with respect to a very strong defense posture for this country.

Be that as it may, I think any judgment about the new canal is primarily an economic decision. Economics is the discipline to which we subject all our decisions with respect to the distribution of resources and the determination of productivity.

Let us look at the situation today. Today, 57 percent of the world maritime tonnage cannot go through the present Panama Canal. To be more accurate, 57.8 percent of the vessels in the world maritime fleet are of 60,000 dead weight tons or more, and the limitation of the present canal is between 60,000 and 70,000 dead weight tons. From an economic point of view that means the canal is more than 50 percent obsolete.

You can bury your head in the sand and only worry about the emotion—who has sovereignty and who does not have sovereignty; this is a giveaway and that is a giveaway. All that is quite irrelevant to the simple fact that the canal is more than 50 percent obsolete today. I do not think that figure, prior to the research that I presented here, was generally known or appreciated.

That is the reason why a person, whether it be a Panamanian or an American in high office, who is not acquainted with these facts cannot develop a very acute—in my opinion—understanding of the present relevance of the present canal or what the needs will be 10 and 20 years from now. But I think we can take the experience of the last 12 years and compute what those figures are and what they show.

What we see is that in 1966, 89.59 percent of the world maritime fleet, in terms of tonnage, could go through the Panama Canal. Ten years later, in 1976, it was 42.2 percent. Of course, today it is 57.8 percent.

If we projected that to the year 2000 and only used a third of the last 12 years experience—not the full experience, only a third of it—we see that by the year 2000, about 7.64 percent of the world maritime fleet would be able to use the canal.

If that is not an indication that the barrier of Panama, the Isthmus of Panama, is increasing for world maritime interests, I do not know what is. If you come to the conclusion that this barrier is rising and increasing every year, then you must come to the conclusion that we should make a decision that was made back in 1903, which was made back in 1880 in Europe, in 1850 in the United States—that we have to try to find a way to breach that Isthmus for the benefit of the world commercial trade. That is the simple conclusion you come to.

We can be rational people and take statistics such as these and say that something is wrong and we should do something about it, or we can wait until the year 2000, when less than 10 percent of the world maritime fleet can use the canal, and say, "We have to do something about it now. We have to build a new sea-level canal."

We can wait until that time, but I submit that we are rational and intelligent human beings, and I think we can get together with the Panamanians and perform the necessary studies and in those studies make an economic decision as to whether or not we should go forward. If it is not justifiable on economics alone, we may choose to add defense considerations. That would be up to the Senate, at a certain point in time, if it chooses.

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

Mr. GRAVEL. I yield.

Mr. LEAHY. Mr. President, the Senator from Vermont has a couple of questions that come to mind in looking at this amendment.

As I understand the provision in the treaty, a treaty that was negotiated by, among others, a distinguished fellow Vermonter, Ellsworth Bunker, the country of Panama is precluded from negotiating with anybody other than the United States on the question of a sea level canal in Panama during the remainder of the century. Is that correct?

Mr. GRAVEL. I am sorry. Will the Senator repeat that?

Mr. LEAHY. As I understand the treaty, as it was signed, Panama is not allowed to negotiate for a sea level canal through Panama with any other country except the United States.

Mr. GRAVEL. That is right.

Mr. LEAHY. It is also a fair understanding that Panama, from an engineering point of view, is ideally the place for a sea level canal, if one were to be built.

Mr. GRAVEL. The most ideal.

I should like to quote a gentleman I know and respect, Mr. John Sheffey, a retired colonel of the U.S. Army. He was the Executive Director of the Inter-Oceanic Canal Study Commission, which completed its report in 1970. I read from his testimony before the Foreign Relations Committee:

> First, as the former executive director of the $22 million Sea-Level Canal Study of 1965–1970. I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new isthmian canal outside Panama. The only feasible routes are in Panama.

So I think the case is very clear.

When my colleague from Kansas talks about that we have to have our options or we are giving away something, it is absolutely preposterous that we would be giving away something. We are not giving away something. There is the only place to put a canal.

Mr. LEAHY. If we remove this section in the treaty, then that means that Panama is free to negotiate immediately with any other country for a sea level canal, that is, with Japan, the Common Market, the Soviet Union, or anyone; is that correct?

Mr. GRAVEL. Yes, they could, if this treaty were to pass. If the treaties do not pass, then I think that some of my colleagues will probably stand up here and say their rights under the 1903 treaty would preclude that.

Mr. LEAHY. Assuming we ratify the treaties as they are before us but follow the Dole amendment as it is before the Senate, if we ratify the treaties but also accepted the Dole amendment, then Panama would be free to negotiate with any other country in the world?

Mr. GRAVEL. The answer to the Senator's question, I think, is yes.

Mr. LEAHY. I tell my friend from Alaska that I have concern when I hear people talk about this section, and I will tell the Senator, if I could impose on his time for a couple of minutes, that in comments I have heard in Vermont and in other parts of the country, people ask us why we would have this in here, why we would allow ourselves to be restricted to negotiate only with Panama, or vice versa. I find when people ask this there is almost a huge blind spot that takes us back perhaps to the days of Teddy Roosevelt, or before, a feeling on the part of some that we could just go ahead and if we decide we want to build a sea level canal in Panama just go down and build one. I wonder if people have listened to any part of the debate that we have had here for the last several months, that we are dealing with a sovereign, proud, responsible, respectable country, Panama.

Mr. GRAVEL. Yes.

Mr. LEAHY. And Panama's main assets, of course, are its geographical location and its land.

Mr. GRAVEL. If my colleague will permit, I know why he runs into this misunderstanding throughout the country: We have a Senator of the United States standing on this floor saying, respectfully, he does not know why we do not have that right, just as if it is normal for us whenever we so feel to go dig a ditch in somebody's backyard.

Mr. LEAHY. I think one of the things that I would hope would finally come out of this debate is that the United States does not feel and should not feel that it owns Panama, certain actions in the past to the contrary notwithstanding, that we are indeed dealing with a proud country, with a country that has diligently maintained and lived up to a treaty that they themselves resent and have resented al-

most from the day it was signed but yet have shown honesty and integrity in living up to it. I really hope that the debate on this particular item, whether it is in this amendment or is an understanding later, does not break down into the kind of argument that we heard throughout the land in differing parts that would seem to have shown an assumption on the part of some people of the United States that if we decide we want to build a sea level canal simply because we might have the technical expertise to do so in Panama then we just go right down and build it irrespective of how Panama might feel.

We should realize than even in the present Panama Canal if Panama decided to bleed off the major part of the watershed of Lake Gatun, and they could do that as part of that is outside of the Canal Zone, we could not operate it anyway. We would lose the 52 million gallons it takes for transit of the canal, every single transit.

Mr. GRAVEL. For each vessel.

Mr. LEAHY. And by the same token, on the building of a sea level canal, assuming that it would become a matter of economic viability or necessity, it is Panama that possesses the primary ingredient, it is Panama whose country will be utilized, and it is Panama that has the most at stake there.

I think that it would be the height of arrogance on the part of the United States to assume that we and we alone would decide whether there would be another canal through Panama. Panama and Panama alone can make that ultimate decision.

But I personally prefer the situation where if they are going to make such a decision they would make it jointly with the United States and not make it with the Common Market, Japan, the Soviet Union, or anyone else. Yet I worry that there seems to be pressure built up in the country that rushes us pellmell into a situation where they are free to make that kind of arrangement with anyone else they want.

Mr. GRAVEL. I wish to thank my colleague because he underscored one important thing which is at total variance with my colleague from Kansas, and that is that a sea level canal will be the ultimate decision of Panama, not the United States. It will involve us but the ultimate decision will be that of Panama.

The language we have in this treaty, in my view, is no more than a mutual expression of enlightened self-interest. How horrible it would be, or how really ridiculous it would be, for the United States unilaterally to withdraw its expression from what is in its actual interests. All we are saying here is that the United States will not negotiate with anyone else, which would not make any sense even if it wanted to negotiate with someone else. And the Panamanians say that they will not negotiate with anyone else because, in point of fact, just like it makes no sense for us to turn elsewhere, it really makes no sense for the Panamanians in the final decision to turn elsewhere.

For my colleague to stand up here and say the Soviet Union would go negotiate with Panama to build a sea level canal—can one imagine the ridiculous scenario of the Soviet Union which in 1969—those are the figures I readily have available—had going through the Panama Canal only .2 percent of the traffic, as opposed to the United States, which had 15.8 percent of the traffic?

It is preposterous to think that the Soviet Union will be so ignorant as to want to waste $10 billion or more building a canal that we could unilaterally make a decision not to use. That means that they would sit there with an investment that would be ridiculous.

So obviously any financing of a new sea level canal is not going to be hidebound by the nationalism and the jingoism of past decades. It is going to be a calculated economic venture. So since the United States is the most important user of the Panama Canal, or the would-be sea level canal, I do not envision as possible that a sea level canal could be built without our involvement. The nature of that involvement would be in terms of helping with the financing of the canal. I would hope that a new sea level canal, if it is warranted economically, would be financed by every nation that used it. That is how it should be financed. It would be international in charter. It would be owned by the Panamanian people, and the Panamanian people, hopefully, would make a handsome profit from this productive instrument that would lie within their country.

Why a Member of this body would want to stand up and say first, this is a give away and second, we ought to just plain take out this language altogether and make out this does not exist, I do not understand. It can only be, regardless of the statements he was quoting from the head of state of Panama, Mr. Torrijos, it could only mean that the tactic is still today what it was yesterday, and that is to load these treaties up with so much that they will just fall over of their own weight and they will not be acceptable. That is the tactic. That is what it has been from the very beginning, and that is what it is now, regardless of the protestations that are made.

But let me submit I think the people of this country and the people of Panama are a little more intelligent than what this amendment would suggest they are, and they are intelligent enough to recognize their enlightened self-interest. I think that in order to make that enlightened self-interest known they are prepared to go forward with a study, and when the self-interest is determined as a result of that study, they are prepared to go into what would be commercial negotiations to bring this about.

All of what this section of the treaty does is to frame that future activity, to put it into a frame, so that when the study is in, the United States knows it is not looking over its shoulder to alternatives, and Panama knows it is not looking over its shoulder to alternatives. The two major beneficiaries of a possible sea-level canal would obviously sit down and work out the situation at that point in time.

Again I do not understand why anybody would want to stand on this floor and say, "Let us take out all this language about a sea-level canal. Let us just pretend it does not exist," and try to go back and look at Nicaragua, maybe spend another $22 million looking all over.

I would hope my colleague would join me in spending $8 million to update the study we have to get the present economics, update the engineering, and do an environmental study. After that we would know whether or not we should build a sea-level canal. I do not know whether we should or not. All I know is that I brought forward evidence to indicate that it would be economically viable and that it is needed.

It is particularly needed for my State. We are the treasurehouse of the United States of America. We have one-third of the known oil reserves of the United States, and we cannot get that energy to market efficiently today.

In fact, we are paying more than a dollar a barrel over what it would cost if a sea level canal were in existence today. Imagine that. I have heard exclamation upon exclamation on the floor of the Senate as to the high price of energy. If we had a sea level canal today, what is selling for $14 a barrel would be $13 a barrel, and it would be American oil at that, and would not have to import it from other countries causing a balance of payments deficit. That is just our oil.

Then we get our gas. There is not a liquefied gas tanker in the world today that can go through the Panama Canal. Not one. Obviously, if we are to use the gas potential of Alaska, which is enormous, the only way we are going to do it is with a sea level canal.

We talk about coal. Coal is the second most important commodity going through the present canal, and that is coal that goes from the East coast of the United States out of Hampton Roads, Va., and goes over to Japan. We could get a better price for our coal and more jobs for our people—my colleague is very concerned about that—and a better price for our coal if we could ship it more efficiently, meaning the larger vessels. We cannot do that. We are restricted in the size of the vessels because of the size of the present canal.

I could go on and make case after case, but if it is not clear let me restate it one more time: Fifty-seven percent of the world's tonnage cannot go through the Panama Canal today. That is a change from what it was 12 years ago. Twelve years ago almost 90 percent could go through the Panama Canal. We cannot be oblivious to that simple fact, that in 12 short years there has been an unbelievable obsolescence taking place. What will happen in the next 20 years? That is the simple question that I ask, and in order to try to find out I have pressed to have some language put in this treaty that will accommodate a study by the United States and Panama, and when that study is in it will speed the negotiations between Panama and ourselves.

To me that sounds very reasonable. It sounds very logical, and if somebody

would stand on the floor of the Senate and say, "Take all that language out and let us just concentrate on the present Panama Canal because it is going to last forever," well, I say the facts do not substantiate that. And the facts, I think, have to either be refuted—or people just have to stand in the dock and be judged by the American people for the ridiculousness of their proposals.

I reserve the remainder of my time.

The PRESIDING OFFICER. (Mr. RIEGLE). The Senator from Kansas (Mr. DOLE.)

Mr. DOLE. Mr. President, I thank my distinguished colleague.

I might join him in supporting additional money for updating the study, assuming we could satisfy the environmentalists and, perhaps, we will need an environmental impact statement. But the Senator from Kansas, of course, is aware——

Mr. GRAVEL. Mr. President, will the Senator yield for clarification? There was no environmental impact statement done in the original study. That is why a large part of the money in our suggestion for the study would go for an environmental impact study, because if the United States were involved in any guarantees we could obviously not do anything without having an EPA statement made. That is the purpose of that.

Mr. DOLE. All right.

The Senator from Kansas, as pointed out by the distinguished Senator from Alaska, is aware, we are all aware, of the sea level canal study commissioned by Congress in 1964.

The Commission's study focused, as I understand, on five feasible sites. Three were within Panama, one ran through Nicaragua and Costa Rica, and one lay within Colombia. The final report, as properly noted by the Senator from Alaska, recommended site No. 10 within Panama as being cheaper and easier to build. But the Commission's recommendation was conditional in nature, and its report clearly stated that route 10 was "subject to the priority of more important national requirements at the time" construction would be contemplated. It specifically recommended that the ultimate decision should also "take into account economic, political and military factors."

Now, the Senator from Kansas does not quarrel with those findings that, based on the study of the new sea level route through Panama, it might be less expensive and less difficult than alternate routes. But it is suggested that other factors ought to be considered: economic, political, and military, and this could make, of course, alternate routes more attractive in the future. I am pleased that the distinguished Senator from Vermont is on the floor because while he was propounding questions, as I understand the provision, it prohibits us from talking to any other country about a new canal. But the Soviet Union or Cuba or anyone else, Saudi Arabia, could negotiate with anyone else to build a competitive enterprise right now.

I would also suggest——

Mr. LEAHY. In Panama?

Mr. DOLE. Anywhere.

Mr. LEAHY. In Panama?

Mr. DOLE. Any other country.

Mr. LEAHY. No, no. I want to be sure I fully understand the distinguished Senator from Kansas. Is he saying they would have the right to negotiate to build one in Panama?

Mr. DOLE. I think so. All we have is a priority. We do not have, again quoting Torrijos, "an exclusive right." The United States is only given the "first option."

Mr. LEAHY. My understanding is that we have a monopoly in the 1903 treaty, and certainly, as I read it, the treaty up for ratification.

Mr. DOLE. We are talking about adopting this treaty which abolishes that monopoly.

Mr. LEAHY. Looking at this treaty, I see it as a complete monopoly. It is betwixt the two of us.

Mr. DOLE. If it is not a complete monopoly, would the Senator support an amendment to strike it out? You would be back to 1903.

Mr. LEAHY. Then if we ratify the rest of the treaty, as I expect we would, are we not then in a situation where Panama can go and negotiate with anybody they want? Quite frankly, while I wonder whether Panama would go along with this section in the proposed treaty, I rather like the fact that if all the major engineering studies say that Panama is the only economically feasible place to build a sea level canal, I rather like the idea that if one is going to build it, it is going to be with the agreement of both Panama and the United States——

Mr. DOLE. Right.

Mr. LEAHY (continuing). Knowing that if anybody is going to build one, Panama is going to have to agree, No. 1; I mean, no matter who else can be involved in the picture, Panama has to agree, No. 1, to build it, and no one would have a chance that someone could walk in and steal the canal, as many feel was done back in 1903.

Mr. DOLE. We do not have to steal it; we are going to give it to them.

Mr. LEAHY. It is called a quid pro quo 75 years later.

Mr. DOLE. If the Senator will yield, I might give him some time, if I have time remaining. I want to make a couple of points.

Mr. LEAHY. If I could just take 10 seconds more to say it——

Mr. DOLE. Right.

Mr. LEAHY (continuing). I just see it as blocking Panama from dealing with anybody else in making a sea level canal, and I rather like that.

Mr. DOLE. Well, I hope I understand it, but let me say——

Mr. GRAVEL. Mr. President, could I propound a question to the Senator on my time? It applies to what the Senator just said.

Mr. DOLE. Let me make three points, and then I will yield; and if I am wrong, the Senator from Alaska can correct me.

As I understand, it is a fact that Panama can allow any other country to build a sea level canal through Panama, including the Soviet Union, so long as they simply notify us first and give us "a first option."

If there is something there the Senator from Kansas has missed, if there is some monopoly power, I hope I will be corrected. I am just going by General Torrijos' interpretation. If we cannot agree on what this means, we have another misunderstanding; we have another DeConcini misunderstanding coming down the pike, or should I say, down the canal.

Second, as I understand, Panama would be entirely within her rights to refuse to allow us to construct a new sea level canal through her territory, even if we felt it absolutely necessary for our defense and our economic interests.

Maybe that is all right. Maybe I agree with the Senator from Vermont there. But the problem is, we cannot go anywhere else if they turn us down.

Finally, I think it is a fact that while we are prohibited from negotiating with any other country about a new canal, the Soviet Union can negotiate with anyone else to build a competitive enterprise.

It seems to me we ought to understand what we are about to do here. As the Senator from Kansas pointed out, I do not know why this provision is in here at all. I can understand that we should not have a right just to go down and say, "We're going to build a canal in Panama" and then build it, if we are talking about intervention in sovereign rights. But I cannot understand why we would make some agreement where we get only a first option, and we preclude ourselves from the right to even negotiate with anyone else.

I would agree that, based on the study referred to by the distinguished Senator from Alaska, the 1964 study, as of now the best route seems to be through Panama. But let us just look at some of the possible scenarios that could occur which would make the Panamanian route less desirable.

First of all, they could flatly refuse our proposal to build a new sea level canal, for reasons ranging from environmental to popular animosity—and I think there may be some of that.

Panama itself could come under the control of a new regime, making us less inclined to risk such a venture.

We could have a natural disaster, an earth slide closing the present canal, thereby necessitating a new canal, maybe even a new site.

Other nations, such as Colombia or Nicaragua, could propose a cost-sharing arrangement that would make our national commitment even less than what was referred to in the study as route No. 10.

And there is always a chance—you know, we live in an era of new technology on a day-to-day basis—that we will have some new technology that will make it easier and less costly to use other routes. In fact, in the Atlantic-Pacific Interoceanic Canal Commission's final report, it is said:

A sea-level canal excavated partially by nuclear methods on Route 25 in Colombia might someday be politically acceptable if proved technically feasible.

So, the point the Senator from Kansas wants to make is that there are a number of reasons why the recommended route through Panama might not be the best route, when it comes time to construct.

What is going to happen after the year 2000? I think it is more likely that we might build a canal after the year 2000 than between now and then.

I do not quarrel with any of the figures cited by the Senator from Alaska as far as tonnage is concerned. He is an expert in the field, far more than the Senator from Kansas, and I can understand his desire to look ahead. I commend it. I think he said that for 57 percent of the shipping on a tonnage basis, the canal is obsolete now.

The point I do not understand is how this provision solves or even addresses that very real, sticky problem the Senator from Alaska has pointed out, not just because of his interest in Alaskan oil, but because of his interest in the future, the future of this country and the interests of this country and other countries as far as traffic is concerned.

I do not really understand what happens if we knock this out. I assume we can negotiate with Panama, or we can negotiate with Colombia, or we can negotiate with Nicaragua, instead of being bound not to negotiate with those countries?

Mr. GRAVEL. Well, on my time, if we can engage in a colloquy. I think you are using more time than I am, and I would like to share it with you. I detect a note of reasonableness, and I might ask if I could hold my colleague's attention, because I have a slight hope that I might be able to persuade him in this regard.

Really, all we are doing in this section of the treaty is setting up a framework for our future course of action. We set up a framework to go forward with the study. After the study is in, then obviously we will have to sit down and make arrangements with the Panamanians, and in my opinion those would be commercial arrangements. I do not think we can say just what those arrangements will be before we have the facts of the study.

There is nothing given away on our side, or on the Panamanians' side, in point of fact. On our side I think it is very simple to see that we have already spent $22 million, and have picked one site, which is Panama.

On the Panamanians' side what are they giving up? They are giving up nothing, either, because, they cannot build—this is a judgment on my part—they cannot build a sea-level canal without us.

We are the biggest users. I think my colleague was out of the room when I gave this figure. If I give him the figure again, I do not think he will use the Soviet Union again as an example.

Mr. DOLE. Actually, I think the Senator from Vermont used it.

Mr. GRAVEL. The Soviet Union presently uses the canal 0.2 percent. The United States uses it 15.8 percent. These are 1969 figures, and the situation today is comparable.

So why on earth would the Soviet Union want to take $10 billion or more and help the Panamanians build a sea-level canal, when the economic viability of that is going to be in our use, the United States use?

To be extreme in this argument, if we were assured that the tolls would be fair, I would encourage the Soviet Union to go do it. Let us use their capital rather than our capital to go build a sea-level canal. Because all we are interested in is that when the canal is finished, everybody can use it at a fair toll. That is all we care about. If the Soviet Union wants to put up its money to furnish a more efficient maritime fleet for ourselves and the rest of the world, bless the Soviet Union; let them do it.

I do not see anything wrong with that. And particularly if we have the interest we have now, then what we will do is have the responsibility to keep it open for them—meaning keep it open for our third of the use. If the Soviet Union wants to use its rubles to invest in the Western world, to make our Western world more efficient, when they only use it 0.2 percent, let them have at it.

I do not think that logic sells. And the figures for the Arab world are considerably less. The only reason why the Arab world would invest in it is that it is a good investment. Their interest is very simple: They would be making a good return on their money.

I think they would invest in it. I would think that when we get around, after the study is done, to building a sea-level canal, that probably the Arab world would put up as much money as the United States for the financing of the canal, because it is the best real estate investment they could find in the whole wide world. If the economics are there, it is the best investment possible. They are not going to get nationalized by anybody, and they will get a fair rate of return. They would want to do that. I think the United States of America, as policy, would encourage the Arabs to make that kind of investment so that we do not rob our own capital markets, which are going to be in desperate shape, because of the balance of payments which will exist as a result of our purchases of oil from the Arab world.

So when raising these specters of, "Well, the Arabs are going to build and negotiate with the Panamanians," or "the Soviets will negotiate with the Panamanians," these are meaningless specters. They do not mean anything. For somebody to dig the canal, whether it is the Panamanians or anybody else, the canal must be economically viable. People do not make uneconomic decisions if they know differently.

The other suggestion is the Panamanians will turn us down cold. I do not know why we would make the inference that the Panamanians are less enlightened than we are. We Americans pride ourselves on our ability that if we see a dollar we will pick it up. If we see an opportunity to make some money, we are not going to sit in the shade. We are going to step out there smartly and get a little of that money.

The Panamanians are just like us. They have a piece of real estate. If we can show them with an economic study that the present canal "we are going to be giving them back" is obsolete and worthless, and what they ought to do is build a new canal, that we will help them finance it and they will make a lot of money off of it, why would they turn down something like that?

We even make deals with our enemies, if we are going to make money off of it. You do not have to love somebody to make money with them. The Panamanians do not have to love us. We may have used up our inventory of good will in Panama in these unfortunate debates. If we have used up that good will, do not worry, it will not make any difference. When the Panamanian people see they can make some money off a sea-level canal, it will not make any difference whether they like us or not. What will be important is can they utilize their geographic location to their economic benefit? That is the issue in question.

That is why I started out by saying that the question with this amendment deals with our enlightened self-interest. So if we take it out, what are we taking out? We are taking out the fact that there is recognition of a sea-level canal possibility. We are taking out the realistic fact that we have to deal with the Panamanians on that subject and that they have to deal with us. Those are the facts that this amendment wants to remove and make out like there is nothing there.

It is all there, and all this section of the treaty does is spell out what is obvious to the world. It is a frame, as I stated, within which we will now move forward with the study. That study will indicate what we should do as separate nations.

Mr. DOLE. Mr. President, the Senator from Kansas does not quarrel with the 1970 study. I do not think my amendment would affect the study. We do commit ourselves to a new study, jointly, on the feasibility of sea level canal in the Republic of Panama, and in the event they determine such a waterway is necessary, they shall negotiate terms agreeable to both parties for its construction.

The point the Senator from Kansas is making is, before we have the study, that we ought to make some arrangement for what happens after we have had the study. I think the Senator from Alaska, who says we may need a new sea level canal before the year 2000, argues against himself, because if Panama turns us down, we are shut out. We cannot go anywhere else. We do not have any leverage. We cannot talk to Colombian leaders or Nicaraguan leaders, because this contains the veto by Panama. We agree not to do that.

All we have is an option. That option, as I understand it—I hope I understand it correctly—is that we cannot negotiate with any other country than Panama for a canal site unless we are authorized to do so by Panama. On the other hand, the Panamanian commitment is imprecise and it is subject to different interpretations.

As far as the Russians are concerned, the Soviet Union sent 217 ships through the canal in 1976; Cuba sent 48 ships through the canal in 1976. I have not noted any word that the Russians are backing away from involvement. It might be that, judging from their maneuvers in recent weeks and months, and judging from rumors about Cuba and submarine bases and all that, they may want to expand their influence in this hemisphere. They may have more of a design on the canal or on a new canal. They may want to compete with America or with Panama. I do not know that they are any respector of the rights of Panama, the United States, or any other country.

I do not want to quarrel with the desire of the Senator from Alaska to protect the United States, because I share that, but it seems to me that we do just the opposite unless we strike out this particular portion of article XII.

Mr. GRIFFIN. Will the Senator yield for a moment?

Mr. DOLE. I yield.

Mr. GRIFFIN. As the Senator knows, I have taken the position that we should not rewrite the treaties here on the Senate floor, but I do want to say that I think the Senator's amendment goes to one of the most objectionable features in this treaty, one that was thrown in at the last minute, as I understand it, by the negotiators for the United States.

There have been a number of studies. In my minority views, which I would like to refer to, I would like to call attention to some studies that are not inconsistent with the view taken by the Senator from Kansas.

For example, a study at the Georgetown University Center for Strategic Studies in 1967, focusing on canal options, reached this conclusion: "Though the Republic of Panama seems technically"——

The PRESIDING OFFICER. The Chair is sorry to interrupt but must advise that all time of the Senator from Kansas has expired. The Chair understands that the Senator from Alaska yields 2 minutes to the Senator from Michigan.

Mr. GRIFFIN. I thank the Chair.

To be the best place for a future canal facility, the United States should not abandon the right to approach other countries for possible canal locations in the event that future political conditions exclude the project from Panama.

In 1967, the Council on Foreign Relations in a study authored by Immanuel J. Klette, surveyed various canal options and concluded the preferable route for a new canal would be the Nicaragua-Costa Rica route. He observed:

> Although the cost of construction bears on the final choices, it should not be the prime factor in making decisions on a new canal. A waterway which is less expensive in dollars may be the most expensive in political consequences.

It seems to me that this provision, in and of itself, is grounds for not approving this treaty and sending it back for renegotiation.

There are other reasons to do that. It seems to me, as I have gone around in my State and talked about these treaties, I find that my constituents are shocked when I read out of the canal treaty from article XII this language:

> During the duration of this treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route (other than in Panama) in the Western Hemisphere, except as the two parties may otherwise agree.

I find that my constituents are shocked that such language is in there and that we have agreed to that. To me it is certainly one of the most objectionable parts of this canal treaty. I think, of course, these treaties should be sent back for renegotiation.

Mr. GRAVEL. I might say to my colleague from Michigan that I have not reviewed that study. But the taxpayers of Michigan paid $22 million along with the rest of the American taxpayers for a study that did choose a route in Panama. Maybe there is somebody there who knows more than what was decided by this commission.

I would like to read this language from the treaty to the American people, to anybody who is listening, and let them be the judge as to how fair or unfair this treaty language is. It does no more for Panama than it does for us, and no less for us than it does for Panama.

The first paragraph deals with the study:

> Consequently, during the duration of this treaty both parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction

As the Senator from Vermont pointed out earlier, the one who is going to be the final deciding factor is going to be Panama. Right now, we have in the treaty that we are both going to decide it mutually.

Is that such a loss? Are your people still so shocked? If they think it is legitimate to go build elsewhere, fine, but there is no evidence that it would be economically feasible to build elsewhere.

Then, what this amendment does, the Dole amendment—here is the language that it wants to strike out. In section 2, the United States of America and the Republic of Panama agree on the following. Here is this terrible agreement that my colleague would like to cut out. This is the Panamanian side of the quid pro quo:

> (a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, or as the two Parties may otherwise agree;

The two parties agree. That is the quid pro quo that binds the Panamanians. I do not see any loopholes there.

Here is the quid pro that binds the United States:

> (b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

Now, if treating the Panamanians as equals is offensive, then this language is offensive. That is the only charge you can make of this language, that it does not give us a big edge. It does not give us the hammer that we have had for the last 70 years. If that is what is offensive, then it is offensive.

I submit that anybody that can understand the English language can appreciate that this is fair to the Panamanians and it is fair to the Americans. That is really all a treaty should be, fair. That is all this is.

Now, moving to the other points that are made, and I have been over this ground, but I shall go over it again, hopefully to try to win a few votes—just as an aside to my good colleague, the best time to make an impassioned speech is when you do have enough votes, because then it does not take any persuasion to get them.

I only say that on our side, we have already spent the money looking at the various sites. I can appreciate that there may be, at some time, military considerations; there may be, at a point in time, a situation where maybe they are right. Maybe the Panamanians would be so illogical that they would not want to build a sea-level canal. When would that be? I am having trouble right now getting enthusiasm for the canal and I hope you are all going to join me in voting for the study. If we got the study done, in 3 years, we would know whether we need a canal or not.

My colleague started out by saying, we are not going to need a sea-level canal. Just offhandedly, he said we do not need it.

Again, in your closing remarks, you stated, well, if we ever do, it is going to be after the year 2000. I am the only one around who thinks we can use it by 1985. In fact, I think we could use it today. We would be saving $1 a barrel on U.S. oil found in Alaska and shipped to Houston. That is what we would be saving if that canal were in existence today.

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

Mr. GRAVEL. I yield.

Mr. DOLE. You argue against your own position, because you cannot build it anywhere but Panama until after the year 2000. If the study the Senator from Michigan pointed out is accurate, in effect, you are shooting down a theory or proposal which has some merit, which I might support.

Mr. GRAVEL. I am not shooting down any proposal that has any merit. I do not know about the Senator from Michigan. Maybe he will give us the name of the study again that said it should go where? Nicaragua?

Mr. GRIFFIN. That was a study conducted for the Council on Foreign Relations. The reference is on page 191 of the committee report.

Mr. GRAVEL. What is the study, though?

Mr. GRIFFIN. The Senator from Alaska keeps saying that the most economically feasible place to build a new

canal is in Panama. No one is arguing with him about that. I will concede that it is cheaper to build it in Panama than anywhere else. The question is whether that is the only factor or consideration that we should take into account. I very loudly and very emphatically say, no. It may be important to us to spend an extra $1 billion to build it somewhere else.

I can tell you, it will not cost us nearly as much as it is costing us to build this subway under the city of Washington.

Mr. GRAVEL. If we get to that impasse under this agreement, my colleague says that if the Panamanians turn this down, they can go negotiate with somebody else. They cannot. The language is very clear that under this treaty, if there is no canal in Panama for our use, there is no canal in Panama for the Panamanians' use. That language is very clear, so references to the contrary just do not hold water.

Mr. DOLE. That is not what Omar says.

Mr. GRAVEL. I do not want to use the body's time to reread the English language, which is quite clear. The quid pro quos bind both of us to a mutual agreement.

Mr. CHURCH. Will the Senator from Alaska yield?

Mr. GRAVEL. I am happy to yield.

Mr. DOLE. I hope we can have an up-or-down vote on this.

Mr. CHURCH. I think it would be appropriate to move to table the amendment, when time has expired. I merely want to point out that, although I am in full agreement with the distinguished Senator from Alaska, the provision this amendment would strike is at least as favorable for the United States as for Panama. Therefore, it is not restrictive. Still, if a majority of the Senate entertains a different view, then the way for the matter to be handled is not by amendment to the treaty itself, which would force a change in the text of the treaty and might well require a second plebiscite in Panama, but rather by an amendment to the articles of ratification.

I am certain the Senate will have a second opportunity to consider this matter in the form of an amendment to the articles of ratification. Then it can take such action as the majority deems fit.

Quite apart from the merits of the argument, pro or con, the wrong way to act would be to force a change in the text of the treaty. On that ground alone, the Senate should vote to table this amendment.

Mr. President, if the Senator will oblige me further, I inquire of the Chair how much time remains to both sides.

The PRESIDING OFFICER. The Senator from Idaho has 5 minutes remaining. The Senator from Kansas has exhausted his time.

Mr. CHURCH. Very well. I am happy to accede to the request of the distinguished Senator from Alaska. He has 2 or 3 more minutes. Then, when he has completed his remarks, I shall move to table the amendment.

Mr. GRAVEL. Mr. President, I only conclude by the statement that, if we could go back to 1970, when the interoceanic canal study was completed, and if the canal at that time had come into being, the sea level canal, on the average projections that they made as to what it would take in the way of revenue to amortize 60-year bonds at 6 percent interest, the revenue that subsequently we would have earned in the last 7 years would have paid handsomely to retire those bonds. In fact, there would have been almost a 100-percent profit above the cost of construction.

I can only say that, using that, I am not talking about the new tremendous discoveries of oil in Alaska or all these other facets. I am only saying that the present canal is moving toward obsolescence at a rate so fast that the new one coming into being would have been viable. That is the case that I make: That we are going to need a sea level canal. It can only come about with the good will of the people of Panama. We can best acquire that good will with the passage of these treaties unfettered by what the Senate might want to add.

I hope that my colleagues will recognize the enlightened self-interest of the United States of America and vote to table the amendment of my colleague from Kansas.

Mr. GRIFFIN. Does the Senator from Alaska have a minute left?

Mr. GRAVEL. How much time do I have left?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. GRAVEL. I am happy to yield a minute.

Mr. GRIFFIN. I thank the Senator from Alaska.

I guess one of the questions here is whether we have a fair agreement, as the Senator from Alaska describes it. On the one hand, we agree that we will not even negotiate with any other countries in the Western Hemisphere for the possible construction of a second canal.

And what does Panama give us? It gives us the promise that Panama will negotiate with us about the possible construction of a sea level canal within Panama.

On October 23 in a radio interview, General Torrijos was asked the question:

(Question). General, I would like to know if you think the Government will begin work, pardon me, studies regarding a possible sea-level canal.

(Answer). The production of oil in Alaska and the existence of large tankers practically forces one to think about the construction of a sea-level canal. Some very complete studies, which cost many millions, have already been done. Now it is necessary to update or nationalize them; that is, adapt them to the national interests. The new treaty obliges us to continue studying with the United States the possibility of constructing a sea-level canal, but it does not obligate us to build it jointly with the United States. They have the first option. And if we cannot reach an agreement with them, we can seek the technology of any other country here in our world.

Well, that is not stating anything that anyone could not, of course, derive from the treaty itself as it is proposed, but those were the words of General Torrijos.

Obviously, they stand ready, possibly, to build a canal in Panama with anybody else they see fit if we do not meet their terms.

At the same time, we have tied our hands between now and the year 2000 to go to any other country and build such a canal.

Mr. GRAVEL. The truth of the matter is that the quote of General Torrijos is merely interpretive of the specifics of the treaty, and ties their hands as well as our hands. We cannot do anything without it. They cannot do anything without it.

But there is no question we could both agree, if we do not want to get involved in the sea level canal, we can let them do it, because we are going to be the beneficiaries of it.

That is what that quote is from General Torrijos. I think we do him an injustice to infer more than that.

It says that under the treaty, very clearly, with respect to Panama, that this provision holds unless the two parties may otherwise agree. With respect to the U.S. side of it, it is also except as the two parties may otherwise agree.

So we do not know what we will agree to in 1990, nor does Panama. But if we agree to let them do it, they can get the technology from Japan, Germany, or anywhere else to do it.

Of course, I think we do General Torrijos a great injustice with that quote out of context.

I think what is clear here is what the treaty says, and the treaty says very clearly in the English language that both sides are treated equally.

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

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

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

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

The yeas and nays were ordered.

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

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Maine (Mr. HATHAWAY), and the Senator from South Dakota (Mr. ABOUREZK) are necessarily absent.

On this vote, the Senator from South Carolina (Mr. HOLLINGS) is paired with the Senator from Arizona (Mr. DECONCINI). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Arizona would vote "nay."

I further announce that, if present

and voting, the Senator from Minnesota (Mr. ANDERSON) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Maryland (Mr. MATHIAS), the Senator from Pennsylvania (Mr. SCHWEIKER), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. THURMOND) would vote "nay."

The result was announced—yeas 49, nays 40, as follows:

[Roll Call Vote No. 86 Ex.]

YEAS—49

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

NAYS—40

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

NOT VOTING—11

Abourezk	DeConcini	Mathias
Anderson	Eagleton	Schweiker
Bartlett	Hathaway	Thurmond
Chafee	Hollings	

So the motion to table the amendment of Mr. DOLE was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 38

The PRESIDING OFFICER (Mr. MOYNIHAN). The question now recurs on amendment No. 38 offered by the Senator from Utah.

Does the Senator from Idaho wish to be recognized?

Mr. CHURCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHURCH. Is there any controlled time on the pending amendment?

The PRESIDING OFFICER. No, there is not.

Mr. CHURCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHURCH. Is the rule relating to germaneness any longer in effect?

The PRESIDING OFFICER. There is no requirement that this amendment be germane.

Mr. CHURCH. Is there any requirement that debate be directed toward this amendment under the germaneness rule?

The PRESIDING OFFICER. Not at this hour of the day, 3 hours having expired.

Will the Senator desist for a moment?

The Senate is not in order.

Will Senators desiring to converse retire to the cloakrooms if they have a matter to be negotiated?

The Senator from Idaho.

Mr. CHURCH. Mr. President, I wish to take some time this afternoon to address a subject which, I believe, is weighing heavily on the minds of most of us who are well aware of the deep concern which has emerged during the last few days in Panama concerning the action we took on the neutrality treaty on March 16.

In approving that treaty, the Senate adopted 13 amendments, conditions, reservations, and understandings, all of which were intended to clarify and thus to strengthen the treaty.

The PRESIDING OFFICER. Will the Senator kindly suspend for a moment?

The Senator from Idaho is making an address of the greatest importance. Will Senators show him the courtesy of listening in silence or retire from the Chamber?

Will the Senate be in order?

The Senator from Idaho.

Mr. CHURCH. These were responsible actions. In the course of hearings of the Committee on Foreign Relations and the debate here on the floor of the Senate, particular aspects of the treaty were pointed out which many of us felt were ambiguous. We felt these ambiguities could lead to confusion and contention between the U.S. and Panama in the future, and that these points therefore had to be clarified if we were to achieve the intended purposes of these treaties —to assure the protection of long-term U.S. interests in the Panama Canal through a new, modern, and mutually acceptable treaty relationship with Panama.

It is highly regrettable, however, that in the course of strengthening the Neutrality Treaty—by removing the ambiguities that we found in it—we appear to have introduced a new ambiguity which is causing grave concerns among the people of Panama. I refer here to the first "Condition" which appears in the Senate's resolution of ratification—the provision popularly known as the "DeConcini Reservation."

Let us analyze for a moment why we did what we did, and why the people of Panama are concerned about it.

Mr. GRIFFIN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator from Michigan is correct. The Senate has not shown its customary courtesy to the Senator from Idaho. Will those Senators wishing to converse leave the Chamber so that others may listen as they wish to.

The Senator from Idaho.

Mr. CHURCH. The Neutrality Treaty, as it was signed by President Carter and General Torrijos last September 7, contained a provision which reads as follows:

ARTICLE IV

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

During the hearings held by the Committee on Foreign Relations, top administration spokesmen, including the U.S. treaty negotiators and the Joint Chiefs of Staff, all testified that this language gave the United States the right to take necessary action—including military action—to protect and defend the canal, even after the year 2000. During the hearings, this right was at times loosely referred to by Members of the Seunate, the press, and on occasion by administration spokesmen as a right to "intervene." I believe we all recall that at that time Panamanian Government spokesmen were assuring their constituents that the treaty did not give the United States a right of "intervention."

These apparently contradictory statements about the fundamental security aspect of the new treaties gave rise to great concern here in the Senate. The Committee on Foreign Relations made it clear to the administration that it could not in good conscience report out the treaties favorably unless these ambiguities were clarified. At the same time, these apparent contradictions were creating equal concern in Panama, as the opposition groups there pointed out the discrepancies between the statements of the Panamanian Government's spokesmen, and those of the U.S. Government.

I repeat this recent history, Mr. President, to remind everyone that the problem we were facing last fall—which at that time appeared to be an enormous defect in the treaties—turned out to be largely a problem of semantics. There was no real disagreement between the two countries on the fundamental rights of each to act to protect the neutrality of the canal. The disagreement was over the way those rights were expressed. It was a problem over the use of the term "intervention."

Intervention to us may mean taking action for the limited and specific purpose of protecting our legitimate security interests in the Canal. But in Panama, and throughout the rest of this Hemisphere, the word "intervention" conjures up all that was humiliating and distasteful in their relations with the United States fifty years ago. To them it means U.S. Marines occupying Haiti and Nicaragua and running the governments of those countries for decades. It means the Platt Amendment. And it means the repeated interventions of the U.S. in the internal affairs of Panama in the early part of this century. Under the original 1903 Treaty, we periodically sent our forces into their towns and

cities—even those hundreds of miles from the Canal—and changed their government if we were unhappy with its politics.

Over forty years ago, we recognized that intervention in the internal affairs of other nations was contrary to our own national interests. In the 1930's, we removed our troops from Haiti and Nicaragua, and repealed the Platt Amendment. And in 1936, we terminated our treaty rights to intervene in the internal affairs of Panama. Since that time, we have strongly promoted international agreements committing all countries to respect the territorial integrity and political independence of their neighbors and to forswear intervention in their internal affairs. The Charter of the United Nations, the Charter of the Organization of American States, and the Inter-American Treaty of Reciprocal Assistance—our pact of military alliance with our neighbors in this hemisphere—all contain provisions flatly prohibiting intervention in the internal affairs of other nations.

So the U.S. policy of intervention is long gone. But in the Latin America, the memory lingers on. The principal unifying factor in the foreign policy of the various Latin American nations for the past 40 years has been support for the principle of nonintervention. Having embarked 40 years ago on a new and more mature relationship with the United States, the countries of Latin America are determined to keep it that way. Thus, whatever we may intend by the term, loose talk in the United States about "intervention" raises deeply-felt concern throughout the hemisphere. It was for this reason we found ourselves in such difficulty last fall when we were discussing the security aspects of these treaties in terms of "intervention."

So what did we do about it then? President Carter and General Torrijos got together and issued a statement of understanding which clearly defined the right of the United States under the treaty to act to insure that the canal will remain open, secure and accessible. That portion of their statement reads as follows:

> Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

At the same time that they thus clarified what the treaty did mean, however, they also made clear what it did not mean. The statement goes on to say:

> This does not mean, nor shall it be interpreted as a right to intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

With the treaty thus clarified, the people of Panama went on to approve it by a 2 to 1 margin in a national plebiscite. The Senate of the United States voted 85 to 5 in favor of the leadership amendment to incorprate this clarifying statement into the text of the treaty and, like the people of Panama, voted to approve the treaty by a 2 to 1 margin. But in the process, as I indicated earlier, the Senate adopted a further clarification which has given rise to an extremely delicate and emotional situation in Panama. Here is the text we adopted:

> Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

Now what is the problem with this language? It is purpose was to further clarify what the two countries had agreed to in the security provisions of the treaty. As General Torrijos put it in his letter of March 15 to President Carter, the treaty establishes "the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the canal." The Senator who introduced the provision in question indicated a very similar understanding. He stated:

> If America is to have any rights at all under this treaty, it must have the right to act independently to protect the canal and to keep it open.

So why the problem? There seems to be no disagreement as to our rights to take action to assure the openness and neutrality of the canal. No. The problem is not one of substance. Rather, it revolves around the emotion-charged matter of intervention in internal affairs.

As I noted earlier, the leadership amendment not only states what our rights are—it states what they are not. It makes perfectly clear that the United States has no interest in or intention of intervening in the internal affairs of Panama. But the provision we adopted on the 16th of March makes no such disclaimer; indeed, because it begins "notwithstanding * * * any other provision of the treaty * * *" it is being interpreted by the people of Panama as a nullification of the clear statement concerning nonintervention and respect for Panama's territorial integrity and political independence which the Senate voted 85 to 5 to adopt in the leadership amendment.

Now this was clearly not the intent of the Senate. The Senator from Arizona (Mr. DECONCINI), who introduced the provision, stated:

> I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation.

So I think there can be little question about the true intention of the sponsor of the reservation. Other Senators who spoke in favor of the provision similarly indicated that its purpose was to clarify —not to nullify—the other provisions of the treaty.

So the objections being raised in Panama are not objections to what he Senate in fact intended in adopting this language. Rather, they are objections to an interpretation of the provision which the Senate did not have in mind—and in fact disclaimed—in discussing the provision.

Perhaps the people of Panama are overreacting. Perhaps they are interpreting this language out of context. Clearly they are reading an intention into our language that was not actually there.

But perhaps their reaction is not so inexplicable in view of Latin America's historical concern over U.S. intervention in their internal affairs which I outlined earlier. And perhaps it is not so unwarranted in light of repeated statements during this debate which showed little respect for the dignity of this small but proud ally.

In effect, Mr. President, we are facing the same situation we faced last fall. We have stated our right to take legitimate action to protect our interests in the canal; many people of Panama have misinterpreted the language we have used in stating those rights as evidence of an intent to revert to the era of gunboat diplomacy and to humiliate their nation.

What is the solution, Mr. President? Is it, as some have suggested, to prevail on General Torrijos to silence the expressions of concern in Panama so we can pretend they do not exist? Clearly not. It would be not only insulting to the people of Panama, but also a grave miscalculation, to make the assumption that the opponents of the Treaty have so long espoused in this debate—that nothing occurs in Panama unless General Torrijos directs that it occur. Whatever we may think about the Torrijos regime, it is clear in this instance that we are faced not with the political dictates of one man, or of his government. We are faced with the heartfelt concern of all segments of Panama society. The news reports from Panama over the past few days make it clear that this concern is being expressed not just by left-wing student groups, but by professional groups and by all the traditional democratic political parties, both conservative and liberal. The Communist Party of Panama is the only one that has not expressed concern—perhaps it sees some mileage to be gained in letting the problem develop further. Most significantly, the business community of Panama is now calling for rejection of the treaty. These are the people who stand to gain the most from the treaties in economic terms.

Mr. President, this is a serious matter.

As long as the Panamanian people believe that the language the Senate has adopted is intended to humilitate them as a nation, by delegating to the United States the ultimate right to govern their internal affairs, there is nothing we or General Torrijos can do to get them to accept these treaties. It would be contrary to our entire concept of human rights and, even more important, contrary to the national interests of the United States these treaties are designed to advance, to suggest that General Torrijos somehow stifle the dissent that has developed in Panama and go ahead as if nothing had happened.

What then is the solution? As I suggested earlier, Mr. President, we are in much the same situation as we were in last fall. Faced then with apparent differences in interpretation, we said what we did mean and what we did not mean. I would submit that we follow the same approach at this time.

Let us make it unmistakably clear that we will not back away from or dilute in any fashion the essential and legitimate rights to protect the neutrality of the canal which we have so carefully defined in the treaty and in the action taken by the Senate. But let us also clearly recognize that the people of Panama are not suddenly opposing the rights to take legitimate action which they have freely granted us in the treaty. Rather, they are opposing an illegitimate interpretation of those rights. The problem, I repeat, is not what we did in clarifying our rights, but in what the Panamanian people are afraid we did.

Let us find an appropriate way to reassure the people of Panama that our intention was not to nullify the specific pledge of nonintervention in the internal affairs of Panama, which 85 Senators voted to incorporate into the treaty.

Let us find a way to reaffirm the specific commitment to respect Panama's territorial integrity and political independence which we similarly voted to incorporate in the treaty.

Let us find a way to tell all the nations of this hemisphere that we have not in one afternoon nullified the last 40 years in the history of United States-Latin American relations.

Let us make it clear to the world that we are not seeking for ourselves the kind of rights the Soviets claimed in Czechoslovakia in 1968.

Mr. President, these treaties are too important to our national interests to allow them to fail over what amounts to a mere misunderstanding. These treaties were painstakingly negotiated over a 14-year period. The Senate has devoted an unprecedented amount of time to debating and perfecting them. They are good treaties—good for us and good for Panama. If we were to allow these treaties to fail, we would never be able to achieve better ones.

We have a duty to ourselves and to the American people to be sure that these treaties do not fail on account of misinterpretations of our actions.

We can tell ourselves that the fears being expressed by the people of Panama are unwarranted. We can say to ourselves that it is their fault if they have misinterpreted our intentions and our actions. We can criticize the Torrijos government for not doing a better job of explaining to the Panamanian people the true meaning of what we have done.

But in the end, we must recognize that, however unfounded, the concerns of the people of Panama are very real and serious concerns to them. We will not have done our duty if we do not address those concerns by clearly and precisely expressing our own intentions to the people of Panama.

Mr. President, I am not proposing that we undo what we have done, or water it down, or dilute it in any way. Fortunately, there is no reason to do so. What we can do and must do is reassure the people of Panama as to what we have not done. We must state categorically that we neither sought nor obtained a right to intervene in their internal affairs, nor do we have any intention of doing so. In this way we can show not only that we insist on preserving the legitimate rights of the United States to protect the canal, but also that we are prepared to respect the legitimate rights of the Panamanian people to independence and national dignity.

Mr. President, I trust that the Senate will find an appropriate way to communicate its true intentions to the people of Panama and to thus promptly resolve the misunderstanding that has arisen. In the meantime, we must proceed to complete our historic task of debating the Panama Canal Treaty. We have come a long way, and must not allow ourselves to be distracted at the last moment by a temporary misunderstanding—a misunderstanding which will, in the end, rate at best only a footnote in the history of this great undertaking in which we have all invested so much.

(Mrs. HUMPHREY assumed the chair.)

Mr. MOYNIHAN. Madam President, I rise to congratulate the Senator from Idaho for what in history may prove to be the critical address in this long, crucial debate. I speak, Madam President, as one of the handful of Senators who are supporters of the treaties, who nonetheless voted against the DeConcini amendment. I did out of a sense that we were not showing that sensibility of concern and feeling on the part of the people of Panama that is owing a neighboring nation, a nation with which we have had the closest relations for the longest time.

I can perhaps say personally that in the aftermath I ceased to participate as actively as I had previously done in this debate. On the first occasion I did speak, I spoke too strongly. I felt too strongly. I mentioned that only to suggest that this is a matter capable of arousing very strong feeling.

I think the Senator from Idaho has addressed the large point which has to be kept first in mind, which is what truly is the disposition of our Nation toward that nation? This is properly to be looked for in the text of documents, but much more powerfully it will be seen in the acts of history, in the trends of events sustained over what is now more than two generations in our political life, since the time of Franklin Roosevelt.

The United States has been judged, as, for that matter, have other countries in Latin America, when intervention in the affairs of others was a repeated event, not extraordinary, in Haiti, in Nicaragua, and it did occur in Panama. This was an age and era when such interventions, when such actions, were scarcely unknown in the world and not really very much thought to be illiberal, even.

The Senator may have had the occasion to visit Canada Square in Montreal. There is a great monument there to a regiment of Canadians who had gone off to fight in the Boer War. The monument is simply entitled, in large bronze letters, "Imperium et libertis," Empire and Liberty. These were not to be entirely compatible views. We have changed, and the people no longer will accept that.

I think the Senator spoke to an important point when he mentioned the rights claimed by the Soviet Union in the case of Czechoslovakia in 1966, which have come to be known as the Khrushchev doctrine, the doctrine of proletarian internationalism, I believe, which gives the Soviet Union, by their judgment, the right, unilaterally, to intervene in other nations' affairs which have some comparable political system.

We have absolutely rejected such things. We have absolutely said no to that for others and for ourselves. This is not our disposition as a people. If we had a disposition that troubles someone such as myself, it would be a growing unwillingness to make those commitments to the responsibilities which inevitably we have as the largest and most powerful of the free nations in the world.

That is the problem which troubles American leaders and American Presidents. Will this Nation any more do what it has to do in Western Europe, in Japan, in other parts of the world? The people of Panama might usefully consider that this is one of our major concerns. It is not that we are going around the world looking for adventure, but that we are too much of a strength for the world.

I would think that they might consider that the unique geographical position they hold in the world offers unique benefits but also unique burdens, not so much that we have because of our size, for the consequences of Japan and West Germany alike, but because of their location and where one of the largest nations in the Western Hemisphere built the canal and wants to continue to help operate it up to the year 2000.

I will not say the Senator has resolved all of my concerns, but he has spoken the truth about the disposition of this Nation and the intention of this Senate. It is not to intervene in the internal affairs of Panama at all, not one bit. That truth one might hope would be large in the minds, thoughts, and the considerations of the citizens of Panama as they now judge our further progress on this treaty.

Madam President, I rose merely to speak as someone who supports these

treaties, who did not support the amendment in question, to say to those who might be listening in this Nation or in Panama, to the Members of the Senate listening in, and to those who will read this in the RECORD, the Senator from Idaho spoke the truth. This country has no intention to intervene in the affairs of Panama whatever. The Senate in adopting this reservation intended no such intervention. In no way did that condition in our minds in any way affect the basic understandings incorporated in the treaty by our negotiators and expanded in that direct documents exchange between the President of the United States and General Torrijos as the head of government in Panama.

Madam President, I have said my point, which is to congratulate the Senator, and to say that he certainly speaks for this Senator, who was in opposition in that particular matter. His statement accords completely with my understanding, and I think that would be the case for all the Senators.

Mr. SPARKMAN. Will the Senator yield?

Mr. MOYNIHAN. I am happy to yield to the distinguished chairman of the Committee on Foreign Relations.

Mr. SPARKMAN. I want to say that in the course of our consideration of these treaties, I insisted time after time that we abolish the word "intervene" or "intervention" so far as the handling of these treaties. I still believe that we ought to get out of our minds that we are approving at any time intervention in the internal affairs of Panama or any other country.

Mr. MOYNIHAN. May I say, and I hope the Senator will not think this presumptuous, there have been few men in the history of this Republic who have so much contributed to getting intervention not only out of our minds but getting it out of our foreign policy as JOHN SPARKMAN of Alabama.

This is not a conviction you have brought recently to the conduct of foreign affairs; it is something you have stood for in one of the most distinguished careers in this body involving foreign affairs for—I dare not say how many years; more than a generation, sir.

Mr. SPARKMAN. I thank my distinguished colleague.

Mr. CHURCH. I subscribe to the remarks made by the Senator from New York. We all owe a debt of gratitude to the distinguished Senator from Alabama and I compliment him on his fine and distinguished career.

Also, I concur with what our distinguished chairman has said. "Intervention" is a word we should avoid because of its history and because of the way it is construed in Latin America. For 40 years now, from the time that Franklin Roosevelt first enunciated the Good Neighbor policy, we have incorporated the principle of nonintervention as a cornerstone of our policy toward our Latin neighbors.

(Mr. MOYNIHAN assumed the chair.)

Mr. CHURCH. We have expressly covenanted not to intervene in the internal affairs of Latin American countries in all of our principal treaties with the nations of this hemisphere, as well as in the Charter of the United Nations. Let no one labor under the misunderstanding that by adopting any amendment to the Neutrality Treaty, we abandon the cornerstone of American policy toward the Western Hemisphere.

It would indeed be a tragedy if the DeConcini amendment were interpreted differently than the author himself interpreted it in the course of the Senate debate.

Now I am happy to yield to the distinguished Senator from Alaska.

Mr. GRAVEL. I thank my colleague for yielding. I should like, one, to state very clearly that, as concerns FRANK CHURCH, the Senator from Idaho, I say he speaks the truth and I say I associate myself with his remarks. But I must differ with my colleague in this regard: He is very clear in his view of intervention, but I pray that we will always have leaders in this country that will be equally clear with respect to his view on intervention. That may not always be the case. We may not always have leaders as mature as my colleague from Idaho. For that reason, I, unfortunately, must differ and say that what we have done is most unfortunate.

We may well have to do something to correct the situation. I do not quite yet know what that would be, but I must add some information to this dialog which I think is at variance with his interpretation. I think my colleague is honest and his interpretation is well meaning, becuse that is him; that is FRANK CHURCH. But I think the realities that exist in the world today are somewhat different.

As I read the DeConcini amendment, I feel bad that we did not put up a greater fight at that time. I think we were all concerned with just winning. But I think the issue now is a little greater than that. I think I would rather have seen the treaty go down to defeat than have something that now I think casts a serious, serious shadow on that Neutrality Treaty.

I would say that, as my colleague quoted—and again, let me just say that I do not think that it will satisfy the people of Panama to have the single word of FRANK CHURCH. That is not going to do it. The word of FRANK CHURCH and MIKE GRAVEL and anybody else will not do it. What is really going to do it is what is in the treaty, because when we are long gone, that is what is going to be interpreted. I think we have created a tremendous ambiguity in that treaty.

Article V was very clear that the only military force would be Panamanians. Then, when we came on with the leadership amendment, that was very clear about intervention. And that had 85 votes, as the Senator pointed out. But the DeConcini amendment had 75. They both had a very large number of votes. I think we can only look at what the DeConcini amendment says, and that is very clear that we can intervene independently if we choose.

We then must go to what Senator DECONCINI said on the floor in the debate prior to his amendment, and I think that is clear. I shall quote two passages. That is on page S3817:

> If the Panama Canal is closed, the United States has the right to enter Panama—

To enter Panama; not the canal—

> using whatever means are necessary to reopen the canal.

He goes on to say:

> There are no conditions, no exceptions, no limitations on this right.

Then, a little further on he states:

> I have been equally bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly government; political riots or upheavals.

This would be comparable to saying in this country that if we had an airline strike that crippled New York City and that inconvenienced foreigners, if they had the muscle to back it up and we had a treaty, we ceded those powers.

Mr. CHURCH. May I respond to the Senator?

Mr. GRAVEL. If I may just briefly complete it, I shall be happy to hear a response.

All I can say is that we may be well-meaning, but this is what is in the treaty. Twenty years from now, something very tragic could happen and we might have an interventionist leadership and we would rule the day that this confusion was added.

I thought it was very clear before we added the DeConcini amendment. That is what made the confusion.

Mr. CHURCH. Let me say that the reason I made this speech was to establish some legislative history with respect to the intention of the Senate in enacting the so-called DeConcini amendment. I think it would be wrong if the legislative history was based solely on the debate that day, some portions of which have now been read again into the RECORD by the Senator from Alaska.

It is true that Senator DECONCINI made some remarks that extended beyond security considerations for the canal itself. It is also true that in the course of his presentation he said:

> I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation.

Now, my address today is meant to be a construction of what the Senate as a whole did in adopting this particular reservation. I am sure that the Senator from Alaska would agree with me that there is nothing in the record, either that day or any other day in this debate, to suggest that it was the purpose of the Senate to remove what, for 40 years, has been the cornerstone of our relations with all our Latin neighbors: Namely to disclaim our adherence to the principle of nonintervention in the internal affairs of Latin countries.

I would concede to him that, in view of the adoption of the DeConcini amendment, it would be wise for the Senate to

take some action to dispel any doubt on that score. I believe that it will be possible for the Senate to do so while fully preserving our rights to defend the canal and protect it against any threat to the regime of neutrality—principles to which both nations are pledged. I am not yet prepared to say exactly what form that action should take.

But the Senator and I do not really have any disagreement, and I think it would be a disservice for us to suggest to the radio audience that there is serious division between us.

I made this speech to attempt to clarify the intention of the Senate as a whole and to contribute to the legislative history connected with the DeConcini amendment.

In the course of the speech, I stressed the need for the Senate to consider some appropriate action to clarify that, in passing the DeConcini amendment, it was not our intention to claim a right to intervene in the internal affairs of Panama, or in any way to infringe upon the independence of that country.

Mr. GRAVEL. I might only state to my colleagues that there is no disagreement between us on the substance. Where I think I do part company is in attempting to understand how the Panamanians view it and how future leaders may choose to view it.

Mr. CHURCH. It is for this reason I believe some clarifying language is called for and I hope that the Senate will address itself to that in the next few days.

Mr. GRAVEL. If I hear my colleague correctly, that we will have a chance for the Senate to vote on some clarifying language, then he is correct. That is the only way we can undo the damage that has been done, because if we do not have that clarifying language—and my colleague stated at the beginning the words of Senator DECONCINI, that we will continue to respect the sovereignty—earlier, obviously, it was stated we had a pretty bad track record of not respecting that sovereignty.

So from the Panamanian point of view, that is not quite acceptable. I would think it unfair to those people—and I might say we are just talking about our side.

I heard a Senator today express a view of concern that we could not go dig a ditch in Panama. How does a Panamanian citizen listen to that when a Senator of some renown stands up and says, "Boy, I'm surprised we can't go and unilaterally dig the sea-level canal."

I resent the fact they would have a different attitude. So, from their point of view, there is deep concern.

Mr. CHURCH. Mr. President, I, too, am fully aware of the sensibilities of the Panamanian people. Often in the course of this debate I have shuddered to think of how they must resent some of the demanding and deprecating things that have been said about them by Senators in this Chamber. But I would hope that they would remember that they are listening to individual Senators expressing individual viewpoints.

The Senate by its vote has overwhelmingly rejected the arguments based upon demeaning appraisals of Panama and the Panamanian people. The Senate as a whole has reflected the viewpoint of the American people as a whole.

We, as a Nation, recognize that the Panamanians have been extraordinarily patient and forebearing in the course of this debate. We, as a people, recognize what staunch and steadfast allies they have been to the United States in our times of critical need, both in the First and Second World Wars.

The great majority of Senators have a profound respect for the people of Panama and understand why they are extremely sensitive to anything that smacks of interventionism.

That is why this afternoon I have tried to place in some perspective the action taken by the Senate when it approved the DeConcini amendment. I would not suppose that many Senators would disagree with me when I say that that amendment was not meant to repeal what has constituted the cornerstone of our foreign policy toward Latin America for the past 40 years, namely, our adherence to the policy and the principle of nonintervention in the internal affairs of Latin governments.

That is the whole purpose of my speech.

I recognize that a problem has been created, particularly in Panama, due to sensitivity over anything that smacks of interventionism. I hope that any doubts on that score can be allayed by some subsequent action of the Senate between now and the time we come to a final vote on this treaty.

Mr. HATCH. Will the Senator yield?

Mr. CHURCH. I am prepared to yield the floor at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. GRIFFIN. I thank the Chair.

Mr. President, recent developments in Panama following Senate adoption of the DeConcini reservation have been described by some in the press and by some treaty supporters as "unexpected" and "surprising."

At the risk of saying, "I told you so," I must say that I, for one, have not been surprised.

Indeed, this Senator expressed deep concern on a number of occasions that Panama and the United States were not really in agreement on the alleged right of the United States, unilaterally, to use military force to defend the canal against any threat, domestic or foreign.

As I have repeatedly warned, an effort to rewrite the treaties here on the Senate floor—and then to present the revised treaty on a "take it or leave it" basis to Panama—would create understandable bitterness among the Panamanian people.

This was a principal reason for the position I have taken throughout the debate that the Senate should return the treaties to the President with the advice that negotiations be resumed so that the obvious ambiguities and other problems could be resolved between representatives of the two countries meeting on an equal footing.

As I said in a speech to the Senate on March 6:

> We would be living in a fool's paradise to assume that these contradictory interpretations will simply go away if the treaties are ratified. Indeed, we would be most fortunate if they do not come back to haunt us in a most agonizing way in the years to come . . .
>
> Obviously, it matters not how many times we declare and repeat that language in the treaty means one thing—if the people of Panama believe and openly insist that it means something else, we really do not have an agreement to ratify.

Let us review what has transpired:

Shortly after the treaties were drafted, some of the ambiguities—particularly with respect to U.S. defense rights—led to conflicting interpretations by Panamanian and American spokesmen.

In an attempt to clarify the situation, President Carter and General Torrijos issued a joint statement of understanding on October 14, 1977.

The Senate and American people were then assured by the State Department and the Foreign Relations Committee that under the Neutrality Treaty, the United States would have the right to use military force unilaterally to protect the neutrality of the canal against any threat, domestic or foreign. For example, the report of the Foreign Relations Committee proclaimed that the Neutrality Treaty, as clarified by the Carter-Torrijos statement of October 14, would allow the United States "to introduce its Armed Forces into Panama whenever and however the canal is threatened * * * The United States [would have] the right to act as it deems proper against any threat to the canal, internal or external, domestic or foreign, military or nonmilitary."

However, despite those assertions in the report of the Committee on Foreign Relations, it was clear to this Senator that Panamanian officials did not so interpret the Neutrality Treaty or the Carter-Torrijos joint statement.

I spoke at some length in the Senate on March 6 and put in the RECORD a wealth of documentation to support the conclusion I had reached that agreement between the two countries had not, in fact, been reached with regard to the defense rights of the United States.

For example, I quoted Foreign Ministry Adviser Luis Bejarano, who told the Panamanian people 3 days after the release of the Carter-Torrijos joint statement:

> *In the event of an attack on the Canal by a third power, the Republic of Panama must agree to the participation of the United States in the defense of the Canal. . . .* [T]he Republic of Panama has primary responsibility for defending the Canal after 31 December 1999 and, in the event of foreign intervention by a strong nation, the Republic of Panama, after exhausting its tactical defense resources, *may* agree with the United States to carry out this defense if necessary. [Emphasis supplied.]

Obviously, that spokesman for the Panamanian Government did not interpret understand this treaty as it has been represented by the Foreign Relations Committee report.

My remarks and the accompanying documentation took up nearly 20 pages

of the RECORD, but my warnings were widely ignored by the media and brushed aside by the treaty proponents in the Senate.

Indeed, on March 6, after I documented extensively the wide differences of interpretation which continued following the Carter-Torrijos joint statement, Senator CHURCH—I am sorry he is not on the floor at the moment—said this:

A few minutes ago, Mr. President, the able Senator from Michigan once again raised the specter of differing interpretations, as between the United States and Panama, with respect to our right to protect the canal. . . . To some extent, *all of this is so much ancient history*. Yes, there was a time when the treaty provisions . . . were being interpreted differently by some Panamanians and by some Americans. And yes, I stated flatly that I would not vote to ratify the treaties if these differing interpretations were not clarified by both parties. Such clarification was forthcoming on October 14 in the form of the Carter-Torrijos memorandum of understanding. In view of this clarification, I am forced to ask why the Senator from Michigan does not recognize that the specific purpose was to insure that the United States and Panama would interpret those critical provisions in exactly the same way; to wit, that *the United States would have the right to defend the canal against any threat in perpetuity* in accordance with its constitutional processes. . . . [T]he incorporation of these critical provisions will serve to guarantee that there are no differing interpretations. . . . If the Senator from Michigan and others persist in suggesting otherwise, *they will have to be held responsible for a distortion of the* record. [Emphasis supplied]

I suggest, most respectfully, that the events of the past week in Panama have demonstrated quite clearly that it has not been the Senator from Michigan who has been responsible for a "distortion of the record."

Mr. SARBANES. Mr. President, will the Senator yield for a moment?

Mr. GRIFFIN. I would like to finish my speech. I would have yielded to the Senator from Idaho, because I mentioned his name. I do not have very much more.

Mr. SARBANES. May I have the date on which the Senator from Idaho made the statement to which the Senator from Michigan referred?

Mr. GRIFFIN. March 6.

On March 16, the Senate adopted the so-called DeConcini reservation to the Neutrality Treaty, which provides that:

If the canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall independently have the right to take such steps as it deems necessary, in accordance with its constitutional precedents, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

In other words, Senator DECONCINI merely was seeking to spell out in unambiguous terms some of the assurances given to the Senate by the Carter administration and by the report of the Committee on Foreign Relations.

Obviously, there would have been no Panamanian objection to the DeConcini reservation if Panama had understood the treaty language as the administration and the Foreign Relations Committee report had been contending all along.

For the record, let me say that I voted against the DeConcini reservation—not because I disagreed with the purpose—but because as I have said all along, I do not think the treaty should be rewritten in a substantive way on the Senate floor. I think any major changes should be achieved through renegotiation.

Many of our colleagues. particularly supporters of the treaty, obviously took the view or assumed that the DeConcini language would really not alter the meaning of the treaty. Thus, Senator CHURCH said:

[T]his reservation must be considered, in my view, in part as a restatement in part as an elaboration of the amendment already adopted by the Senate to article IV of the Neutrality Treaty. As such, it is acceptable and I hope that the Senate will adopt it.

Senator KENNEDY opposed the amendment, and then he said:

It stirs up what is already an emotional issue in Panama, *without adding to rights of the United States already recognized by the treaty*. (Emphasis supplied.)

Obviously, over the weekend, we have been learning about the Panamanian reaction, how they interpret the DeConcini amendment—in light of how they have interpreted all along the Neutrality Treaty.

In a memorandum dated March 28, 1978, Panamana's permanent representative to the United Nations informed the Secretary General of Panama's dissatisfaction with the DeConcini reservation, saying in part:

According to its proponent, the "DeConcini Amendment" is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government", pretending that said amendment must be construed to permit the United States to intervene in Panama in the event of labour unrest, strikes, a slowdown, or under any other pretext labeled as interference with Canal operations.

Treaty supporters have expressed surprise at the reaction in Panama. But the reaction there is fully consistent with the position taken by Panamanian leaders in the aftermath of the Carter-Torrijos joint statement of October 14, 1977. Here is how I summarized the differing interpretations in my floor statement of March 6, 1978:

Indeed—now, as before the joint statement—the two countries are not in agreement on two vital points:

First. Our administration continues to tell the American people that the United States will have the right to defend the canal's neutrality after the year 2000 against any threat, including an internal threat from within Panama. But spokesmen for Panama continue to assert that the United States will have such a right only if the Canal is threatened by a foreign power. Second. Our administration continues to tell the American people that the United States can determine unilaterally when such a threat exists. But Panamanian spokesmen insist that U.S. forces could defend the canal only if requested to do so by Panama or when such action is agreed to by Panama.

The strong Panamanian rection to the Senate's adoption of the DeConcini reservation reinforces the deep concern which I have had all along about the differing interpretations held by the two countries.

Even though the Senate has completed its action on the Neutrality Treaty, it is not too late to undo the mistake we made.

As I see it, there is a clear course that we should follow.

The two treaties are parts of an indivisable whole. One treaty cannot go into effect without the other. Accordingly, instead of adopting the Resolution of Ratification, that will be offered for this treaty, the Senate should adopt instead a substitute along the lines of one that I offered immediately before the final vote on the Neutrality Treaty.

And I shall offer a similar substitute resolution next Tuesday, providing for return of this treaty to the President of the United States, with the advice of the Senate that negotiations be resumed and continued until a more acceptable treaty can be fashioned.

I thank the Chair.

Mr. ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I thank the Chair.

Mr. President, I was interested in the remarks of the distinguished Senator from Idaho (Mr. CHURCH) with respect to the meaning of the DeConcini amendment when he stated that in the days ahead he felt that some effort should be made to clarify the meaning of the DeConcini amendment. He went on to talk about our time-honored policy of nonintervention in Central and South America and the fact that the DeConcini amendment did not go counter to that and to talk about creating legislative history for the DeConcini amendment.

The door is closed, Mr. President, on legislative history for the DeConcini amendment because that amendment has been agreed to, it has become a part of the resolution of ratification of the Neutrality Treaty, and it has been approved by the United States Senate. And all dialog here on the floor cannot change the meaning of the DeConcini amendment once it has been adopted and once the resolution of ratification has been adopted. It is just like trying to restore Humpty Dumpty. It cannot be done.

Also, Mr. President, we all know that this is called the DeConcini amendment, but it would not have gone one step farther than the amendment to the treaty embodying the language of the DeConcini amendment would have gotten—and it did not get anywhere at all—unless the leadership itself had taken over this amendment and allowed its passage because there has not been one single dotting of an "i" or crossing of a "t" to either of these treaties that has not had the approval of the leadership, the managers, and the administration. So this treaty is theirs. If they have made any mistakes in it, they are their mistakes. It is not the mistake of those of us who are seeking to strengthen these treaties or in the alternative to kill them.

Mr. President, they say, "Let us clarify"—"clarify" is just a code word for weaken—"let us weaken the DeConcini amendment first by legislative history,"

which cannot be done because the door is closed on that treaty. "If we cannot do that, then let us water it down, let us clarify it, let us dilute it by something added to this treaty."

Mr. President, this treaty ends with the next century. The DeConcini amendment starts with the next century. So how in the world are you going to put a different meaning into the DeConcini amendment starting in the year 2000, when the present treaty ends at the beginning of the year 2000?

Also, Mr. President, are we going to play games with these Senators who sincerely felt that before they could vote for the Neutrality Treaty they had to be assured that the United States would unilaterally have the right to keep that canal open after the year 2000 no matter what it took and to say, "Well, Mr. DECONCINI did not mean what they now say"?

I was very much intrigued at the colloquy between the distinguished Senator from Idaho (Mr. CHURCH) and the distinguished Senator from Alaska (Mr. GRAVEL). And as that colloquy proceeded I noticed the distinguished Senator from Idaho wanted to get ahead and said "Senator, let me answer that question and respond to it." The Senator from Alaska would not hear of that. He said, "We have done something wrong." The Senator from Alaska said, "We have done something wrong in adopting the DeConcini amendment."

And how right he is. But he was not giving the responses that the distinguished Senator from Idaho (Mr. CHURCH) wanted him to give. He was not aiding in the colloquy. So he wanted to give an answer right away. The distinguished Senator from Alaska would not have any of that and he pointed out what a mistake had been made with the DeConcini amendment.

Mr. President, I can see how dictator Torrijos is a most unhappy man. If he, acting as the Government of Panama, agrees to the DeConcini reservation and, as he sees it, impugns upon the sovereignty of the sovereign State of Panama, he will be toppled by his own people, and if he submits the question to a plebiscite, the people will turn the treaty down. So, if there ever was a fellow between Scylla and Charybdis, or between the rock and a hard place, as the modern day expression is, it is dictator Torrijos.

Also, Mr. President, since we seem to be seeking as much approval of this treaty by the Panamanian people in shaping public opinion down in Panama with respect to action here in the Senate, I think the time has come to point out that the supporters of this treaty have been quite adept at pointing out what great friends of the Panamanian people they are and what bad things have been said about Panama and the Panamanian people by Senators who are seeking to strengthen these treaties or, in the alternative, to defeat them. They say, "That is just those individual Senators talking, that is not the whole Senate, as you can tell by the vote."

Mr. President, the record will show who has been standing up for the Panamanian people and who has been standing up for dictator Torrijos. I will proceed to prove that right now.

The argument has been made against every amendment that has been offered except the leadership amendments, which were so deficient, I state, without fear of successful contradiction. Plea has been made and the argument has been made against every amendment, other than the leadership amendments that have been offered, "Do not do this, do not agree to this amendment; if you do we are in danger of having a plebiscite."

What is wrong with that? If we want to trust the Panamanian people, what is wrong with that? Who is casting aspersions upon the Panamanian people by saying, "Don't send this back to them, they might reject it"? Who is standing up for the Panamanian people? Those who want to offer amendments and guarantee that it will go back to the Panamanian people or those who support the treaties and say, "Let us not send it back to a plebiscite"?

So I hope that the Panamanian people will not get the idea that just because those who oppose the treaties have things to say about dictator Torrijos, that they do apply to the great Panamanian people, who are a great people, who want their sovereignty, who are entitled to the sovereignty over their land.

I dare say as I speak of the dictator down in Panama, I do not have any less regard for him than does the average Panamanian down there. That is the reason I think it is so important that this matter be submitted back to a plebiscite so that we can have a compact with the Panamanian people and not just with the Panamanian dictator.

I stated this morning, and the distinguished majority leader was quick to ask me to yield so that he could say he was opposed to my proposed amendment before I could even well explain it, and I suggested that before we concluded action on the treaty, I wanted to assure the right of the Panamanian people to express themselves on this changed treaty.

But the distinguished majority leader quickly got to his feet and announced that he would oppose any such amendment. Who is standing up for the Panamanian people? Who is seeking to give them a voice in agreeing to this treaty? Well, it is not the proponents, it is not the supporters of the treaty. It is those who are seeking to strengthen the treaty or, as I say, an alternative to defeating it. We are the ones who want the Panamanian people to speak, not the supporters of the treaty.

Now, Mr. President, would it be fair at this late date, after both sides have agreed on a date for a vote, to bring in some extraneous matter, something that has already been covered in the other treaty, something which cannot be debated on account of the time limitation, to try to cut down, dilute, the DeConcini amendment? That is not just my saying that is going to be done; that is the distinguished manager of the treaty, the distinguished Senator from Idaho (Mr. CHURCH). He says something is going to be offered—he does not know what. "But we have got to change this around," is what he says. "We cannot let the DeConcini amendment go out even though it has already been approved," that is what he says, and it was OK'd by the leadership or it would not have passed. Every Senator knows that.

So every single word in this treaty as it now stands, and as the other treaty was approved, was the result either of action by the negotiators or a change approved by the leadership, the managers of the treaties, and the administration.

The opponents of the treaties have not added one single word to the treaties, unless it be said that Mr. DECONCINI would not have voted for the treaty if his reservation had not been added.

How is Mr. DECONCINI going to feel about this? I am sorry he has not been here today. I do not know whether he just has not come back or he is not on the floor.

(Mr. GRAVEL assumed the chair.)

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

Mr. ALLEN. No, I will not yield. I will yield for a question, but I do not want to yield for a discussion.

Mr. SARBANES. I just thought in fairness to Senator DECONCINI it ought to be observed that it is my understanding that he returned to his State to meet with his constituency over the weekend and he has not yet come back to Washington.

Mr. ALLEN. I thank the Senator.

Mr. SARBANES. Because there was some implication——

Mr. ALLEN. I just do not know that. I just do not know where he is.

Mr. SARBANES. The Senator did raise that point. It is my understanding he is at home with his constituency in Arizona.

Mr. ALLEN. I see. Well, I am glad to get that information. I am glad to yield the floor for that purpose.

Mr. SARBANES. I appreciate the Senator's yielding for that purpose.

Mr. ALLEN. I thank the Senator.

Would it be fair to the distinguished Senator from Arizona who, at this time, is among his constituents getting, I hope, the good advice that the people of Arizona are able to impart to him, would it be fair to him, who would not have agreed to vote for the first treaty without the acceptance of reservation word for word—they tried to water it down in their negotiations with him, and I can say to his credit he would not yield. He said, in effect, "This or nothing."

So now that they accepted his reservation, they accepted the exact wording, it was pushed by the leadership or it would not have been agreed to. we all know that, his vote was obtained, and Senator CANNON voted for the treaty, and it had been—he was not going to vote that way, and he was a cosponsor of the DeConcini reservation—would it be fair to these honorable Senators to undercut or dilute the DeConcini reservation when its acceptance was the method by which victory was obtained in the final vote on the treaty?

I must say, Mr. President, I believe that this victory that was achieved in

the approval of this first treaty is going to develop into a hollow victory, because I do not believe this treaty is going to be approved by the Senate.

Mr. HATCH. Mr. President, will the Senator yield for a few questions?

Mr. ALLEN. Inasmuch as I did not yield to the distinguished Senator from Maryland, I will state to the Senator, as I did to him, I will yield for a question.

Mr. HATCH. Yes.

What is bothering me here today is there seems to be an attempt to malign Senators here in some of the comments made by the proponents of this treaty by indicating that Senators on this floor have been maligning the people of Panama.

Mr. ALLEN. It would just be the contrary.

Mr. HATCH. That is what I think. Is that not the Senator's recollection?

Mr. ALLEN. Yes, I say we stand for another plebiscite——

Mr. HATCH. That is right.

Mr. ALLEN (continuing). In Panama to determine whether or not the Panamanian people approve of the treaties as finally agreed to here in the Senate.

The proponents of the treaties, the managers of the treaties, the leadership, the administration want no part of a vote by the people of Panama. They want to deal directly with the dictator.

As I pointed out a moment ago, the dictator is in quite a quandary, because he recognizes public opinion in Panama is now against the treaties, and if he accepts the treaties without a plebiscite, they are going to overthrow him, and if he submits it to a plebiscite, they are going to defeat the treaties.

Mr. HATCH. If I might interrupt the distinguished Senator from Alabama again, my friend and colleague, I would just like to praise the distinguished Senator from Alaska who indicated that his stand today is the same as it was during the DeConcini reservation. He voted against the DeConcini reservation.

Mr. ALLEN. That is right, and I commend him for that nonchange of position.

Mr. HATCH. That is right; and it is very interesting to see who else voted against the DeConcini amendment. Because the distinguished Senator from Idaho (Mr. CHURCH) voted for it. He vociferously supported that amendment.

As I recall the amendment, and I have a copy of it here, it is pretty clear, and the distinguished Senator is correct in why those Senators were pushing for it: so they could have this wonderful language proposed by the Senator from Arizona (Mr. DECONCINI), a man whom all of us admire.

The Senator from Maryland (Mr. SARBANES) supported it. The distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) supported it.

But those who did not support it—in other words, those who voted against the DeConcini amendment—were the ranking minority member of the Foreign Relations Committee (Mr. CASE); Mr. CLARK; Mr. CRANSTON; Mr. CULVER; Mr. DURKIN; Mr. GARN voted against it; Mr. GOLDWATER voted against it; Mr. GRAVEL, whom I have complimented here for not changing his position, voted against it; Mr. GRIFFIN voted against it; Mr. HART voted against it; Mr. HATCH—myself, I voted against it; as a matter of fact Mr. JAVITS voted against it, known all over the world for his contributions to foreign relations.

Mr. KENNEDY voted against it. Mr. LAXALT, one of the leaders on the opposion side, voted against it. Mr. MCCLURE voted against it. Mr. MCGOVERN voted against it. Mr. METZENBAUM; Mr. MOYNIHAN—Mr. MOYNIHAN voted against it. Mr. SCHMITT, Mr. SCOTT, Mr. STEVENS, Mr. TOWER, and Mr. WEICKER, all voted against the DeConcini amendment, which indicates something here.

Now all of a sudden I see these people—and I wonder if the distinguished Senator from Alabama will not agree—I see these very same people who were outspoken in their support for this amendment making noises all over this floor that somehow or other it is the rest of the Senators who are opponents of these treaties who have caused this problem, because they have been maligning the Panamanians. I have not heard any one malign the Panamanians.

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

Mr. HATCH. The Senator from Alabama has the floor.

Mr. GOLDWATER. Will the Senator yield to me with the same understanding?

Mr. ALLEN. Yes, I yield to the distinguished Senator from Arizona.

Mr. GOLDWATER. Mr. President, I am prompted in part, because the name of my junior colleague is being spoken of, and I must say in his defense that he was absolutely sincere in this effort. He and I talked about this for some time, and he introduced it feeling that it was wise.

I might say that that same reservation was introduced as an amendment and roundly defeated by means of a motion to table.

Mr. ALLEN. Correct.

Mr. HATCH. That is right.

Mr. GOLDWATER. A strange thing I wanted to bring back to memory was that when I visited General Torrijos in January, I would say the principal matter we discussed was the subject of the defense of the canal.

Now, he recognized as rapidly as anyone that a national guard total force of 8,500, of whom 1,600 were trained infantrymen, with merely a handful of antiquated armament, could clearly not be expected to defend this canal; and while I cannot stand here and say categorically that we agreed to the subject that we be allowed to stay in perpetuity in the Canal Zone, as I recall it he did agree that there would be no objections to our continuing to train our airborne forces where we had trained them, in conjunction with the Panamanian forces.

So for the general to now be expressing surprise and some shock that the Foreign Relations Committee of the U.S. Senate would endorse U.S. forces remaining in Panama surprises me, unless my memory has completely left me, because he indicated that while it would not be desired, it was recognized that any attempt to invade Panama of any sized force—I am talking about even a battalion—would require more forces than they have, and that such attempts could possibly go on long after the year 2000.

So, frankly, I am going to watch developments with a great deal of interest, because I do not know how the Foreign Relations Committee is going to back off from this one. If it is a hot dog today, it was a hot dog then; and when they, almost to a man, approved this change, those, most of us, who are uninitiated in the subject of foreign policy would have to follow the leadership, because we look to the committees of Congress to guide us laymen through the tortuous paths of that which we do not know.

So, together with the Senator from Alabama, the Senator from Utah, and others, I think we are going to find some very, very interesting legerdemain, hocus-pocus, and dingle-dangle going on here in the next few days, trying to placate what seems to be an angry general in Panama for what the Foreign Relations Committee embraced with full gusto.

I thank my friend from Alabama.

Mr. HATCH. Mr. President, will the Senator from Alabama yield again, for me to ask one more question?

Mr. ALLEN. Yes, I am glad to yield to the distinguished Senator from Utah, provided I do not lose my rights to the floor.

Mr. HATCH. It was my understanding that the distinguished Senator from Alabama and a number of others, including myself, have consistently pointed out the disparities and ambiguities in these treaties, and that they raised an awful lot of problems. That is one reason why we have had so many of these substantive amendments to these treaties brought up. The Senator from Michigan indicated that he does not believe these treaties can be repaired with amendments, and that is the reason why he has voted, basically, against almost every amendment.

As I understand it, it has also been the position of the distinguished Senator from Alabama all along that these treaties are fatally defective, that they do not protect Panama or the United States. If I do not misunderstand, I think both the distinguished Senator from Alabama and myself would agree with the distinguished Senator from Michigan that these treaties are not really clear and understandable.

Mr. ALLEN. They are not, to this good day, because we are still arguing about the meaning of the DeConcini amendment, which seemed perfectly clear to me.

I might say that Dictator Torrijos relied on the exchange of correspondence between him and the President on March 15, and we have those letters in the RECORD, in which Torrijos was complaining about some upcoming reservations. The President reassured him that nothing was going to be passed that would

interfere with their understanding of the meaning of the treaties.

Well, apparently this does somewhat differ from their understanding of the treaties, it would seem, and no wonder. Let us read the language of the DeConcini amendment. The proponents argue, "Well, he did not mean what he said," but how can they say that about an amendment sponsored by a U.S. Senator which has been gone over with a fine-toothed comb by the administration attorneys, by the Secretary of State and the State Department, by the President himself, by Mr. DECONCINI, who is an outstanding lawyer—how could they say it did not mean what the words say that it meant?

Let us see what it says. We can all read the wording. It was read and supported by the leadership. Let us see what it says:

Before the period at the end of the resolution of ratification—

Right at the tail end, in other words—

insert the following: "subject to the condition, to be included in the instrument of ratification of the treaty to be exchanged with the Republic of Panama—

Now, that is not talking about the resolution of ratification; that is in the exchange of instruments of ratification between the heads of state.

So this condition is to be placed in the exchange of notes between the dictator and the President—

subject to the condition, to be included in the instrument of ratification of the treaty to be exchanged with the Republic of Panama, that, notwithstanding the provisions of Article V—

That is where it says that only Panama, after the year 2000, shall have troops in Panama—

or any other provision of the Treaty, if the the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

If they had any interpretation such as they are trying to advance now, I do not know what it is. The distinguished Senator from Idaho (Mr. CHURCH) said he did not know how to go about it, but something has to be done, something has to be done to change the wording of the DeConcini amendment. How can it be done, when that treaty has already been agreed to by the U.S. Senate, or had been accepted by the U.S. Senate? How will he change it?

The distinguished Senator from Idaho (Mr. CHURCH), who is present in the Chamber, gave a speech in which he was seeking to set up some sort of legislative history with regard to the DeConcini amendment. How in the world are we going to have legislative history? Legislative history is established to indicate and to explain what the Senate, or what the House in the case of legislative history over there, meant when it passed a given piece of legislation. One cannot think up some 3 weeks later for what was meant by the wording there for the legislative history. The legislative history cannot be changed 3 weeks after the action has been taken. Someone might think up a good reason, "By the way, I thought up a good reason why that amendment does not mean what it says it means. I am going to go to the floor and point out this good reason that the DeConcini amendment does not mean what it says to mean."

(Mr. SASSER assumed the chair.)

Mr. GOLDWATER. Will the Senator yield?

Mr. ALLEN. Yes.

Mr. GOLDWATER. Will the Senator briefly outline how the recent advocates of the DeConcini amendment might go about changing it?

Mr. ALLEN. With their great majority here in the Senate they can write words into this treaty. By a great use of force then can pass an amendment saying the DeConcini amendment does not mean what he says it meant. I dare say they could get a majority of the Senators. But that will not change the force of public opinion. It will not change the facts. I do not think it will placate the Senators who agreed to vote for this first treaty in return for agreeing to the DeConcini amendment, as interpreted by DECONCINI and others, and as clearly related to the language of the amendment. I believe if they do seek to cut the ground out from under the DeConcini amendment they are going to lose enough votes here on the floor of the Senate to assure the defeat of this treaty.

Mr. GOLDWATER. I will ask my friend further, could that amendment be tabled?

Mr. ALLEN. Well, theoretically it could, yes. But actually the leadership is in control of well over 60 votes and those 60 acting pretty much monolithically could defeat a motion to table.

Mr. GOLDWATER. Let me ask the Senator one more question. This come to my mind as a layman. Let us say an amendment is offered which would put the meaning of the DeConicin amendment in a different reservation. Would it be possible for this body to vote again on the first treaty of the change in what we might say to be the deciding reservation?

Mr. ALLEN. No. The only way to defeat the Neutrality Treaty, after accepting the DeConcini amendment as written and as explained by Mr. DECONCINI, is to defeat this treaty. The defeat of the Panama Canal Treaty works to defeat the Neutrality Treaty as well, even though it has been approved by the Senate.

Mr. GOLDWATER. I thank the Senator.

Mr. HELMS. Will the Senator yield?

Mr. ALLEN. I yield.

Mr. HELMS. The fact remains, notwithstanding anything else, that the distinguished Senator from Arizona (Mr. DECONCINI) advanced his amendment in good faith, is that not correct?

Mr. ALLEN. My attention was diverted. Will the Senator repeat his question?

Mr. HELMS. I merely raised the question about our distinguished colleague from Arizona (Mr. DECONCINI). There is no question about his good faith in presenting the amendment on the basis which he did, is that correct?

Mr. ALLEN. That is correct. And efforts were made, I might say, to dissuade him from insisting on such strong language, but it was necessary to accept his amendment in order to get him to vote for the treaty, to accept his reservation, word for word. They did accept it and now they are saying it is going to be necessary to water it down.

Mr. HELMS. And all that having occurred, he then voted for the neutrality treaty in good faith?

Mr. ALLEN. Yes. He stated on the floor that he would not support the treaty if his amendment was not agreed to. Now the distinguished Senator from Idaho (Mr. CHURCH) says it is going to be necessary to pass something to change the meaning which is being attached to the DeConcini amendment. I say that is water over the dam. That treaty has passed. Now if they seek to dilute that amendment in this treaty, it is difficult for me to see how that could be done inasmuch as the treaty we are on now expires in the year 2000, and the treaty with the DeConcini amendment does not even start until the year 2000.

Mr. HELMS. But even if it could be done, it would be an affront to the good faith of the Senator from Arizona, would it not?

Mr. ALLEN. Of course, it would be, and it would be an affront to the Members of the Senate who acted on the same assurance.

Mr. HELMS. I agree with the able Senator. Neither the Senator from Alabama nor the Senator from North Carolina can say with any certainty whether the Neutrality Treaty would have passed without the DeConcini amendment, and without the votes of Senators who accepted the amendment in good faith, but I have a feeling that the treaty would not have passed.

Mr. ALLEN. I was of the opinion that two of the cosponsors of the DeConcini amendment would not have voted for the treaty had not the DeConcini amendment, as written and as explained, been accepted.

Mr. HELMS. And endorsed and supported by the leadership and by the administration. Is that correct?

Mr. ALLEN. That is correct. It would not be part of the treaty now if it had not been agreed to by the President himself.

Mr. HELMS. The Senator is obviously correct.

I have some sympathy for the leadership and the sponsors of the treaties in their present anguish, now that some difficulty has arisen as a result of their maneuver in connection with the DeConcini amendment. I am sorry for them. Senator GRIFFIN tried over and over again to warn the Senate of the defects in these treaties. The Senator from Alabama has been eloquent in his warnings. I have done the best I can, as have many others. No heed was paid to the Senator from Alabama, the Senator from Michigan, or to any of the rest of us. This set

of circumstances reminds me of Sam Ervin's story about a fellow down in North Carolina who killed his mother and father and then asked the court for mercy on the ground that he was an orphan. The leadership made their own bed in this matter, with great help from the President. I am sorry for them, but they were given fair warning.

Mr. ALLEN. The leadership is responsible for every word in the treaties. They have defended what the negotiators have done and have not allowed anything to be added without their express approval.

Mr. HELMS. And the Senator from Alabama has not added one syllable to the treaty, has he?

Mr. ALLEN. Unfortunately, I have not been able to. It is not that I have not tried.

Mr. HELMS. The Senator has tried valiantly, but he has not managed even to get a "t" crossed or an "i" dotted. Is that correct?

Mr. ALLEN. That is correct.

Mr. MAGNUSON. Will the Senator yield?

Mr. ALLEN. I yield.

Mr. MAGNUSON. There are two or three of us who have an important engagement and we would like to find out from the Senator from Alabama if we are going to vote on this tonight and, if we are, when.

Mr. ALLEN. As far as the Senator from Alabama is concerned, I do not believe there will be a vote, but the distinguished managers of the bill could get in at any time and move to table, which would cause a vote. I will say to the distinguished Senator I will not cause a vote this evening. If he can get a similar assurance from the other side, that will dispose of the matter.

Mr. MAGNUSON. I thank the Senator.

Mr. ALLEN. Have I responded to all of the inquiries of the distinguished Senator from North Carolina?

Mr. HELMS. Yes; and I thank the Senator for his courtesy.

Mr. ALLEN. I thank the distinguished Senator.

Let us see what Mr. DECONCINI said about his amendment:

> The purpose of this amendment is quite simple, Mr. President. It is designed to establish a precondition to American acceptance of the Neutrality Treaty. That precondition states that regardless of the reason and regardless of what any other provision of the Neutrality Treaty might say or what interpretation it might be subject to, if the Panama Canal is closed, the United States has the right to enter Panama, using whatever means are necessary, to reopen the canal. There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as to the means necessary to insure that the canal remains open and accessible.

Mr. President, what is so bad about that amendment, I think it is a very fine amendment. After all, did not the two leaders, Republican and Democratic, say, when these treaties were first submitted to the Senate, that they could not vote for the treaties and that they would be defeated unless we were given the right unilaterally to intervene? It was only when that memorandum was entered into between the President and the dictator, allowing for a measure of right to defend the canal, and the leadership amendments were evolved, that the distinguished leaders agreed to support the treaties. Were they not driving for the right of unilateral intervention?

Sure, they were. That is what they said they wanted, as the Senator from Alabama recalls. They wanted the right to intervene militarily unilaterally.

Well, they seem to have gotten what they wanted. But the dictator got a very nice provision stuck in the leadership amendment that is not here. It is not in the DeConcini amendment. It was stuck in the leadership amendment or, prior to that, in the memorandum between the President and the dictator. That was that, in our intervention to protect the canal, we would not intervene with the internal affairs of Panama; we would not interfere with their territorial integrity; and we would do nothing to upset the independence of Panama. Those three things were stuck in the leadership amendment, but not the DeConcini amendment.

There, Mr. President, I believe we have the core of the dispute and the difference of opinion and Torrijos' protest because, as long as we just had the leadership amendment, it was so defective and so full of ambiguities and so full of qaulifications that it held no fear or pause for Dictator Torrijos.

But the DeConcini amendment does not have these provisions that the dictator got inserted in the memorandum and that were carried over into the leadership amendment. I believe that is what is eating on them. This does give the United States the unilateral right to keep the canal open.

Mr. President, what sort of respect is that, talking about not according proper respect to Panamanians? I submit that those of us who have sought to improve these treaties and strengthen them or, in the alternative, to kill them, have shown greater respect for the people of Panama and less respect for the dictator than have the supporters of these treaties. Because we have sought, and I say that today, I was going to offer an amendment requiring this treaty to go back to the Panamanian people, showing that I have confidence in their good judgment. All through action on both of these treaties, if any amendment was offered, they would say, "Oh, we cannot vote for that; it might cause another plebiscite."

Does that show respect for the people of Panama, wanting to follow their will, their wishes, or show respect for Dictator Torrijos in wanting to follow his wishes?

This $100 million a year that Torrijos is going to get out of this treaty is what is going to keep him afloat. That is what is going to keep his dictatorial regime afloat. I would not be at all surprised, if we were to tailor this treaty to suit the best interests of the people of the United States and require a plebiscite, not only would the treaty be disapproved by the Panamanian people, but Mr. Torrijos would get his walking papers.

I think that would be a fine day for Panama if democracy should return to that fine republic, consisting of some fine American—and I say that in the broad sense—American people. I respect the great people of Panama and I want them to have a part in deciding this controversy. If we have overstepped our bounds when we have, by recommendation of the leadership, agreed to the DeConcini amendment, let us let the people of Panama say whether we have or not. Let us give them a voice in this issue and, at the proper time, I hope that the Senate will agree to this amendment sending this treaty back to Panama.

I yield to the Senator from Utah.

Mr. ROBERT C. BYRD. Will the Senator yield for a question?

Mr. ALLEN. I had planned to yield to the distinguished Senator from Utah, but inasmuch as my distinguished friend, the distinguished majority leader, wishes me to yield, I yield to him.

Mr. ROBERT C. BYRD. I have been listening to the debate. I ask the Senator, is the DeConcini amendment back before the Senate at this time?

Mr. ALLEN. It has been injected into the discussion in this fashion. The distinguished majority leader must not have been listening at the time the distinguished Senator from Idaho was speaking, when he said that something is going to have to be done to indicate a different meaning to the DeConcini amendment; that he did not know how it was going to be done, but that it would have to be done. That is how the issue came into the debate at this time.

I state to the distinguished Senator from Alaska, who has been supporting the treaties up to now—I do not know what his position might be now, but he stated that we went too far in agreeing to the DeConcini amendment; that he does not believe, if I correctly heard him, that it can be cured by an amendment to this treaty, inasmuch as the door has been closed on the other treaty and no legislative history can affect what has already taken place.

Mr. ROBERT C. BYRD. May I ask the Senator a further question?

Mr. ALLEN. Certainly.

Mr. ROBERT C. BYRD. An amendment by Mr. HATCH is pending, is that correct?

Mr. ALLEN. That is correct. But when I come into the Chamber, the distinguished Senator from Idaho was speaking of legislative history with respect to the DeConcini amendment. That is how it came in at this late hour of the day.

Mr. ROBERT C. BYRD. Very well. I wonder if we could reach an agreement to vote on the pending Hatch amendment, say at 5:45 p.m. today?

Mr. ALLEN. I would have no objection, except the distinguished Senator from Washington (Mr. MAGNUSON) asked the Senator from Alabama if there was going to be a vote and I stated, "Not as far I am concerned."

The motion might be made to table.

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. To table the amendment, and that I would not anticipate that there would be a vote.

I had not thought there would.

I would have no objection to agreeing to vote the first thing in the morning, but I do have my word out to the distinguished Senator from Washington.

Mr. ROBERT C. BYRD. I would be glad to get in touch with the distinguished Senator from Washington.

Mr. ALLEN. I would have no objection.

Mr. ROBERT C. BYRD. I wonder if we could agree to vote, say, at no later than 6 o'clock p.m.?

Mr. HATCH. Will the Senator yield?

Mr. GRAVEL. I would have an objection.

Mr. ROBERT C. BYRD. He would have an objection.

Mr. GRAVEL. I certainly would. I have been very patient. I waited around part of the afternoon. I would like to express myself on this, and I do not want to have it interrupted by a vote because we have had the opponents cackling here for the last hour over difficulty that we may have on our side, and I think there should be an explanation.

Mr. ROBERT C. BYRD. I really am not aware of any difficulties. I heard all day long that these crocodile tears have been shed. The carpet is wet where I stand. Everywhere I see the carpet is wet. There have been so many tears about all the difficulties that have arisen—and I know of none, really—but I would defer if the Senator is not in the mood to vote. How about 6:30?

Mr. GRAVEL. I would have not objection if I could get the floor and be recognized and make my expression of views.

I have been very patient, and I am prepared to, if it takes all night.

But I think there is another side that should be presented, and I have intended to present that other side before voting on any specific amendment.

Mr. ALLEN. I have no objection, I might say to the distinguished majority leader, I think, on a vote first thing in the morning, and I have no objection to a vote if we could get the approval of the distinguished Senator from Washington, to whom I am committed not to allow it to come to a vote, unless a motion to table——

Mr. ROBERT C. BYRD. Yes.

Well, Mr. MAGNUSON is still here. I am sure we would have no trouble with Mr. MAGNUSON.

What does the Senator from Utah say?

Mr. HATCH. We brought it up around noon today. I spoke for about half an hour and we have not had any chance to debate it.

I understand there are other Senators who want to speak. I, again, need to speak to it. Senator SARBANES has indicated he needs to speak shortly on this amendment.

Mr. SARBANES. Very shortly, I assure the Senator.

Mr. HATCH. Well, I might add, there have been some Senators come up to me who have noticed how long this debate has taken today and have asked we vote tomorrow morning.

I really think we will need some time. I think we could finish the debate tonight. But I would recommend, if it is possible, because of some of the Senators who felt this was going on and on, that we vote tomorrow morning the first thing.

I would be more than happy to do that, and finish up whatever debate there is on this this evening, if both sides may be heard, and then vote the first thing tomorrow.

Mr. ROBERT C. BYRD. All right.

May I ask the Chair, on what article are we at this point, just for the record?

The PRESIDING OFFICER. The Senate is debating article III.

Mr. ROBERT C. BYRD. And there are how many articles, 14?

The PRESIDING OFFICER. Fourteen articles.

Mr. ROBERT C. BYRD. One annex, 1 minute, and we have 3 days left to debate the treaty.

The PRESIDING OFFICER. The majority leader is substantially correct.

Mr. ROBERT C. BYRD. I just want to express concern on the part of Senators who may have amendments to various articles that we do not run out of time without their having time to offer their amendments.

Several Senators addressed the Chair.

Mr. HATCH. I would be happy to set mine aside while others are brought up today and have back-to-back votes tomorrow, if that would make the majority leader happy.

Mr. ROBERT C. BYRD. Does the Senator have another amendment?

Mr. HATCH. I have another amendment, but not to this article.

Mr. ROBERT C. BYRD. I see no need to set it aside and bring up another.

Mr. HATCH. It has been set aside all day.

Mr. ROBERT C. BYRD. If we can get a vote on another amendment today, that would be agreeable.

I do not have the floor, but the Senator from North Carolina——

Mr. HELMS. Will the Senator yield for an inquiry?

Mr. ALLEN. Yes.

Mr. HELMS. I thank the Senator from Alabama.

Mr. ALLEN. Provided I do not lose my right to the floor.

Mr. HELMS. Mr. President, with that understanding, I will say to the majority leader, that I have three amendments.

I would be perfectly willing to enter into a time agreement on, say, two of them this evening, and not have a vote on either of them and carry the votes over to tomorrow. That will get two of my several amendments out of the way.

Mr. ROBERT C. BYRD. Are they to this article?

Mr. HELMS. No, they are to the next article, but I want to do anything I can to expedite matters. But, to answer the Senator's question my amendments are addressed to the next article.

Mr. ROBERT C. BYRD. They are. Very well. We will talk about the Senator's amendments and possibly be able to reach an agreement before the Senate goes out.

Mr. HELMS. I merely want to help, if I can, with what may develop into a time problem later this week.

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. I agree with the majority leader. The clock is running and as the Senator has indicated we need to get on with it.

Mr. ROBERT C. BYRD. I thank the Senator.

I thank the Senator from Alabama for such time as he yielded.

Mr. ALLEN. I thank the distinguished majority leader.

As I understand, we have gotten nowhere with respect to setting a time for a vote, is that correct?

Mr. ROBERT C. BYRD. I believe the distinguished Senator from Alaska has indicated he wishes to address some remarks to the pending amendment.

Mr. GRAVEL. Not to the pending amendment, but to the subject raised, which has really occupied our time for most of the afternoon. The amendment is of no concern to me.

Mr. ROBERT C. BYRD. Let me ask once more, is it possible to get a vote in relation to the pending amendment by, say, 6:30 p.m. today, or by 7, no later than 7?

Mr. GRAVEL. I would have no objection if I could get the floor.

Mr. ALLEN. May I make this inquiry, inasmuch as the debate in which the Senator wishes to participate really has nothing to do with the pending amendment, could we vote on the pending amendment and then allow the Senator from Alabama to resume his discussion? Then we would suit everybody. We would have a vote and we would still have our debate.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. I hope the Senator from Alaska——

Mr. GRAVEL. If we vote right now, and then if the Senator would continue as long as he feels necessary, as long as it is not past midnight——

Mr. ALLEN. Twenty or twenty-five minutes.

But if we can vote now, let me resume the floor for a limited time, it will not be long, and then the distinguished Senator from Alaska could be——

Mr. GRAVEL. Might I ask my colleague, since he has occupied the floor for a 20-minute period with the opponents of the treaty, might he not give me the courtesy to have 15 minutes after the vote and then he could retort, so we could really have a dialog?

We have been listening to the cackle, and I do not mind that, but I think we might have a little give and take.

Mr. ALLEN. I say to the Senator from Alaska, there was no cackling, as far as I am concerned, but possibly a few smiles.

Mr. GRAVEL. I think he is entitled to it. I think anybody that throws gasoline on a fire and then laughs over people having difficulty putting out the fire——

Mr. ALLEN. I do not yield any further to the Senator.

Mr. ROBERT C. BYRD. If the Senator

will yield to me, I believe I see the possibility here of our voting in relation to the Hatch amendment.

I ask unanimous consent that a vote occur in relation to the Hatch amendment at 6 o'clock p.m., with the time to be equally divided between now and 6 o'clock between Mr. HATCH or his designee and Mr. CHURCH or his designee.

Mr. GRAVEL. Reserving the right to object, and I shall object, I think we are on a much more meaningful subject than the Hatch amendment. I do not think we should let go of it. It is really going to determine what the future will be with these treaties, so we could go ahead and have our amendments—I am explaining my reservation—if the Senator from Alabama has a filibuster going on and wants to go on, I am prepared to sit here and listen all night and after he is done I will take my turn in expressing my views.

So I do not think we should interrupt the Senator from Alabama if he wants——

Mr. SARBANES. Will the Senator from Alabama yield for a question?

Mr. ALLEN. Yes.

Mr. SARBANES. Do I correctly understand that the suggestion of the Senator from Alabama was that we take a short but reasonable period of time to make closing remarks, as it were, on the Hatch amendment, and vote; that then the Senator from Alabama thought the debate could be resumed, and I take it that it could be worked out between him and the Senator from Alaska on how there can be an exchange? Was that essentially the Senator's suggestion?

Mr. ALLEN. Yes. I stated that I would not occupy the floor longer than an additional 25 minutes—in that range. I am not trying to prolong the matter.

I really think the distinguished Senator from Alaska should not have stated that the Senator from Alabama had a filibuster going, because he does not have. I am only trying to answer what the distinguished Senator from Idaho (Mr. CHURCH) had to say by way of supposed legislative history and about seeking to undercut the meaning of the DeConcini amendment.

Mr. ROBERT C. BYRD. Mr. President, I talked with the distinguished Senator from Alaska, and I believe that I detect the possibility that we could vote in relation to the Hatch amendment within 10 minutes, so we can limit the debate on the Hatch amendment, 5 minutes to a side; and after that amendment is disposed of, we can carry on with the debate of the Senator from Alabama and the Senator from Alaska, both holding forth.

Mr. ALLEN. Provided the Senator from Alabama has the floor. Provided he is recognized immediately after the vote on the Hatch amendment.

Mr. ROBERT C. BYRD. The Senator from Alabama has indicated that he would not like to hold the floor for very long.

Mr. ALLEN. I said I thought I would conclude my remarks in the range of 25 minutes, give or take 5 minutes.

Mr. GRAVEL. Is that a unanimous consent request the leadership is propounding?

Mr. ROBERT C. BYRD. Yes.

Mr. GRAVEL. Reserving the right to object, and I shall not object—

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. GRAVEL. Because I think we should go forward with this, and I will be happy to sit here for 25 or 50 minutes or 2 hours and listen to the Senator from Alabama propound it.

Where I did get a little uptight—and I apologize to the leadership for that—was when Senator SARBANES wanted to address an inquiry to the Senator from Alabama, and the latter would not entertain it. But then he proceeded to entertain it from Senator GOLDWATER, Senator HATCH, and Senator HELMS. I do not mind that, either. He is entitled to do that. But I think if we want to give the color of fairness, we should be precise in how we do this, and not just spill the bucket and think we are fair.

Mr. ALLEN. I yielded twice.

Mr. GRAVEL. I withdraw any objection.

Mr. HELMS. Mr. President, reserving the right to object—and I hate to add to the Senator's difficulty—I have a problem with reference to the distinguished Senator from Virginia, who is on his way to Richmond.

Mr. ROBERT C. BYRD. I will give him a live pair. We will have one Byrd against the other—two Byrds with one vote.

[Laughter.]

That will beach my perfect voting record, but I am willing to do it.

Mr. HELMS. Of course, that would be quite satisfactory to the Senator from North Carolina, but I do not know whether it will be satisfactory to the Senator from Virginia. What is the difficulty in carrying the vote over until tomorrow?

Mr. ROBERT C. BYRD. No difficulty.

Mr. HATCH. Especially since I am willing to set aside this amendment and go ahead with other amendments.

Mr. ROBERT C. BYRD. We can call up another amendment.

Mr. HATCH. I do care a great deal for the distinguished Senator from Virginia.

Mr. ROBERT C. BYRD. I wonder whether I might check with the office of the Senator from Virginia (Mr. HARRY F. BYRD, JR.) and see if it would be agreeable to him for me to give him a live pair.

Mr. HELMS. If it is agreeable with his office, of course it would be agreeable to me.

Mr. ROBERT C. BYRD. Let us get the agreement, conditioned on that.

Mr. ALLEN. I call to the attention of the distinguished majority leader the fact that he said he would make it agreeable to the distinguished Senator from Washington (Mr. MAGNUSON). On that condition, I would agree.

Mr. ROBERT C. BYRD. Yes.

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

Who yields time?

Mr. ALLEN. I yield the floor, under the unanimous-consent agreement. As I understand, debate is now to be confined to the Hatch amendment, and there will be a vote. I yield the floor, on that condition.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, with respect to the deferral of the Hatch amendment, it has been very interesting to hear the colloquies which have taken place as a result of the incidents over the weekend.

Some of us have pointed out some of the difficulties the proponents have been having, it seems to me, in trying to foist the responsibility for these language and interpretation and disparity difficulties with the treaties upon the opponents of the treaties, indicating that the opponents have made statements deprecatory to the Panamanians and perhaps have not conducted themselves with respect for Panama, which of course is not the case.

The fact is that we have shown great deference to the people of Panama and will continue to do so, because we think a great deal of the people. The only instance I know of in which there has been any harsh language was an instance in which it was totally justified, on the basis of bringing out the drug connections with Mr. Torrijos' two brothers and others in Panama. I believe it is justified to speak about those types of incidents in Panama as being deleterious not only to this country but also to Panama.

I yield to the distinguished Senator from North Carolina, who will speak with regard to my amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. ROBERT C. BYRD. Mr. President, the office of Senator HARRY F. BYRD, JR., has informed me that it will be perfectly agreeable to the Senator for me to announce a pair with him.

Mr. HATCH. What is our agreement for today? We are going to continue until what time?

Mr. ROBERT C. BYRD. We have 10 minutes, equally divided.

Mr. HATCH. Shall we start right now with the 10 minutes?

Mr. ROBERT C. BYRD. The agreement was that we start a moment ago, but it is all right with me to start now.

Mr. HATCH. I yield to the distinguished Senator from North Carolina.

Mr. ROBERT C. BYRD. Mr. President, I ask that the 10 minutes begin to run now.

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

Mr. HELMS. I thank the distinguished majority leader for clearing up that dilemma concerning the distinguished Senator from Virginia.

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

Mr. HELMS. Mr. President, the amendment offered by Senator HATCH is needed to insure that the Republic of Panama understands and accepts the fact that payments made to it out of Panama Canal revenues must and will be made subject to the constitutionally required appropriations process of the U.S. Congress.

Every U.S. Senator knows the provision of article 1, section 9 of the Constitution:

No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.

The Hatch amendment sets up a clear process by which this time-honored guideline of our Founding Fathers shall be dutifully adhered to, rather than bypassed.

Article III of the Panama Canal Treaty includes this language:

5. The Panama Canal Commission shall reimburse the Republic of Panama for the cost incurred by the Republic of Panama in providing the following public services . . .

And so forth.

Article XIII has this language:

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

And then it goes on with the financial arrangements we are all familiar with.

The implementing legislation submitted by the State Department contains this language:

The Panama Canal Commission shall pay directly from Canal operating revenues to the Republic of Panama those payments required under paragraph 4 of article XIII of the Panama Canal Treaty of 1977.

The point is this, Mr. President: The Panama Canal Treaty will remain an imperfect treaty, and in my opinion, inoperative, without the exercise by Congress of the appropriations power in the matter of transferring funds to Panama in connection with the matters dealt with in the treaty and implementing legislation.

Department of State witnesses have acknowledged before various congressional committees that payments to Panama are subject to legislation.

The Senator from North Carolina fears, however, that the State Department may hold to the position that mere passage of the implementing legislation will be sufficient.

As I have just quoted it, that legislation states the Panama Canal Commission will make direct payments to the Republic of Panama.

However, there is nothing in the treaties or the implementing legislation as proposed that indicates any necessity for scrutiny and authorization of such transfers of moneys specifically under the appropriations process of the U.S. Congress.

Mr. President, legislation cannot and does not amend the Constitution. Passage of the legislation implementing these treaties will not amend the Constitution to make unnecessary the appropriations process called for by our Constitution.

So the pending amendment of the distinguished Senator from Utah will clarify this important matter. It not only will clarify the issue; it will establish the very procedures by which the transfers of moneys shall be made in full conformity with our constitutional requirements.

And, as I have indicated at the beginning of my remarks, it will establish a clear understanding between the two Republics as to the basis and the processes on which and by which those transfers of moneys shall be made.

Mr. President, the Senator from North Carolina will not take any more time at this point to expand on his view. Let me just repeat, Senators all know the Constitution.

For an exhaustive treatment of that issue which the Hatch amendment addresses I want to call to the attention of the Senate an excellent paper compiled by W. M. Whitman, former Secretary of the Panama Canal Company, and now a consultant to the Merchant Marine and Fisheries Committee of the House of Representatives.

Mr. Whitman's paper dated November 1977, is entitled, "Panama Canal Treaty Payments and the Constitutional Power of Congress to Make Appropriations".

Mr. President, I want to pay tribute to Mr. Whitman for his diligence in the preparation of works such as this paper which have rendered great assistance to both Houses of Congress. The action of the Senate in pursuing various aspects of the treaties has been greatly aided by the background information and insights provided by Mr. Whitman.

Mr. President, I ask unanimous consent that this paper be printed in the RECORD.

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

PANAMA CANAL TREATY PAYMENTS AND THE CONSTITUTIONAL POWER OF CONGRESS TO MAKE APPROPRIATIONS

I. INTRODUCTION

A. Question Presented

The question addressed in this memorandum is whether under Article I, section 9 of the Constitution, appropriations by the Congress are necessary to carry into effect the provisions of the proposed Panama Canal treaty for annual payments to Panama.

B. Summary

In summary, the memorandum concludes that under Article I, section 9 of the Constitution, provisions of a treaty for payment of money do not become effective as domestic law in the absence of appropriation of the necessary funds by the Congress. Under the treaties with Panama now in effect, which also provide for annual payments to Panama, revenues derived from operation of the canal are treated as public moneys and expenditures of those funds are limited to those authorized by appropriation acts of the Congress. There is nothing in the language of the proposed treaty to take the annual payments to Panama provided by the treaty out of the operation of the general rule or to distinguish such payments from those provided by the existing treaties so far as concerns the application of Article I, section 9 of the Constitution. Accordingly, such payments may not be made without Congressional appropriations in the consideration of which, in the language of a resolution adopted by the House of Representatives in 1795, the Congress has the obligation to act as, in their judgment, may be most conducive to the public good.

II. CONSTITUTIONAL PROVISIONS

The three constitutional provisions directly involved are Article I, section 9, clause 7, the power to make appropriations; Article II, section 2, clause 2, the treaty power; and Article VI, clause 2, the supremacy clause. The text of these several clauses is set out below:

Art. I, sec. 9, cl. 7:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; . . ."

Art. II, sec. 2, cl. 2:

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

Art. IV, cl. 2:

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

It is settled that the power of the President, with the advice and consent of the Senate, to make treaties with foreign countries extends to all proper subjects of negotiation between the United States and other countries.[1] It is also clear that such treaties may extend to subjects that are also within the legislative power of the Congress, i.e., a treaty is not necessarily invalid because it deals with a subject on which Congress has the power to legislate.[2] A treaty does not affect the power of the Congress to enact legislation on the same subject. In the event of a conflict between the treaty and the law, the later in time prevails.[3]

Once made, a treaty operates in a dual role: in its international aspect, it is a contract between the United States and the country with which it is made giving rise to rights and obligations under international law; [4] and under the supremacy clause of the constitution, a treaty takes effect as domestic law unless, in terms, it is made dependent on further legislative action by the Congress,[5] or unless the provisions of the treaty are in conflict with other provisions of the constitution.[6]

Analysis of the effect of a treaty as domestic law is usually cast in terms of whether or not the treaty is self-executing, i.e., whether it takes effect as domestic law without further action by the Congress. The state of the law in this respect is summarized as follows by the American Law Institute: [7]

"(1) A treaty made on behalf of the United States in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it shall become effective as domestic law of the United States at the time it becomes binding on the United States.

"(a) is self-executing in that it is effective as domestic law of the United States.

"(b) supersedes inconsistent provisions of earlier acts of Congress or of the law of the several states of the United States.

"(3) A treaty cannot be self-executing under the rule stated in subsection (1) and have the effect stated therein to the extent that it involves governmental action that under the Constitution can be taken only by the Congress."

The provisions of the proposed Panama Canal treaty for annual payments to Panama by the U.S. Government agency to be established to operate the canal, raise directly the question whether such provisions are self-executing in view of Article I, sec. 9, cl. 7 of the constitution limiting to the Congress to the power to make appropriations.

There appears to be no controversy whatever as to the constitutional validity of treaty provisions under which the United States undertakes to make payments of money.[8] The first treaty made by the Government of the United States after the adoption of the constitution, the Jay Treaty of

Footnotes at end of article.

1794 with Great Britain, provided for payment of debts owed by U.S. citizens or inhabitants to British creditors; [9] the treaties with France for the cession of Louisiana provided for payment to France of 60 million francs; [10] the Treaty of Paris, ending the Spanish-American War, provided for the payment of $20 million to Spain for the Philippine Islands; [11] the 1903 convention with Panama providing for construction and maintenance of the Panama Canal, provided for a lump sum payment to Panama of $10 million and annual payments of $250,000.[12] These examples could be duplicated many times over and in no instance has such a treaty provision been challenged as beyond the constitutional power of the President.[13]

If, as appears to be the case, Article I, sec. 9, cl. 7 of the constitution does not preclude the negotiation of a treaty providing for the payment of money by the United States, the conclusion is otherwise in respect to attempts to set up a procedure for transfer of funds in discharge of the treaty commitment without an appropriation by Congress.

After the ratification of the Jay treaty, the effect of the provisions of the treaty requiring expenditure of funds was debated at length in the House of Representatives. The debate did not involve the question whether the President could enter into a treaty requiring the expenditure of funds; the two questions at issue were (1) whether the House of Representatives was entitled to obtain copies of instructions given by the President to the negotiators, and (2) whether the Congress was required to appropriate the funds necessary to carry the treaty into effect, in view of the provision of Art. VI, clause 2 of the constitution declaring that treaties along with the constitution and laws made in pursuance thereof shall be the supreme law of the land.[14] President Washington rejected the demand of the House for copies of the instructions to negotiators,[15] but the House adopted a resolution introduced by Thomas Blount, vigorously supported by James Madison, providing as follows:

"When a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good." [16]

Congress thereafter enacted a law making the necessary appropriations.[17]

When difficulties arose in the execution of Art. VI of the Jay treaty, providing for payment by the United States of certain debts owing by U.S. debtors to British creditors, a second convention was negotiated and ratified providing for discharging the responsibility of the United States under Art. VI by payment of 600,000 pounds sterling in three equal annual installments.[18] On April 27, 1802, President Jefferson sent copies of the convention to the Congress with a brief message concluding as follows:

"I now transmit copies thereof to both Houses of Congress, trusting that, in the free exercise of the authority which the Constitution has given them on the subject of public expenditures they will deem it for the public interest to appropriate the sums necessary for carrying this convention into execution." [19]

The same principles were recognized and the same procedure was followed in reference to the three treaties with France for cession of Louisiana to the United States. In Article I of the second of the three treaties, the United States agreed "to pay to the French Government, in the manner specified in the following article, the sum of sixty millions of francs. . . ." Article II specified that payment to France would be effected by issuance of stock of $11,250,000 bearing interest at the rate of 6 percent, with a further provision for retirement of the principal in annual payments of $3 million, commencing 15 years after the date of the exchange of ratifications.[20] In his message to Congress on October 17, 1803, President Jefferson referred to the treaties with the statement that after ratification "they will without delay, be communicated to the Representatives for the exercise of their functions as to those conditions which are within the powers vested by the Constitution in the Congress." [21]

On October 21, 1803, the date of the ratification of the treaties, the President forwarded copies to the Senate and House of Representatives with a message which, after referring to his earlier message of October 17, in reference to the treaties, concluded:

"These, with the advice and consent of the Senate having now been ratified, . . . they are communicated to you for consideration in your legislative capacity. You will observe that some important conditions cannot be carried into execution, but with the aid of the Legislature, and that time presses a decision on them without delay." [22]

Adherence to the view that provisions of treaties for the payment of money by the United States are not self-executing, but that Congress is required to exercise independent judgment in considering appropriations for such payments, has not been confined to the House of Representatives.

During the debates in the Senate on entry by the United States into the League of Nations and related treaties negotiated at the end of World War I, a resolution was introduced to request the Judiciary Committee to advise the Senate as to whether there was any constitutional objection to one of the treaties providing for military assistance to France. In the course of a comprehensive review and analysis of the treaty making power, Senator Kellogg (who was later to become Secretary of State) referred to the exclusive power of the Congress to make appropriations as follows:

". . . it is well settled that while the treaty-making power can obligate the United States to the payment of the sums of money, it can not itself appropriate from the United States Treasury the amounts specified or compel the Congress to provide for their payment . . . Undoubtedly nations dealing with the treaty-making power are presumed to have knowledge of this limitation." [23]

The relationship of the supremacy clause and the constitutional power of Congress to make appropriations was considered in the federal circuit court at an early date in a case involving the effect of an 1836 treaty with an Indian tribe, which among other things, provided for payment of the net proceeds of the sale of 160 acres of land to the owner of the buildings on the land. In that case the court said:

"A treaty under the Federal Constitution is declared to be the Supreme law of the land. This, unquestionably, applies to all treaties, where the treaty-making power, without the aid of Congress, can carry it into effect. It is not, however, and cannot be the Supreme law of the land, where the concurrence of Congress is necessary to give it effect. Until this power is exercised, *as where the appropriation of money is required*, the treaty is not perfect. It is not operative, in the sense of the Constitution, as money cannot be appropriated by the treaty making power. This results from the limitations of our government. . . . As well might it be contended that an ordinary act of Congress, without the signature of the President, was a law, as that a treaty which engages to pay money, is in itself a law. . . . It [the treaty-making power] cannot bind or control the legislative action in this respect, and every foreign government may be presumed to know that as far as the treaty stipulates to pay money, the legislative action is required.[24] (Emphasis supplied.)

The view that a treaty provision for the payment of money is not self-executing but requires an appropriation by the Congress is also reflected in the American Law Institute comment on section 141 of its restatement of foreign relations law, quoted above, which states:

"f. Constitutional limitation on self-executing treaties. Even though a treaty is cast in the form of a self-executing treaty, it does not become effective as domestic law in the United States upon becoming binding between the United States and the other party or parties, if it deals with a subject matter that by the Constitution is reserved exclusively to Congress. For example, only the Congress can appropriate money from the Treasury of the United States.[22]

"Ilustration:

8. The United States enters into a treaty with State A under which A agrees to cede a portion of its territory to the United States in return for payment of $7,200,000. Advice and consent to the ratification of the treaty is given by the Senate and it is ratified by the President. The ratification does not have the effect of appropriating the $7,200,000. Further action to this effect must be taken by both Houses of Congress.[25]

This view of the effect of Article I, section 9 has not been disputed by the Department of State in the hearings on the Panama Canal treaties signed in September 1977. In hearings on the treaties before a subcommittee of the Senate Judiciary Committee, the Legal Adviser of the Department of State conceded that Article 1, sec. 9, cl. 7 of the Constitution constitutes a limitation on the impose taxes nor directly appropriate funds." [26]

Similarly, at hearings on the treaty on September 29, 1977, Attorney General Griffin Bell advised the Senate Foreign Relations Committee that:

"It is generally assumed that the specific powers granted to the House of Representatives and the Congress in fiscal matters (Article I, section 7, clause 1 and Article I, section 9, clause 7, money bills and appropriation power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the pursestrings."

In the light of the constitutional principles summarized above, it appears that the provisions of the proposed Panama Canal treaty for payments to Panama are not self-executing but require legislative action by the Congress unless there is some special element involved in the treaty provisions or in the nature of the canal operation that would serve to take the payments to Panama out of the operation of the constitutional rules that would otherwise apply. Review of the pertinent treaty provisions and of the legal and fiscal characteristics of the operation of the canal, either at present or under the proposed treaties, discloses no such distinguishing characteristics.

III. PANAMA CANAL TREATIES AND OPERATING STRUCTURE

A. 1903 Treaty

In 1902 an act of Congress, popularly known as the Spooner Act, authorized the President to acquire control of the land and other rights necessary for the construction and operation of a transisthmian canal and to proceed with the construction of such a canal when such rights were obtained.[27] After an abortive effort to obtain the necessary rights in a treaty with Colombia, and fol-

Footnotes at end of article.

lowing secession of Panama from the Republic of Colombia, the United States on November 18, 1903, entered into a treaty with the Republic of Panama providing for the acquisition by the United States of the rights specified in the Spooner Act and for the construction and operation by the United States of a transisthmian canal at Panama. Article XIV provides that:

"As the price or compensation for the rights, powers, and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid. . . ."

B. 1936 Treaty

A treaty between the United States and the Republic of Panama signed March 2, 1936,[28] among other provisions, abrogated certain provisions of the 1903 treaty, and placed restrictions on residence, importations, and commercial activity in the Canal Zone.[29] Article VII of the 1936 treaty increased the amount of the annuity payable to the Republic of Panama under Article XIV of the 1903 treaty to four hundred thirty thousand Balboas (B/430,000) as defined in a separate monetary agreement, effected by an exchange of notes on the same date as the treaty. The treaty authorized payment of the annuity in any coin or currency provided the amount so paid was the equivalent of B/430,000 as defined in the monetary agreement.

C. 1955 Treaty

A third treaty between the United States and the Republic of Panama, signed January 25, 1955,[30] contained among other provisions, an article that increased the annuity to one million nine hundred thirty thousand Balboas (B/1,930,000) as defined by the agreement embodied in the exchange of notes of March 2, 1936, but authorized the United States to discharge its obligation with respect to payment of the annuity in any coin or currency provided the amount so paid is the equivalent of one million nine hundred thirty thousand Balboas (B/1,930,000) as so defined.[31]

D. Panama Canal Organizational Structure

Construction of the Panama Canal was accomplished by the Isthmian Canal Commission under the provisions of the Spooner Act, *supra*. As construction approached completion, Congress passed the Panama Canal Act of August 24, 1912,[32] providing for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone. The Act authorized the President to discontinue the Isthmian Canal Commission and to complete, govern and operate the Panama Canal through a Governor of the Panama Canal. The pertinent provisions of the Panama Canal Act were later incorporated in the Canal Zone Code, enacted in 1934.[33]

The adjuncts of the Panama Canal, referred to in the Panama Canal Act, were principally consolidated in the operations of the Panama Railroad Company, originally created in 1849 under the laws of the State of New York as a private corporation for the construction and operation of a railroad across the Isthmus of Panama. At the time of the construction of the Panama Canal all the stock of the Company was acquired by the United States and, after the canal was completed, the railroad conducted certain business operations supporting the maintenance and operation of the canal, including operation of a transisthmian railroad, a steamship line operating between the United States and the Canal Zone, docks, harbor terminals, coaling plants for bunkering ships, commissaries for supplying employees and ships, dry and cold storage plants, hotels, and the telephone system of the Canal Zone. The Supreme Court has characterized these operations as auxiliaries primarily designed and used to aid in the canal's management and operation,[34] and they have been similarly described by the Congressional Committees responsible for Panama Canal affairs.[35]

In 1945, the Government Corporation Control Act[36] designated the Panama Railroad Company as a wholly-owned government corporation and prohibited the existence of any such wholly-owned government corporations created under the laws of a state. Accordingly, in 1948, the Panama Railroad Company was reincorporated under a federal charter with authority to continue its operation in support of the maintenance and operation of the Panama Canal.[37]

Under legislation enacted in 1950, a basic change in the organizational structure of the enterprise became effective July 1, 1951.[38] One purpose of the reorganization was to separate the business operations of the canal enterprise, including operation of the waterway, from those functions associated with civil government of the Canal Zone. All the functions of the agency previously known as The Panama Canal, except those relating to civil government, health and sanitation were transferred to the Panama Railroad Company which was renamed the Panama Canal Company. The Panama Canal agency retained its governmental functions and was renamed the Canal Zone Government. A second purpose of the reorganization was to give the Panama Canal Company authority to prescribe the rates of tolls for use of the canal, subject to final approval by the President.[39] Previously, power to prescribe rates of tolls had been vested exclusively in the President since the enactment of the Panama Canal Act in 1912.[40]

The basic provisions of the 1950 reorganization legislation were subsequently incorporated into the 1962 edition of the Canal Zone Code.[40] Under the statutory scheme, the Panama Canal Company and the Canal Zone Government function as an integrated enterprise although each is an independent agency of the United States.[41]

The Panama Canal Company is described in the law as a body corporate and an agency of the United States for the purpose of maintaining and operating the Panama Canal and conducting business operations incident thereto and incident to the civil government of the Canal Zone.[42]

The powers of the Company are enumerated in its charter.[43] In general, the principal activities of the Company are (1) operations directly involved in the movement of ships through the canal and (2) supporting services. The latter include vessels repairs, harbor terminals, a railroad across the Isthmus, a supply ship operating between the United States and the Canal Zone, motor transportation facilities, storehouses, an electric power system, a communications system, a water system, and service activities essential for meeting the needs of employees, such as living quarters, commissaries and restaurants.

Under its charter the Company is required to be self-sustaining although appropriations are authorized to cover any operating losses,[44] or for the capital improvements.[45] Appropriations for operating losses are required to be repaid.

The Company is also required to reimburse the Treasury for interest on the net direct investment of the United States in the corporation at rates fixed annually by the Secretary of the Treasury,[46] for the annuity paid under the 1903 treaty as amended by the 1936 treaty, and for the net cost of operation of the agency known as the Canal Zone Government.[47]

The Board of Directors of the Company is required to review annually its working capital requirements together with foreseeable requirements for plant replacements and expansion and to pay any amounts in excess thereof into the Treasury.[48] Since 1950 the Company has paid $40 million into the Treasury for this purpose.

IV. FISCAL MANAGEMENT OF GOVERNMENT AGENCIES

Article III of the proposed Panama Canal treaty specifies that the U.S. Government agency to be established to operate the canal "shall be constituted by and in conformity with the laws of the United States." The laws of the United States governing the fiscal management of government agencies in general are incorporated in Title 31 of the U.S. Code.[49]

The Executive Departments and non-corporate federal agencies are subject generally to the provisions of title 31, except the provisions of the Government Corporation Control Act. Wholly owned government corporations are subject to the provisions of the Government Corporation Control Act and to many of the other provisions of title 31 as well.

The provisions of title 31 clearly delineate the fiscal responsibilities of government agencies generally and their dependence on appropriations to authorize the expenditure of funds. The Budget and Accounting Act, 1921, defines "department or establishment" to include "any executive department, independent commission, board, bureau, office, agency or other establishment of the Government," and the term "appropriations" to include funds and authorizations to create obligations by contract in advance of appropriations or "any other authority making funds available for obligation or expenditure."[50] All moneys received from whatever source for use of the United States are required to be paid into the Treasury.[51] Detailed provisions are made for submission of estimates for appropriations for expenditure by government agencies.[52] Expenditures in excess of appropriations are prohibited, and all appropriations or funds made available for obligation are required to be apportioned to avoid the necessity for deficiency or supplemental appropriations.[53]

Agencies of the government in corporate form, such as the agency now responsible for operation of the Panama Canal, are established pursuant to and operate in accordance with the Government Corporation Control Act, and other applicable provisions of title 31 of the United States Code. The Government Corporation Control Act requires a government agency subject to the Act to submit annually to the Congress, through the Office of Management and Budget and the President, a budget program which among other things must include a statement of financial condition and of income and expense, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operation of the corporation.[54] The Congress, after consideration of the budget program, is required to enact legislation "making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources, or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends."[55] The legislation making funds available for payment of expenses of the corporation is regularly incorporated in the annual appropriation acts enacted by the Congress.[56] Accounts of

Footnotes at end of article.

corporations are required to be kept with the Treasury, or with the approval of the Secretary of the Treasury, with a Federal Reserve Bank or a bank designated as a depository or fiscal agent of the United States.[57] Agencies in corporate as well as non-corporate form are subject to the provisions of the anti-deficiency act requiring apportionment of all appropriations or funds made available for obligation.[58]

V. PANAMA CANAL FUNDS AND PAYMENTS TO PANAMA UNDER PRESENT TREATIES

A. Panama Canal Funds

The basic framework for operation of the Panama Canal under the 1903 treaty was provided by section 5 of the Panama Canal Act referred to in Part III of this memorandum. Under that Act, the President was authorized to prescribe "tolls that shall be levied by the Government of the United States for the use of the Panama Canal" which were required to be fixed at rates sufficient to pay the estimated cost of the actual maintenance and operation of the canal.[59] Under the general laws of the United States applicable to the handling of funds of government agencies, tolls and other revenues were paid into the Treasury as miscellaneous receipts, and all disbursements were covered by direct appropriations.[60] Exceptions to the general rule, permitting expenditure of canal revenues before being covered into the Treasury were covered by appropriations made by the Congress.

Thus, section 6 of the Panama Canal Act authorized the President, through the Panama Railroad Company or otherwise, to operate dry docks, repair shops, yards, docks, wharves, warehouses, storehouses and other necessary facilities and appurtenances, "in accordance with appropriations hereby authorized to be made from time to time by Congress as part of the maintenance and operation of the Panama Canal. Moneys received from the conduct of said business may be expended and reinvested for such purposes without being covered into the Treasury of the United States, and such moneys are hereby appropriated for such purposes, but all deposits of such funds shall be subject to the provisions of existing law relating to the deposit of other public funds of the United States, and any net profit accruing from such business shall annually be covered into the Treasury of the United States."[61]

Similar provisions were included in the Sunday Civil Appropriations Act, 1917, which also "appropriated out of any money hereafter received as tolls, before such money is covered into the Treasury as miscellaneous receipts" amounts necessary to make refunds of tolls that were erroneously collected.[62]

After the Act of September 26, 1950, the agency previously known as The Panama Canal and renamed Canal Zone Government, continued to pay all revenues into the Treasury and receive direct appropriations to cover expenses of performance of its various duties in reference to the civil government of the Canal Zone.[63]

In the operation of the canal and related facilities, the Panama Canal Company is subject to the provisions of the Government Corporation Control Act.[64] As noted above, under that Act, funds of the Company, which must be deposited into accounts with the Treasury or depository banks approved by the Secretary of the Treasury,[65] are made available for expenditure by appropriations enacted annually by the Congress, after consideration of a detailed budget program submitted to Congress by the President in the Annual Budget of the United States.[66]

B. Payments to Panama

Funds for the lump sum payment to Panama of $10 million provided for in Article XIV of the 1903 treaty were appropriated by Congress by the Act of April 28, 1904.[67] An appropriation of $250,000 to enable the Secretary of State to make the first annual payment to Panama, due February 28, 1913, was made in a deficiency appropriation act for that year.[68] Funds for the annual payments to Panama under the applicable treaties were thereafter regularly included in appropriation acts for the Department of State until a permanent appropriation was enacted for making the annual payments in the amounts specified by the 1903 and 1936 treaties ($430,000).[69] In 1955 the appropriation was increased to $1,930,000 to cover the corresponding increase in the payments provided by Article I of the 1955 treaty,[70] and subsequent appropriation acts have adjusted the amount of the annual payment to reflect the effect of the relationship of the dollar to the price of gold.[71] The current amount of the annual payment ($2,328,000) is shown as one of three permanent appropriations in the Department of State budget for fiscal year 1978.[72]

When Congress provided in 1950 for operation of the canal by the government corporation previously known as the Panama Railroad Company and renamed the Panama Canal Company, the corporation was required to reimburse the Treasury for the amount of the annual payments to Panama under Article XIV of the 1903 treaty as modified by Article VII of the 1936 treaty, then totalling $430,000 a year.[73] When the 1955 treaty increased the amount of the annuity payment to Panama to $1,930,000, a Senate amendment of the bill to implement the treaty that would have required the corporation to reimburse the Treasury for the amount of the increase was deleted in conference.[74] The amount of the annual payment to Panama reimbursed to the Treasury is one of the costs of operation of the canal recovered from user charges under the tolls formula enacted by Congress,[75] but the payment by the corporation is to the Treasury, not to Panama, and the total amount of the annual payment to Panama is covered by appropriations budgeted by the Department of State.

VI. PROPOSED PANAMA CANAL TREATY

A. Operation of the Panal Canal—The Panama Canal Commission:

Insofar as concerns the question of the compatibility of the provisions of the proposed Panama Canal treaty with the provisions of the constitution limiting to the Congress the power to make appropriations, the pertinent provisions of the proposed treaty include the following:

Article I of the proposed treaty [76] grants to the United States for the duration of the treaty, "the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the canal." [77]

Under Article III of the treaty:

The United States "may" "establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment." [78]

The United States "shall, in accordance with the terms of this treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America." [79]

The Panama Canal Commission is to be supervised by a nine-member Board, the membership of which is to be comprised of five nationals of the United States and four nationals of Panama.[80]

The United States is to employ a national of the United States as Administrator of the Commission and a Panamanian national as Deputy Administrator through December, 1989. After that date the Administrator is to be a Panamanian and the Deputy Administrator a United States national.[81]

On the effective date of the treaty, "the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone." [82]

Other than to specify the name of the agency to be established to operate the canal, and to provide for Panamanian participation in the supervisory Board and appointment of a national of Panama, first as the Deputy Administrator and later as Administrator, the treaty leaves the form of the agency and the description of its powers entirely to the laws of the United States.

The laws of the United States governing the funding and fiscal obligations of government agencies generally are summarized in Part IV of this memorandum, and the application of those laws to the various agencies presently involved in the administration of the Panama Canal is described in Part V.

B. Payments to Panama

Article III of the treaty provides that "the Panama Canal Commission shall reimburse the Republic of Panama" in the amount of $10 million per annum for certain described services in canal operating areas and housing areas presently provided in the Canal Zone by the Panama Canal Company and Canal Zone Government. Provision is made for adjustment of the amount of the payment in three years for inflation and "other relevant factors affecting the cost of such services." [83]

Article XIII of the treaty provides that:

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 all real property, including non-removable improvements in the present Canal Zone, on a time schedule set out in the Article.[84]

The Republic of Panama shall receive "from the Panama Canal Commission" a return on the national resources dedicated to the operation of the canal in the form of three categories of annual payments: [85]

a. "An annual amount to be paid out of Canal operating revenues" computed at the rate of 30¢ per Panama Canal net ton, or its equivalency, for each vessel transiting the canal after entry into force of the treaty for which tolls are charged;

b. A fixed annuity of $10 million to be paid "out of Canal operating revenues" and to "constitute a fixed expense of the Panama Canal Commission."

c. An additional annual amount of $10 million "to be paid out of Canal operating revenues" to the extent such revenues exceed expenditures with a provision for carry over of unpaid balances of this payment to future years.

C. Effect of Treaty Provisions for Payment to Panama

Nothing in the language of the proposed treaty serves to take the stipulated payments to Panama out of the accepted principle that a treaty providing for the payment of money is not self-executing but, under the Constitution, requires appropriations by the Congress. In the 1903 treaty, the United States agreed to pay to Panama a lump sum of $10 million and annual payments of $250,000. Appropriations were required and have been obtained for all such payments.

The prescription of the proposed new treaty that the payments to Panama are to be made by the Panama Canal Commission appears to be without significance in this context. The Commission is the agency of the United States that the treaty provides will be "constituted by and in conformity with the laws of the United States of

Footnotes at end of article.

America" by means of which "the United States of America shall, in accordance with the terms of this treaty and the provisions of United States law" carry out its responsibilities under the treaty. The responsibilities are clearly those of the United States as a party to the treaty and as principal of the agency to be established under United States law. Presumably it would not be seriously contended that the effect of the constitutional provision limiting to the Congress the power to make appropriations can be circumvented by the device of providing in the treaty that a payment without appropriations is to be made by a named government agency instead of by the United States.

The purpose of the addition in Article XIII of the treaty of the language that the payments provided in that article are to be made by the Commission "out of canal operating revenues" is not immediately apparent. The "canal operating revenues" referred to are presumably the "tolls for the use of the Panama Canal, and other charges" which the United States (not the Panama Canal Commission) is authorized to "Establish, modify, collect and retain" by Article III, section 2 (c) of the treaty. These revenues are the same in kind as those that have been derived by the United States from the Panama Canal since it was opened to commerce and which have been expended pursuant to appropriations by the Congress since that time.

It may be that the objective of the provision of the treaty for making the payments "out of canal operating revenues" was to identify such payments as part of the cost of operation for purposes of establishing rates of tolls. Such a construction necessarily assumes that revenues will be sufficient to cover both the payments to Panama and operating expenses other than such payments and leaves unanswered the obvious question of the results of a disparity between the amount of revenues and the total of such expenses—is such a deficiency to be absorbed by the United States Government by appropriations to cover losses, or by Panama through acceptance of less than the amount of the payments stipulated by the treaty? In either case, the provision for payment out of revenues does not appear to affect the constitutional requirement for appropriations to carry the provisions into effect.

The provision of section 4(c) of Article XIII for payment of $10 million "out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission" bears some resemblance to the present provision of law requiring the agency operating the canal to pay into the United States Treasury annually in reduction of the investment of the United States in the canal, such funds of the agency as are in excess of requirements for working capital and forseeable plant replacements and expansion.[87]

Viewed in that light the provisions of section 4(c) of Article XIII would substitute Panama for the United States as the beneficiary of funds in excess of those required for operating and capital expenses, and effectively precludes further reduction of the U.S. Government's investment in the canal. This, of course, would represent a substantial departure from one of the present laws governing operation of the canal; a matter left by the treaty to the discretion of Congress.[88] In any event, like the provision of Article XIII for annual payments based on the aggregate measurement tonnage of ships using the canal during the year, the qualification introduced by section 4(c) relates to the determination of the amount of the payment, not to the necessity for Congressional appropriations to authorize payment.

The provisions of Article XIII of the treaty for payments to Panama "out of Canal operating revenues" also invite comparison with the provisions of the various acts of Congress referred to above appropriating or making available for expenditure revenues of the Panama Canal without such revenues having been covered into the Treasury. Viewed in that light, the payment provisions would represent an attempt to provide permanent appropriations for the treaty payments, an objective clearly precluded by the constitutional limitation to the Congress of the power to make appropriations.

Finally, it is not considered that the provision of Article XIII section 4(a) for calculation of the payment to Panama to be made annually under that section affects the constitutional requirement that treaty provisions for payment of money be carried into effect by Congressional appropriations. That section provides for payment of an annual amount computed at the rate of $.30 per Panama Canal net ton, "or its equivalency" for each vessel transiting the canal for which tolls are charged. The rate of $.30 per Panama Canal net ton "or its equivalency" is to be adjusted periodically for changes in the wholesale price index.

The obvious difference between the payment provided in this section and the annual payments originally provided in the 1903 treaty and modified by the 1936 and 1955 treaties, is that the latter established a fixed sum while section 4(a) of the new treaty provides for a variable annual payment depending on the measurement tonnage of ships paying tolls for use of the canal. Apart from an inherent ambiguity as to the meaning and effect of the phrase "or its equivalency" as used in the section, the required computation is a straight-forward arithmetical calculation. The provision for adjustment of the rate per ton used in the calculation to reflect changes in the wholesale price index is new only in the standard applied for the adjustment; annual payments under the existing treaties are adjusted for fluctuations in the price of gold in relation to the dollar. In any event, there is no basis for concluding that the provisions of section 4(a) for calculation of the payment or adjustment of the rate used in the calculation obviate the necessity for appropriations as required for the payments under the existing treaties.

In an early opinion upholding the constitutional validity of a treaty providing for the issuance (but not the payment) of bonds to an Indian tribe, the Attorney General correctly stated the rule applicable to the payments provided by the proposed treaty as follows:

"According to Article I, section 9, of the Constitution, as construed by the practice of the Government, an Act of Congress is necessary to appropriate money to pay the public debt, however created. The change of the form of the debt from a general stipulation in the treaty to bonds with a particular provision does not take away that necessity." [89]

FOOTNOTES

[1] *Asakura* v. *City of Seattle,* 265 U.S. 332 (1924); See American Law Institute, Restatement, Second, Foreign Relations Law of the United States, (1965) §§ 117, 118.

[2] *United States* v. *The Schooner Peggy,* 1 Cranch 103 (1801); *Hizo* v. *United States,* 194 U.S. 315 (1904); *Cook* v. *United States,* 288 U.S. 102 (1933); *Bacardi* v. *Domenech,* 311 U.S. 150 (1940)

[3] *The Cherokee Tobacco,* 11 Wall. 616 (1870); *Head Money Cases,* 112 U.S. 580, 598 (1884); *Taylor* v. *Morton,* 23 Fed. Cas. 784 (CC Mass., 1885)

[4] *Foster* v. *Neilsen,* 2 *Pet.* 253 (1829); *Head Money Cases,* 112 U.S. 580 (1884)

[5] An example is Item I of the Memorandum of Understandings Reached attached to the 1955 Treaty with Panama for which the United States agreed that "Legislation will be sought" to authorize the U.S. Government agencies in the Canal Zone to conform their employment practices to certain stated principles.

[6] *Reid* v. *Covert,* 346 U.S. 1, at 17 (1957); *The Cherokee Tobacco,* 11 Wall. 616, 620 (1870)

[7] *Restatement, Second, Foreign Relations Law of the United States,* (1965) § 141

[8] See XIII Op. Atty. Gen. 354 (1870)

[9] 8 Stat. 116

[10] Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers,* Vol. 1, p. 511

[11] 30 Stat. 1756

[12] 33 Stat. 2234

[13] See Crandall, *Treaties, Their Making and Enforcement,* 1966, pp. 178–182

[14] 5 Annuals of Congress, 4th Cong., 1st Sess., pp. 426–783

[15] Id., pp. 759–762

[16] Id., pp. 771–782

[17] 1 Stat. 459

[18] Convention for Payment of Indemnities and Settlement of Debts, concluded January 8, 1802; ratified April 27, 1802, proclaimed April 27, 1802. The text of the Convention appears in Malloy, *Treaties, etc.,* Vol. 1, p. 610.

[19] Debates and Proceedings, Seventh Cong., pp. 293, 294

[20] For the full text of the treaties see Malloy, *Treaties, etc.,* Vol. 1, p. 513.

[21] Annals, 8th Con., p. 11

[22] Id., pp. 17, 18

[23] 58 Cong. Rec., Pt. 4, p. 3680 at 3687.

[24] Turner v. American Baptist Missionary Union, Fed. Cas. No. 14251, CC Mich., (1852), 24 Fed. Cas. 345, 346.

[25] Restatement, Second, Foreign Relations Law of the United States, (1965), p. 435.

[26] Hearings, Subcommittee on Separation of Powers, Committee on the Judiciary, United States Senate, 95th Cong., 1st Sess., Panama Canal Treaty, Part 2, p. 4.

[27] 32 Stat. 481.

[28] 53 Stat. 1807.

[29] Article III; see C.Z. Code, Appendix IX, § 34.

[30] TIAS 3297.

[31] Article I.

[32] 37 Stat. 560.

[33] 48 Stat. 1122.

[34] New York ex rel. v. Rogers v. Graves, 299 U.S. 401, 406 (1937).

[35] H. Rept. No. 2396, 80th Cong., pp. 1–2; S. Rept. No. 17401, 80th Cong., pp. 1–2.

[36] 31 U.S.C. 841 et seq., 59 Stat. 597.

[37] 62 Stat. 1076.

[38] Act of September 26, 1950, 64 Stat. 1038.

[39] See H. Rept. 2935, 81st Cong., and H. Doc. 460, 81st Cong., for analysis of the objectives of the Act of September 26, 1950.

[40] See Panama Canal Act of August 14, 1912, 37 Stat. 560, and 2 C.Z. Code (1934 ed.) § 411.

[41] 76A Stat. 1, et seq.

[41] See 2 C.Z. Code § 62(g).

[42] 2 C.Z. Code § § 61–75, 121–123.

[43] 2 C.Z. Code § § 65–66.

[44] 2 C.Z. Code § 72.

[45] 2 C.Z. Code § 62.

[46] 2 C.Z. Code § 62(e).

[47] 2 C.Z. Code § 62(g).

[48] 2 C.Z. § 70.

[49] Pertinent provisions of title 31 include the following:

1. The Budget & Accounting Act of 1921 (31 U.S.C. §§ 1–64, 71, 471, 581, 581a).

2. Budget & Accounting Procedures Act of 1950 (31 U.S.C. §§ 2, 11, 14, 16, 18a–18c, 22–24, 65–67, 581–581c, 847).

3. Chapter 10. §§ 471–564, headed "The Public Moneys."

4. Chapter 11, §§ 581–752Z, headed "Appropriations."

5. The Government Corporation Control Act, §§ 841–871.

6. Chapter 22, §§ 1151–1176, headed "Fiscal Controls."

[59] 31 U.S.C. 2.
[51] 31 U.S.C. 484.
[52] 31 U.S.C. 581–752Z.
[53] 31 U.S.C. 665.
[54] 31 U.S.C. 847, 848.
[55] 31 U.S.C. 849.
[56] See, for example, P.L. 95–85, Department of Transportation and Related Agencies Appropriation Act, 1978, approved August 2, 1977.
[57] 31 U.S.C. 867.
[58] 31 U.S.C. 665.
[59] 37 Stat. 562.
[60] Annual Report of the Governor of the Panama Canal, Fiscal Year 1915, pp. 10 et seq., 41–47, 297, 298, 300.
[61] 37 Stat. 563. These provisions were reenacted as Chapter 4 of Title 2 of the Canal Zone Code (1934 ed.) comprising sections 51 and 52. In 1947, Chapter 4 was expanded into four sections, 51–54, retaining the provisions for appropriations and covering net profits into the Treasury. 63 Stat. 601. The sections were repealed by the Act of September 26, 1950, 64 Stat. 1049, when the canal and related supporting facilities were transferred to the Panama Canal Company for operation under the provisions of the Government Corporation Control Act.
[62] Act of June 12, 1917, 40 Stat. 179.
[63] See Annual Report, Canal Zone Government, Fiscal Year 1976, p. 135; the functions of the Canal Zone Government in relation to the operation of the canal under the 1950 legislation are summarized in Part III of this memorandum.
[64] 31 U.S.C. 846; 2 C.Z. Code 66; Act June 29, 1948 (62 Stat. 1076).
[65] 31 U.S.C. 867. The provisions of the Government Corporation Control Act are summarized in Part IV of this memorandum.
[66] See, for example, Department of Transportation and Related Agencies Appropriation Act, 1978, 91 Stat. 402 at 414.
[67] 33 Stat. 420.
[68] Act March 4, 1913, 37 Stat. 913.
[69] Department of State Appropriation Act, 1954, 67 Stat. 368. See S. Docs. 83d Cong., 1st Sess., Vol. 7, p. 180.
[70] Supplemental Appropriation Act, 1956, 69 Stat. 464.
[71] The "permanent" appropriation for annual payments to Panama was increased to $2,095,405 by the Supplemental Appropriation Act, 1973, 86 Stat. 1498; and to $2,328,000 by the Department of State Appropriation Act, 1974, 87 Stat. 640.
[72] Hearings, Subcommittee of Committee on Appropriations, House of Representatives, 95th Cong., 1st Sess., Department of State, Justice, Commerce, Judiciary, and Related Agencies Appropriation Act for 1978, Part 2, p. 40.
[73] Act Sept. 26, 1950, § 7, 64 Stat. 1041; 2 C.Z. Code 62(g). The dollar amount reimbursed to the Treasury adjusted for devaluation of the dollar is currently $519,000. Hearings, Subcommittee of Committee on Appropriations, House of Representatives, 95th Cong., 1st Sess., Department of Transportation & Related Agencies Appropriations for 1978 Part 1, p. 686.
[74] H. Rept. No. 1196, 85th Cong., 1st Sess., to accompany H.R. 6709.
[75] Act September 26, 1950, § 12, 64 Stat. 1022; 2 C.Z. Code 412.
[76] Sen. Exec. N, 95th Cong., 1st Sess.
[77] Art. 1, sec. 2.
[78] Sec. 2(d).
[79] Sec. 3. An illustrative description of the activities to be performed by the Commission, attached in an Annex, is referred to in section 4 of Article III. The Annex is published in Selected Documents, No. 6B, Department of State Publication 8914, Documents Associated with the Panama Canal Treaties, p. 1.
[80] Sec. 3(a).
[81] Sec. 3(c).
[82] Sec. 10.
[83] Sec. 5.
[84] Sec. 2.
[85] Sec. 4. At current levels of traffic, the payment for passenger and cargo vessels paying tolls on the basis of Panama Canal net tonnage, would be approximately $43 million. The section provides for adjustment of the 30 cents rate in future years to reflect changes in the wholesale price index.
[86] Article III sec. 3.
[87] Act of June 29, 1948, § 2, 62 Stat. 1076, now incorporated in 2 C.Z. Code § 70.
[88] Presumably, legislation enacted by the Congress to constitute the Panama Canal Commission would establish fiscal requirements to be met by the Commission as has been done for the present operating agency by the Act of June 29, 1948 (62 Stat. 1076) as amended by the Act of September 26, 1950 (64 Stat. 1041).
[89] XIII Op. Atty. Gen. 354 at 360 (1870).

Mr. HELMS. I thank the able Senator from Utah for yielding to me.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Utah has 1 minute; the Senator from Maryland has 5 minutes.

Mr. SARBANES. I thank the Chair.

Mr. President, the other day we considered an amendment which proposed to include in the text of the treaty a subject which could be handled by statute here in Congress, because it dealt with a matter entirely within our jurisdiction. I rose to oppose that amendment, because I take the view that on those matters where we retain jurisdiction and can change by statute we should not place such matters into a treaty with another country. To do so would mean that we could only change the provisions concerning the matter by treaty change when, in fact, it is a matter that is within our jurisdiction and with which we can deal by statute.

The subject matter of the amendment offered by the distinguished Senator from Utah is exactly such a subject matter. As I indicated the other day, it is my intention to take this approach toward amendments which may be offered which seek to take a subject matter, over which we can exercise control by statute, and to place it in a treaty we are making with another country.

Why should we do that if we are really concerned about maintaining the maximum amount of control in our own hands? Why should we lose the control we have, through the use of statute, over a particular subject matter by placing the subject matter in a treaty? As long as we retain statutory control, we can do it in a particular way that serves our purposes and if we evolve a different way for doing it, we can change the manner of doing it. We can add a requirement from time to time. We can eliminate a requirement from time to time.

When we have that kind of control, why should we take the subject matter, put it into a treaty with another nation, and thereby give that other nation some degree of control over a matter that is otherwise completely within our own discretion?

I submit that that approach defies logic, defies commonsense and most important of all runs counter to what is in our best interests.

I am not contending that the substance of the suggested amendment as to how to handle the matter may not in fact be the best way to do it. The point I am making is that it is a subject matter that we can deal with by legislation. Given that this is the case we ought not to take the subject matter and make it part of the treaty. This would mean that if we want to change how we deal with the subject we can only accomplish that change by an amendment to the treaty which, of course, then involves another nation. We have a subject matter here that does not have to be included in the treaty and therefore we do not have to bind ourselves to deal with it by treaty. It is open to us, to Congress, to the United States, to make its own determinations as to how this subject matter should be dealt with.

Given that this is the case, it seems to me prudent and sensible to maintain in our own hands the maximum amount of discretion and control over this subject matter. The way to do that is not to place it into the treaty which then means that the other nation with whom we have the treaty would thereafter be involved in determining how that subject matter should be dealt with.

Not only is that not necessary here, but in fact to include it in the treaty is to place limitations upon our own power to deal with this subject matter. We may well want to deal with it in the way that the Senator from Utah has suggested in the amendment. But we may want to deal with it that way over a period of time and at some future time as different procedures or concepts evolve we may want to change how we deal with it. As long as we do not lock it into the treaty, we have the power, the control, and the discretion to make such changes.

If you take a subject matter that is entirely within our own purview and put it into the treaty, then you needlessly and unwisely give another nation a role to play, and I just do not think we should do that. I do not think we need to do that. We do not need to lose something in terms of our own control and jurisdiction over the subject matter. For that reason I oppose the amendment of the Senator from Utah.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired. The Senator from Utah has 1 minute.

Mr. HATCH. Mr. President, that is the very reason we would like to have it dealt with in the treaty because we would like to deal with it legislatively, but the implementing legislation indicates that it is not going to do that. If the subject can be dealt with by legislation, why is it that the implementing legislation clearly indicates that the substance of my amendment will not be followed? Therefore, we want the Constitution to be abided by. The best way to do it is by this amendment. It does not hurt the Panamanians in any way, and it corrects an obvious defect in the treaties and in the implementing legislation.

So I recommend that my colleagues vote for this amendment, because it is a worthwhile amendment and one worthy of their consideration.

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

Mr. SARBANES. Mr. President, I move to table the amendment of the Senator from Utah and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Utah.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.). If he were present and voting he would vote "nay." I have already voted "yea." I, therefore, withdraw my vote.

Mr. BAKER (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the distinguished Senator from South Carolina (Mr. THURMOND). If he were present and voting he would vote "nay." I have voted "yea." I, therefore, withdraw my vote.

Mr. FORD (after having voted in the negative). Mr. President, on this vote I have a live pair with the Senator from South Carolina (Mr. HOLLINGS). If he were here and voting he would vote "yea." I have voted "nay." I, therefore, withdraw my vote.

(Mr. MATSUNAGA assumed the chair.)

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arizona (Mr. DECONCINI), the Senator from Missouri (Mr. EAGLETON), the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), and the Senator from New Hampshire (Mr. MCINTYRE) are necessarily absent.

On this vote, the Senator from Minnesota (Mr. ANDERSON) is paired with the Senator from Arizona (Mr. DECONCINI). If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Arizona would vote "nay."

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

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. BARTLETT), the Senator from Rhode Island (Mr. CHAFEE), the Senator from Nebraska (Mr. CURTIS), the Senator from Missouri (Mr. DANFORTH), the Senator from New York (Mr. JAVITS), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The result was announced—yeas 54, nays 29, as follows:

[Roll Call Vote No. 87 Exec.]

YEAS—54

Bayh	Biden	Chiles
Bellmon	Bumpers	Church
Bentsen	Case	Clark
Cranston	Humphrey	Packwood
Culver	Inouye	Pearson
Durkin	Jackson	Pell
Glenn	Kennedy	Percy
Gravel	Leahy	Proxmire
Hart	Long	Ribicoff
Haskell	Magnuson	Riegle
Hatfield, Mark O.	Mathias	Sarbanes
	Matsunaga	Sparkman
Hatfield, Paul G.	Melcher	Stafford
	Metzenbaum	Stevenson
Hathaway	Morgan	Stone
Hayakawa	Moynihan	Weicker
Heinz	Muskie	Williams
Hodges	Nelson	Zorinsky
Huddleston	Nunn	

NAYS—29

Allen	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Helms	Scott
Cannon	Johnston	Stennis
Dole	Laxalt	Stevens
Domenici	Lugar	Talmadge
Eastland	McClure	Tower
Garn	Randolph	Wallop
Goldwater	Roth	Young
Griffin	Sasser	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—3

Robert C. Byrd, for.
Baker, for.
Ford, against.

NOT VOTING—14

Abourezk	Chafee	Hollings
Anderson	Curtis	Javits
Bartlett	Danforth	McGovern
Byrd, Harry F., Jr.	DeConcini	McIntyre
	Eagleton	Thurmond

So the motion to lay on the table was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I believe the Senator from Alabama is to be recognized. Will the Senator yield to me?

Mr. ALLEN. Yes, I will.

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama (Mr. ALLEN) is recognized.

Mr. ROBERT C. BYRD. Mr. President, may I inquire of the distinguished Senator from Alabama, the distinguished Senator from North Carolina, and the distinguished Senator from Nevada as to whether or not there are any further amendments to article III? I do not believe there are. If that is the case, we could move on to article IV, Mr. HELMS could lay down an amendment tonight to article IV, and we can get an agreement on it, I believe—if Mr. SARBANES is agreeable, Mr. HELMS is—to allow 1 hour on that amendment, to be equally divided, the time to begin tomorrow.

Mr. LAXALT. Mr. President, apparently all proposed amendments to article III of the treaty have not been disposed of. The Senator from Nevada (Mr. CANNON) indicated earlier that he might want to process his amendment this evening, but he has left the Chamber. If we could have moment to contact his office and verify that——

The PRESIDING OFFICER. The Senate will be in order. The Chair is unable to hear what Senators are saying.

Mr. ROBERT C. BYRD. I wonder if we could move on to article IV.

The PRESIDING OFFICER. Senators will please suspend until the Senate is in order.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Could we move on to article IV, subject to allowing Mr. CANNON to call up an amendment to article III tomorrow?

Any Senator can do that if he wants to, in any event.

Mr. LAXALT. That would be perfectly agreeable to me.

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

Mr. ROBERT C. BYRD. Yes.

Mr. GOLDWATER. While we are still in session this afternoon, and there are a few Members on the floor, I would like to take this opportunity to commend our majority leader. It has been brought to the attention of our colleagues several times here that at one time he was opposed to the Panama Canal Treaty.

Now, I am a rather stubborn individual, and I am known for sticking to my ideas; but I think I would be crazy if I did not change my mind once in a while.

So I rise at this time in defense of a man who has seen fit to change his mind. I think, as one famous old Senator said—oh, I forget what he said, but it was pretty good thinking [laughter]—something about consistency being the hobgoblin of little minds.

So I want to defend my leader. Although I wish he had not changed his mind, I defend him for doing it, and always will.

Mr. ROBERT C. BYRD. Mr. President, if the Senator from Alabama will allow me, I have been asked the question twice as to why I had changed my mind, and I spread the reasons on the record, and I have been glad to do so. In fact, I have thought on one or two occasions I would slip a note to the Senator who has the floor and ask him to ask me why I changed my mind, so I could spread it on the record; and I have been able to do that twice.

But I am glad there are Senators on the floor who will rise to my defense, because I need that kind of defense. I know I can depend on the distinguished Senator from Arizona always to be fair, just, and reasonable, as he has just demonstrated once again.

Mr. President, could we move on to article IV?

The PRESIDING OFFICER. There being no further amendments to article III, the clerk will read article IV.

ARTICLE IV

The legislative clerk read as follows:

Article IV, Protection and Defense.

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes—

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

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

Article IV is as follows:

ARTICLE IV

PROTECTION AND DEFENSE

1. The United States of America and the Republic of Panama commit themselves to

protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

3. 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 establish a Combined Board 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 United States of America or the Republic of Panama. 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.

4. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, 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.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Mr. ALLEN. Mr. President, the distinguished Senator from Alaska (Mr. GRAVEL) having expressed a wish to respond to certain of my comments, I would like, subject to yielding first to the distinguished Senator from North Carolina, to ask that the Senator from Alaska be permitted to speak for 15 minutes, and that I then be recognized again.

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

Mr. ALLEN. I yield first to the Senator from North Carolina.

UP AMENDMENT NO. 19

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

Mr. ALLEN. I had also promised to yield to the Senator from Arkansas for 3 minutes.

The PRESIDING OFFICER. Is the Senator from North Carolina now offering his amendment?

Mr. HELMS. That is correct.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk proceeded to read the amendment.

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

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

The amendment is as follows:

Before the first sentence of paragraph 2 of article IV, insert the subparagraph designation "(a)".

"(b)(1) When in the performance of official duties, the vessels and aircraft operated by or for the United States Forces may move freely through Panamanian air space and waters without impediment.

"(2) Similarly, the vehicles, equipment, and personnel of the United States Forces may, when in the performance of official duties, move freely in the Republic of Panama without impediment.".

Mr. HELMS. I ask unanimous consent that the amendment be laid aside, in accordance with the unanimous-consent request propounded by the distinguished majority leader.

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

Mr. ROBERT C. BYRD. Mr. President, could we get a unanimous consent that there will be a 1-hour time limitation on the amendment to begin running tomorrow when the Senate resumes its consideration of the treaty, to be equally divided in accordance with the usual form?

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

Mr. HELMS. I thank the Senator from Alabama and I thank the Chair.

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield 4 minutes to the distinguished Senator from Arkansas (Mr. HODGES), as in legislative session, and to then yield to the Senator from Alaska (Mr. GRAVEL).

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 4 minutes, as in legislative session.

SENATOR JOHN L. McCLELLAN

Mr. HODGES. Mr. President, last Tuesday I was given the high honor of being asked to give the dedicatory address at the dedication of McClellan Hall, Arkadelphia, Ark. My comments at that dedication dealt with what I thought of the late Senator McClellan and the role he played in the U.S. Senate.

I have been asked by a number of people to include those remarks in the RECORD. I ask unanimous consent that those remarks be printed in their entirety in the RECORD, and, if it is possible to include them in whatever remembrances are gathered together and published with other remarks in the Senate, I ask unanimous consent that that be done.

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

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

STATEMENT OF SENATOR KANEASTER HODGES, JR.

Mrs. McClellan, Dr. Grant, distinguished guests, ladies and gentlemen: I have in hand a copy of a letter, dated March 11, 1938. It is styled at the top "John L. McClellan, Candidate for United States Senator, Temporary Headquarters Malvern, Arkansas." It is addressed to W. M. Shelby, an old friend, and it is from 42-year old John L. McClellan, Congressman from the Sixth District of Arkansas. Mr. Shelby's daughter lives in Newport now, and has the original. In a column on the left side of the letter, as was the custom in those days, is a recounting of the approximately first one-half of John McClellan's life. It starts off at the top by saying "The son of a tenant farmer at birth" and continues on to indicate that he was licensed to practice law when 17 years of age, becoming the youngest lawyer in the United States. At 21 served as a lieutenant in the Army in the World War; elected city attorney of Malvern at 24; elected prosecuting attorney of the Seventh District of Arkansas at 30; elected to Congress from the Sixth District of Arkansas at the age of 38; and then it concludes by saying "Now, at the age of 42, on the way to the United States Senate."

The letter itself gives insight into the man who was John McClellan. The first paragraph concludes with John McClellan telling Mr. Shelby to relax and enjoy his vacation. He goes on to say "I know how difficult it is to do this, because I am miserable when I am not working." The second paragraph begins with this statement, "I am fully confident of victory." It concludes by saying, "When elected, I shall undertake to make the State of Arkansas a senator the people can be proud of." We see in this letter then some of the essential hallmarks of the life of John L. McClellan: the love of work, especially public service; his confidence in final victory; his love of Arkansas; and his desire to work for the State of Arkansas and to make it a senator of which it could be proud.

It is ironic that also at the top of the stationery is found the picture of a large blue ribbon, which has across it "A Winner." As we know, he did not win that race. It was to be four years later before he could claim the victory and a seat in the United States Senate. It must have been a dark and depressing time for him. But as he was to do time and again, in the face of the vilest vicissitudes of life, John McClellan did not merely survive—time and time again he prevailed.

The tough metal which was John Little McClellan was forged in a plain rural home, hammered out in hard times, and tested time and again politically and personally; by presidents, by Jimmy Hoffa, by McCarthyism, by the TFX Scandal and by personal losses—and he was not found wanting in any of these.

But I am equally impressed by other things: by how he treated the little man; Jim in the Senate gym, who told me fondly of his $1 football bets with the Senator and how he misses him. Or the chauffeur of the Senate limousine, who was so sad at his friend's death, having regularly driven him, commenting on the many kindnesses of John McClellan. The question the Senator would

ask about U.S. Attorney prospects—Does the man have the courage to prosecute the rich and the powerful?

There were the dramatic projects; the Arkansas River Navigation is one. But so too we should recall the countless thousands of individuals he helped: Social Security, pensions, academy appointments, veterans, local projects—so many in those 35 years. So long as our people honor those who have labored long and well in the vineyards of public service, John L. McClellan's name will be remembered with love, gratitude and reverence.

Does this mean there were no faults? No mistakes? No errors of judgment? Of course not. Must one share the political philosophy of John L. McClellan to honor him and recognize his achievement? Of course not!

His record in the United States Senate was outstanding. His impact on our state obvious. His contributions to the nation among those of any senator.

It was William Penn who said, "They have a right to censure who have a heart to help." John L. McClellan feared no man or principality, but he always had a heart to help also.

We are here today to dedicate this building, which with the favor of God and the labor of man has been completed. It embodies the wisdom of one man and his political generation, and it will impart its treasures of wisdom and knowledge to all who follow and study. We never fully learn the lessons of history, but with the use of Senator McClellan's papers perhaps we will not forget those lessons either.

It is my hope this hall will expand and grow, for this dedication is in vain without a re-dedication to the deep public service of John L. McClellan. His reputation for honesty, integrity and service will be alive in the hearts of people of good will and freedom longer than this building will stand. He was, and is, a man of that stature.

Who would have guessed, when John McClellan wrote that letter on March 11, 1938, of the great service he was *yet* to render—the tumultous decades ahead—that he would be a friend of presidents, serve 35 years in the United States Senate, his name become a household word, eventually to be chairman of the powerful Appropriations Committee. "The son of a tenant farmer at birth"—he came a long way, but he brought with him in the coming his common sense and common touch.

His death was the end of an era in Arkansas and part of the twilight of a Senate era—the powerful and effective committee Chairman from the South.

One can almost hear the bittersweet irony of the Gaelic toast: "Here's to us, and those like us, of which there are few, and they are all dead."

Except John Little McClellan shall live; in his papers, in these exhibits, in memories, in his good works.

The American dream that John L. McClellan lived out to its fullest is indeed alive and well, here in McClellan Hall, Ouachita Baptist University, Arkadelphia, Arkansas.

This day indeed we celebrate a rising sun—we thank God for those who gave this hall to preserve and perpetuate his work, we thank God for the life of John Little McClellan.

He was, and is, as that first stationery so stated, "A Winner."

BILL RUDDELL

Mr. HODGES. Mr. President, Bill Ruddell, a longtime close personal friend of mine, is the outstanding president of the White River Production Credit Association, which has its principal office in Newport, Ark., and is one of the largest, most efficient, and financially sound of the Production Credit Associations of this Nation.

He is a noted leader in his community, a leader in the church, an outstanding father and husband, as well as being of the highest reputation in the business community.

I was honored to speak at the annual meeting of the White River Production Credit Association in January of this year, where my remarks were preceded by a speech by Mr. Ruddell. His speech was in response to the severe financial crisis in agriculture today, and comes out of more than 28 years experience in agricultural financing. I strongly recommend to all who are interested in resolving the problems of agriculture that they read his remarks, which are sound, down-to-earth and have a practical application.

I ask unanimous consent that his speech be printed at the conclusion of my remarks.

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

SPEECH BY MR. RUDDELL

This concludes my financial report. I have briefed it, for it is printed in your program for you to study as time permits when you get home. I assure that your association at present is in good financial condition.

Usually following the financial report I give a brief management report on operations or credit, but today in lieu of such a report I have put together excerpts from a recently published agriculture history. I think this will serve a purpose better than a cold, statistical management report on credit or operational procedure, and your board chairman has already discussed some operational procedure and credit with you.

I feel that a review of this brief agricultural history will piece together and clarify some of the things we have forgotten which have carried us to our ailing agriculture situation which is crying out with its problems today. I feel these excerpts can remind us of what has perhaps brought agriculture to its present predicament, and perhaps has contributed to our nation's increase in city slums and poverty which has to be supported by food stamps.

There is a saying, "You can stand so close to the forest you cannot see the trees." This is perhaps what has happened to us—we have been moving too fast to rationalize our situation.

I want to share with you some of the personal things I have observed during my twenty-eight years in agriculture financing. I hope as you listen, you too, can relate them to some of our present agriculture problems we are facing today.

During the years following World War II, American agriculture's thrust toward bigness took on a new momentum. Fueled by cheap gasoline, by the new machines new technology, and by the endless quest for greater profits, expansion surged forward. With astonishing rapidity, the 60-horsepower general-purpose tractor was replaced by a new 130-horsepower model, then by a towering 235-horsepower machinery with a $40,000 price tag. The single-row harvester gave place to combines that could handle four rows simultaneously, then eight rows. The cost of such new equipment made it economically imperative for farmers to take on more acreage. Between 1950 and 1975 the acreage of the average American farm doubled and the value of farm machinery trebled.

Those who could not keep up with the frenzied pace were shoved aside and forced to drop out. In the new agriculture that was taking shape, there was no room for the "average" operator who simply wished to live on the land, work the soil and sell enough products to pay his bills, and generally, farmers found themselves underpriced and cut out of the market by the supermarket chains and agri-business corporations. In 1950, there were over 5.5 million farms in the country. By 1975 half of these farms had been consolidated out of existence. It was all part of the life-and-death struggle that one farm spokesman called "the survival of the fit."

In the past two decades millions of farm families have left the land for the cities and the suburbs. And with them have come millions of farm workes and millions of small-town residents. At present, 73 per cent of our population is crowded onto less than 2 percent of our land.

The movement in the United States toward bigger and fewer farms has received substantial assistance from government policies and programs for government research, and this research has been conducted at agricultural colleges and experiment stations. While Congress has appropriated hundreds of billions of dollars for American agriculture during the course of the last few decades, this research and costly technology has benefited only the affluent farmers, or the nation's agri-businesses.

The interests of average producers and non-commercial farmers have been given only minimal attention. The goal of public policy has been to create an expanding, industrialized system for production of poultry, beef and hogs, and elaborate machinery for the application of fertilizer, insecticides and herbicides and mechanical equipment of assorted crops and agriculture. Human considerations have been of little or no importance. Not only has this high priced equipment completely failed to meet the majority of the nation's farmers needs, but in most cases has posed a serious threat to their survival. In the last decades millions of farm families have been forced off the land and into cities, but this vast exodus from the countryside has been viewed by the U.S. Department of Agriculture with complacency and indifference. In fact, some agricultural leaders and policymakers have looked upon the loss of farm population as actually beneficial. In 1960, the future Secretary of Agriculture wrote in the USDA Yearbook: "The declining trend in farm population is itself a sign of a strong agriculture. . . . We will need fewer farmers in the future, but they must be better. They will be operating on a fast track and the race will go to the swift." He did a wonderful job by maintaining open exports and developing foreign markets, but having an agri-business background did not realize where average agriculture was going. Six years later a USDA report stated, "Our rural population is becoming largely a non-farm one. By 1980 only one rural resident in seven or eight may live on a farm. It is generally agreed that it is neither socially desirable nor economically feasible to try to arrest or even slow down this trend." And although not said, it was understood then that the exodus would be toward the city-unemployment and welfare.

In 1972, the USDA report stated: "Agricultural policy should be directed towards maintaining agriculture as a viable industry and not as a way of life. The number of farms, or the farm population is irrelevant except as these influence performance of the agricultural industry." This was someone writing them off, but at what a price to the nation—what eventual costs—high cost foods, high cost land and a controlled agriculture by big corporations.

Views such as these have in large part

shaped our national agricultural policies—policies that have seriously neglected the interest of general farmers and have substantially accelerated the nation's trend toward larger and fewer farms, and if continued, will absorb all in its wake, regardless of present size.

The needs of the great majority of farmers have been ignored by research institutions and virtually no money or effort has been directed toward the development of economical, small-scale technology. The high costs of this developed technology has created the heavy national agricultural debt load burden, now well over $100 billion. This technology did not research price or returns needed to cover investments, and is leading to disaster to some now, but all later, and the nation in the end. The third president of the United States, Mr. Jefferson, warned against this trend nearly two hundred years ago.

Thus, all the high priced equipment has completely failed to meet the needs of the majority of the nations farmers, and as I stated, in many cases the development of such technology has posed a serious threat to their survival. Average farmers have found themselves unable to compete with high powered equipment and again, I repeat, that the average farmers have found themselves caught up in these excess capital costs and are sinking ever more deeply into debt in order to obtain the new machinery that will, if continued, only widen the debt-income ratio.

In 1969 one USDA official candidly admitted that, for the majority of farmers, government research had probably done more harm than good. He stated that the farmers had "been on the treadmill of technological change so long that they are frustrated about the past and present, and apprehensive of the future . . . They accept the new technology as a requirement for survival . . . The purchase of new machinery and the adoption of new practices often force them to overcapitalize their operations, bleed their assets and mortgage their future returns. . . . When we ask what agricultural research has done for this, the answer comes back: 'Very Little' . . . We have narrowed their choices to two: either get with the new production efficiency technology as we are developing it, or get out of the farming business."

Modern American agriculture prides itself above all upon its superabundant productivity and superlative efficiency. In 1975, a leading Department of Agriculture official declared: "I want to salute the world's greatest food system: A system of wondrous efficiency which is the envy of the world. A system whose innovations continue to point the way and serve as models for every other food system on our globe. . . . One American farm worker today supplies enough food and fiber for 56 people . . . Agricultural output last year was twice what it was 20 years ago."

In 1970, the Secretary of Agriculture stated: "Using a modern feeding system for broilers, one man can now take care of 60,000 to 75,000 chickens. One man in a modern feedlot can handle upwards of 5000 head of cattle. One man, with a mechanical system, can operate a dairy enterprise of 50 to 60 milk cows." In 1972, The American Farmer noted, "A new asparagus harvester can take care of 6 acres per hour, doing the work of 400 hand laborers."[1]

[1] All operated as big agri-businesses—all vulnerable to disease control & death loss, excess capital, use of larger & larger sources of anti-biotics & poison until consumption is, or may become, dangerous—Stronger and stronger herbicides until the soil is no longer viable and many other dangers too numerous to mention—all highly vulnerable to finance for lender and borrower.

The sheer output of modern American agriculture is, without question, stupendous. Yet in order to measure the true efficiency of any system of farming, it is necessary to consider inputs as well as outputs. And the inputs of American agriculture are massive.

At present, agriculture consumes more petroleum than any other of the nation's industries. In 1975, one Harvard scientist stated, "The total energy consumed by U.S. agriculture per year is equivalent to more than 30 billion gallons of gasoline. This represents more than five times the energy content of the food produced. Petroleum is used not only by the machines that plant, cultivate, spray, and harvest the nation's crops, but also in the production of fertilizers, insecticides and herbicides. Additional petroleum is used in the manufacture of farm equipment, in the production of electricity used on the farm, in irrigation, transportation, and processing. Agricultural economists who have totaled up these various energy inputs of the nation's agriculture have found that when taken together, the energy that goes into making our food is actually more than the energy contained within the food itself. According to some calculations, American agriculture now expends over five calories of energy in the form of fossil fuel in order to get one calorie of food to the consumer.

The Department of Agriculture tells us that, in the last twenty years, farm production has doubled. Yet it is also true that energy inputs during this period have rapidly increased. Between 1950 and 1970, the amount of fertilizer used in the production of the country's corn crop rose by eight times, the amount of insecticides by ten times, and the amount of herbicides by twenty times. One group of Cornell scientists who have painstakingly tabulated the inputs and outputs of the nation's corn crop during the last few decades have come to the conclusion that the American farmer produced corn 25 per cent more efficiently in 1945 than in 1970. Rather than become more efficient, United States agriculture, according to these experts, has become increasingly inefficient.

I feel there is a parallel between our accelerated, government-supported technology whose urgency was to industralize agriculture too rapidly, resulting in too rapid expansion of high cost capital, all coupled with excessive, accelerated operating or input costs, dependent likewise upon an accelerated, increased price that has not occurred, in relation to the invested excess capital and accelerated operating expense. The designers of the accelerated technology forgot to plan for accelerated price, resulting in lack of profit and in operating loss which so many of you have fought and attempted to compensate by increasing debts on real estate to get income to replace your operating loss, or sometimes selling assets, resulting continuously in erosion of net worth, all because of the fact that it was the only way you knew to stay alive and to continue in the only occupation you know and love.

I do not ask, or expect, that all in this room agree with this, but I remind one and all that whether you agree or not, without an increased price now to compensate the present dilemma, there is no solution to our present agriculture situation, for agriculture is too far in debt ($120 billion, and $18 billion income—nearly a 7 to 1 debt ratio). Any lender will tell you that a loan is lost or cannot be made with such ratio, for the borrower is broke.

I hesitate to make any additional remarks, but if we are to solve our present problems, we must be fair and honest in facing those problems. Such must be solved, for as agriculture goes, so goes America. If many, like the farmers now, had hollowed in 1924, there might not have been a 1929 and the 30's. If these remarks are too strong, or disagreeable, I apologize, but they still remain facts, not fiction, for I can attest to debt loads; the erosion of assets; and decline in net worth. This cannot continue, nor will it go away. The cost-price squeeze *must* be solved, or an industry will surely die, and if agriculture should die, with it being the base of our economy (which even now some disbelieve), other industry will also die with it, and so the national economy; thus, the problem lies not just with the farmer, but with the whole nation.

This concludes my remarks.

Thank you.

THE PANAMA CANAL TREATY

The Senate continued consideration of the treaty.

Mr. GRAVEL. Mr. President, first, I wish to express my gratitude to the Senator from Alabama. We could probably go on for more than 25 minutes. I wanted to interject my thoughts into this colloquy so it could be more evenly balanced.

The Chamber has fallen into silence. This is the first silence we have had today in the deafening cackle. I think that is the proper word, the deafening cackle that we have had. I think it is occasioned by reports coming out of Panama and the obvious disagreements which have appeared, or the fissures which may appear, within the proponents of the treaties which are before us.

I think it is most unfortunate that the Members of the Senate who are so close to these treaties would find relish in this because, as I stated earlier and I will state again, their joy is somewhat like the joy of an arsonist who has thrown a can of gasoline into a house. The house is burning down and they relish that. But what they relish even more is the fact that the firemen who are trying to put out the fire are having difficulties in coordinating their activities.

That they find relish in that I think is unfortunate, very unfortunate indeed, because if we have a dilemma before us today it is because of the opponents of the treaty who truly are opponents to change. The Senator from Alabama, I think for the first time, revealed truly one of his goals. That is, as he stated, to topple the Torrijos government and institute, as he sees it, a democracy.

I would first like to speak to that particular problem because, one, toppling of the Torrijos government, if that can be done from the Senate floor, would be very innovative, and, two, I do not think it is any guarantee that it would bring about democracy. I think we would be better advised, rather than to meddle tactically in domestic affairs of another country, to look to ourselves.

With respect to Mr. Torrijos, I do not think he needs any defense. I think the record should be made abundantly clear to the American people and to the people of Panama that he is the head of state and should receive the proper respect from Members of the Senate in the position he occupies.

I do not think there is a leader in this country who can claim that he has doubled the amount of schools in his tenure of office, and that is what Mr. Torrijos

has done in Panama. That is quite an accomplishment. I do not think that has even been done in Alabama or in Alaska. Doubling the number of schools by a person is an unusual accomplishment because it is education and knowledge which is a touchstone of democracy. So if a foundation is being built for democracy, I submit that the present leader of Panama has made a contribution in that direction.

Also, if there is a reason why he has been abused so much by Members of the Senate, I think I know why. It is because he has put the United States of America to the test more than any other leader in the history of Panama. Every single leader of Panama since the 1903 treaty was signed has been trying to get that treaty changed. This is the first time that a leader of Panama has been able to get it to the floor of the Senate. He negotiated a treaty and did a good job.

If we respect and honor Jimmy Carter as the President of the United States and admire him for the courage he demonstrated in bringing the treaty to the Senate floor, then I think we owe the same respect to the gentleman who was on the other side of the negotiating table because it takes two to tango, and it takes two to bring us where we are.

So if this treaty is good, as I think it is, and I think many people throughout the Nation think it is good, then the credit should go, one, to Jimmy Carter and, two, to Omar Torrijos—equally, not one above the other.

I can understand some people who hold an archaic view of what the United States should be, who hold an archaic view of gunboat diplomacy in Panama. I can understand that, if they are made at the change of events or if they want to vent their anger. They want to vent that anger at the person who brought it thus far. So I do not say this by way of defense of anything that Mr. Torrijos has done, or his leadership. I stated it as a simple fact for any person to observe, and it would not take much of an observation to recognize that unusual accomplishment. That is what gets a lot of people mad on this floor, the fact that he has been able to realize the aspirations of his own people.

I think it is a bit of an exaggeration when my colleague from Alabama tells us that he is for the Panamanian people. If he is so much for the Panamanian people, then he ought to be for the treaty that the Panamanian people have overwhelmingly already approved.

When he says he wants another plebiscite in Panama, what he is saying is that he really wants to change that treaty so that there will have to be another plebiscite, a plebiscite that will turn it down.

I venture this thought: If there were a vote tomorrow in Panama on the Neutrality Treaty, based on what knowledge I have, if there were a plebiscite, it would be turned down, overwhelmingly.

As I stated earlier in the day, if I were a citizen of Panama and going to vote on this Neutrality Treaty in Panama, I would vote against it. I would clearly vote against it. It gives unbelievable rights to a foreign power over my sovreignty. If we had a labor dispute on the Panama Canal after the year 2000, the United States could unilaterally send in troops to correct the labor dispute. As I view it, a labor dispute in the United States is a very internal situation and a labor dispute in Panama is a very internal situation.

Let us now recapitulate as to how we got ourselves into the dilemma we have. First, let us look to the motivation of the proponents of the treaty on this side of the aisle, starting with the President of the United States. In my mind, Jimmy Carter has demonstrated courage and leadership of an unusual order. There is no question that his taking leadership on the Panamanian treaty to bring about a change that would create justice between ourselves and Panama was a very unusual act.

I think that there will be no personal benefit to him except in the retrospect of distant history. It was really an oddity that there should be such a view held, just prior to the vote on the first treaty, that we should vote for the treaty because it will make Jimmy Carter look bad in his leadership role if the treaty were turned down. I can assure you that Jimmy Carter will not look bad in anyone's eyes as history looks back upon what has taken place.

It would have been the Senate that would have looked bad had the treaty been turned down. That is who really would have been hurt, not Jimmy Carter. He did the best of his ability. He brought the treaty to us. If we turned it down, it would be the Senate that would have turned down the treaty, and Jimmy Carter would have done his work and we would have done our work. So I think his motivation is fine, honorable, and, in my mind, in the great tradition of this great country of ours.

Let us look at the motivation of the Senate leadership, Senator ROBERT C. BYRD. I think that here, again, he demonstrated equal courage, because I am sure that this is not a popular issue in his constituency, and he is one who can read his constituency very well. But, I think, he characterized his views with the Edmund Burke statement; that is, that he not only owes the people of his State, West Virginia, his industry, which he has given more than I could ever have thought possible; but he also owes the people of West Virginia his judgment. Oftentime, it takes courage to exercise that judgment.

The same thing is true of FRANK CHURCH. This is not a popular issue in the State of Idaho, any more than it is popular in the State of Alabama. So when a man stands up on this floor and is prepared to take his political life in his hands, that, I think, is meaningful, particularly when you know that he is talking from the bottom of his heart as to what is important.

Then to see Senator SARBANES stand on this floor, day in and day out, to provide leadership in this matter in a most skillful and able manner, also, I think, indicates courage, because the easy way out on this issue is to cop out to the demagoguery and to the false emotion that has pervaded this country. That is the easy way out. To my mind, to stand up and say what is right when there are no benefits in it for your constituency and yourself, that is what takes courage, and where great political damage could happen to yourself.

I stated a while back that had we had a secret vote on the treaties, the treaties would have passed a long time ago. What does that mean? That means the people in this Chamber know what is right and what is wrong. They know a change has to take place and if they could have voted secretly, they would have seen that a change would take place.

What happens in a democracy? By and large, the people of the country make cowards of the Senators. That is right; we are cowards. We are afraid of losing our jobs, so we cower to general public opinion, whether that public opinion is informed or not. We cower down.

So here we have a situation, because of the great sums of money that have been put up by the radical right, confusing the Nation with false information, in some cases outright lies; we have a situation where the proponents of a decent treaty have been pushed to the wall and, with their backs up against the wall, they made a normal human error. That is what I think is really the problem that has occurred today.

The human error was that the form became a little more important than the substance. In this case, I equate the form with the desire to pass a treaty. The substance is, is it a good treaty?

I was quite upset during the period that these amendments were accepted and were put on; not the DeConcini amendment. A lot of the other amendments were not worth the attention they got. "Cosmetic" is probably the kindest word I can use. They were put on so that we could have something that we could take back to the people and tell them, "Hey, I voted for the treaties, but, boy, I cleaned them up before I voted and it is OK now."

The issue is a very clear issue: Do we give back the canal to the people of Panama so we can continue using the canal? That is it. That is the issue. We can talk about defense and troops, and a lot of it is just eyewash.

The proponents of the treaty—and here, now, I mean the full gamut—we are all at fault. I for not speaking up when I thought better; General Torrijos for pushing too fast, with the inexperience of his first year, trying to push the Senate to get a decision on this. They were pushing to have a vote last September. They think they have problems now; just imagine what they would have been last September.

Then the leadership for agreeing to take the measure up and bring it to the Senate for a vote before they knew we had the votes. We did not know we had the votes until the last day. And we bought the last votes with the DeConcini amendment.

So the situation we have today is that we now have passed a treaty that is unacceptable to the Panamanian people.

Now we have an interesting dilemma. We see the error. We can slough over it. We can finesse it, which is obviously what we politicians generally attempt to do to avoid embarrassment.

What will happen? Well, the Panamanian people will turn down the treaty. So we can say that we in the Senate did our job and it is not our fault that the Panamanian people turned down the treaty.

Of course, we have heard this all day long, talking about the misunderstandings. That was no misunderstanding about the treaties that were brought to us. The misunderstanding is in this Chamber. That is where the misunderstanding is. The misunderstanding is what pushed the acceptance of the DeConcini amendment, which is not misunderstood in Panama. It is clearly understood in Panama and, from their point of view, it is not acceptable. It is an invasion of their sovereignty for perpetuity. I confess, as I read the English language, I view it exactly that way. It is an invasion of their sovereignty for perpetuity and they are not going to accept it.

So we are faced with this dilemma: We pass the treaties and they vote it down. Who is going to look bad in the court of world opinion? We Senators will stand up and pontificate and make speeches and tell them what a great job we did passing these treaties, and those terrible Panamanians did not have the gratitude to accept what we threw them.

Of course, with all the media in this country, we will come off well. Fortunately, the media in this country are beginning to mature. In fact, I might say the media on this subject have been very good all along.

Mr. ALLEN. Would the Senator repeat that?

Mr. GRAVEL. I think the media have been correct on this subject all along.

Mr. ALLEN. I am sure the Senator would think that, inasmuch as they have been drumming for the treaties all along. I can see how the Senator might think they are responsible. Of course, I have just the opposite view, I say to the distinguished Senator from Alaska.

Mr. GRAVEL. That is right. The reason I think the media are doing a good job right now is I share the same view they have.

That is not unusual, to have that view.

I would like to reinforce the record at this point and ask unanimous consent to have printed in the RECORD an editorial from the Washington Post, a Time essay from Time magazine, and what I feel is a most perceptive piece by Haynes Johnson entitled "Trial" which appeared on April 9. I think all of those would reinforce the RECORD with repect to where we stand right now.

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

RESERVATIONS ABOUT DECONCINI

The "DeConcini Reservation," which the Senate attached to the first Panama Canal treaty, is a ratty thing to behold. Imposed on a desperate (and careless) White House by Sen. Dennis DeConcini (D-Ariz.) as the price of his vote, it authorizes the United States on its own to use military force "in Panama" to keep the canal open and operating after the year 2000, when ostensibly Panama would be in full control. The "reservation" is arrogant. It mocks the intent to replace the dangerously obsolete terms of the 1903 treaty with a relationship respectful of a small country's sovereignty and pride. And it could yet kill the two Panama treaties.

Here is why: From the moment it was enacted, Mr. DeConcini's handiwork galled all Panamanians, regardless of their attitude toward the government or the new treaties. All other Latins, too, instantly understood that the language trod grossly on Latin America's traditional resentment and fear of American intervention. It can be argued that, regardless of treaty language, this country has the power to intervene in Panama, and would. But to state that, to rub Panama's nose publicly in the dirt, is intolerable. So it is no surprise that the Panamanians, passing beyond their initial, relatively subdued criticism of the reservation at home, are now soliciting international sympathy for their objections to it. Once international support for their position solidifies, as almost certainly it will—and why not?—they may openly reject the reservation and hope to face the United States down.

MYTHOLOGIZING THE PANAMA CANAL

Getting the first Panama Canal treaty through the Senate last month was roughly the equivalent of putting a big tanker through the waterway: there was no room to spare. The second treaty, providing for the gradual transfer of authority to Panama by the year 2000, is expected to have an equally narrow passage when it comes up for a vote on April 18. Opponents of the treaty have intensified their pressure on wavering Senators, and a defeat of the second treaty would force renegotiation of the entire agreement, with potentially explosive consequences. Seldom, in fact, has a project that is so clearly in the national interest faced such a desperate fight for approval.

The opposition to the treaty is a curious mixture of cynicism and conviction. After a period of many setbacks overseas, Americans have been in no mood to accept what seemed to be another reversal. Moreover, the canal is fixed in the popular imagination as a memorable achievement of American vigor and know-how. Why, people asked, should it be given away under any circumstances? There were reasonable answers to such a question, but they were not provided by the superpatriots of the hardcore right wing, who thought they had a sure-fire issue and promptly started to exploit it. Their lavishly financed propaganda barrage has often made a hash of the facts. Many people have been led to believe that the treaty constitutes some kind of massive giveaway that will leave the esteemed and still vital waterway in the clutches of rapacious crypto-Communists who will thereupon thumb their noses at the helpless giant to their north. Nothing could be further from the truth.

The pact profoundly commits the U.S. to the defense of the canal from here to eternity. Until 2000, the U.S. maintains control of the waterway; at the turn of the century, Panama takes over, but the U.S. has the right to keep the canal open and functioning. Indeed this provision has been strengthened because of the doubts among treaty opponents. Responding to their pressure, the White House accepted two reservations that clearly state that the U.S. can send troops into Panama to protect the canal if it is shut down for virtually any reason.

The treaty, in fact, gives the sanction of law to U.S. intervention if the need arises. This provision has been made so explicit by the reservations that Panama now has sent a letter to other Latin American nations suggesting that it may not be able to accept the treaty in its present form. Rather tolerant through all the tumultuous and sometimes insulting Senate debate, Panamanians have been pushed close to their limits; and there are, after all, two parties to the treaty.

The second Senate vote does not come at the best of times. The Soviet Union is rapidly building up its armaments and brazenly sending its Cuban allies into Africa to stir up trouble and challenge American interests. Many treaty supporters, including Senator Henry Jackson, are understandably concerned that a ceding of the canal may be interpreted as another American retreat. But the U.S. is hardly backing down from a Soviet threat; it is rising to the occasion of settling a dispute with an ally. If it is a sign of weakness to capitulate to an enemy, it may well be an indication of strength to make timely concessions to a friend.

Now, perhaps Gen. Omar Torrijos, the Panamanian leader, is feinting, or trying to win an international moral victory to cover Panama's humiliation. Or perhaps he is merely gathering international support to deter further hurtful amendments that the Senate may impose on the second treaty (covering the period up to 2000). It may yet turn out that Panama's crushing need for the new revenues promised by the treaties will induce the general to swallow his pride, brush aside his opposition and accept the administration's worried assurances that the reservation does not really alter the substance of the first treaty. It is not inconceivable that he will bow to the threats of Sen. Howard Baker (R-Tenn), who, incredibly, takes the position that since he, Howard Baker, has "really gone out on a limb for these treaties . . . our friends in Panama ought to know that just the twitch of an eyelid, just the slightest provocation or expression that these treaties, or this treaty in this form, is not acceptable to Panama, and this whole thing could go down the tube." By jingo, Mr. Baker, how could Panama dare to inconvenience your presidential aspirations?

Such are the stakes for both countries, however, that anyone wishing them well is reduced to foisting upon Panama an additional burden of compromise. Presumably, that is why President Carter, in the text of an interview released yesterday, said that "any statement, even if it is well-based, by the Panamanians that would cause consternation or doubt in the minds of U.S. senators could very well endanger the passage of the second treaty." We say with genuine regret that we do not see that the Panamanian government has a good alternative to learning to live with the DeConcini reservation. To carry its anger to the point of giving the Senate the pretext to turn tail on the treaties would be a disaster. In a fairer world, it would not be this way. The fact is that the United States lacks the maturity, and the administration the political prowess, to make things come out otherwise.

The shame of this approach is evident. If, however, Panama finally balks at accepting the American revision of the first treaty, or if the Senate piles more equally egregious amendments on the second, then it is clear where the principal responsibility for the resultant diplomatic catastrophe will lie. It will lie on uninformed, insensitive, posturing legislators like Dennis DeConcini and Howard Baker—men demonstrably blind to the requirements of treating other nations, even a small, close, friendly and strategically vital nation like Panama, with decency and respect.

TRIAL

(By Haynes Johnson)

In a week the Senate prepares to vote on the second, and final, of the Panama Canal

treaties. The canal has stirred more words and less passion than any supposed major issue in memory. Most senators, and Americans undoubtedly want to be done with it. Certainly there are more critical questions. It's hardly surprising that passage of the second treaty was assured—until, that, is the last few days.

Now, we're told, the treaty package is in jeopardy. The problem, it's being said in Washington, lies with the Panamanians. At the last moment they are letting their concerns be known and raising the prospect that they may reject the treaties as amended and ratified by the Americans. Howard Baker, leader of the Republican pro-treaty forces in the Senate, has bluntly warned the Panamanians to cool it, or risk losing all.

"Any rocking of the boat," Baker said, "could put these treaties in extreme peril." If the Senate gets the idea Panama is dissatisfied, or if any action occurs either in street demonstrations or in protests at the United Nations—well, there goes the deal.

Spoken, appropriately, like a big brother to a wayward sibling. Keep quiet and smile, or else.

There is a problem with the treaties, but it doesn't lie with the Panamanians. As presently amended, the first of the treaties represents a negation of almost 50 years of bipartisan American foreign policy. It puts us back in the business of nakedly advocating intervention in the internal affairs of other nations, something history and a host of documents we've legally subscribed to presumably put to rest long ago.

Not that American practice has always lived up to American ideals. At times we have violated our own oaths and attempted to overthrow or subvert other Latin nations—Guatemala in the 1950s, the Bay of Pigs in the 1960s, Chile in the 1970s all are part of broken U.S. promises. But in each case our secret interventions caused serious international problems for America contributing to a tarnishing of the U.S. reputation for good faith abroad and to a lessening of belief in the government at home. Today, particularly, in the post-Vietnam, post-imperialist America when we are preaching the cause of human rights and supporting the rights of emerging nations, a U.S. endorsement of the principle of armed intervention defies belief.

This is an offensive doctrine. It will be a tragedy if allowed to stand. The test lies not with little Panama, but with us. It's not too much to suggest that American principles are on trial here, and that the Senate still can redeem them. The question is whether we act like a great power, assured of our strength and confident in our convictions, or like a petty, churlish state—whether, in short, we uphold what we have pledged to uphold.

And there the record of history is clear.

In the fulminations of the critics, Panama has been mythologized into a nation of peasants lusting to get their hands on the Canal Zone as soon as the U.S. relinguishes it. Panama in fact, contains a substantial, sophisticated, much-traveled business community with close ties to the U.S. Its leaders are just as determined as anyone to gain control of the waterway that divides their country in two. For them, it is a matter of national and indeed group pride. They feel they are perfectly capable of running the canal; it is a role for which they have been groomed in their dealings with the U.S. Approval of the treaty would probably strengthen their position in Panama, since the left wing would no longer be able to campaign effectively on a program to seize the canal. It is no accident that the opposition to the treaty is as intense among the left in Latin America as it is among the right in the U.S.

When treaty supporters make these facts known to their constituents, they find that opposition often melts away. As the issues have been clarified, the public has turned around in its opinion. Sentiment against the treaty is as strong in Arizona as anywhere in the nation, yet when Democratic Senator Dennis DeConcini went home over the Easter recess, he discovered that the "reaction was not nearly as hostile as I expected. I found pretty good acceptance." Since he had sponsored one of the two reservations sharpening the treaty's language, he could legitimately boast that he had improved the pact. When he got a phone call from Jimmy Carter in Nigeria asking for his vote on the second treaty, DeConcini replied that he would have a reservation or two to offer. Said the President: "My door is open."

Another last-minute convert to the treaty, Montana's Senator Paul Hatfield, ran into heavier flak among his constituents. He is particularly vulnerable because he was appointed to the Senate last January and is up for election in the fall. When a fellow Senator remarked to Hatfield's wife Dorothy Ann that her husband was at least getting a lot of publicity from his ordeal, she snapped, "So did the Los Angeles strangler." Nonetheless, Hatfield has learned that independence has its rewards. Elden Curtiss, the Roman Catholic Bishop of western Montana, publicly endorsed Hatfield's vote as "courageous." A bit belatedly, the President also called Hatfield from Nigeria to express his thanks for the vote that put the first treaty over.

Anxiety about the second vote raises anew the problem that confronted the great British Statesman Edmund Burke when he was elected to Parliament. In a speech to his Bristol constituents, he recognized that it was "his duty to sacrifice his repose, his pleasures, his satisfactions to theirs." But he went on to say: "Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion." On grounds of judgment alone, the Panama Canal treaty would probably have easily been approved long ago. Without pressure from their constituents, a sufficient number of Senators would doubtless have voted for the pact. Perhaps Senators would show more respect for their constituents by assuming that they, too, can understand the merits of the case if it is properly explained to them. By supporting the treaty at a time when leadership is urgently needed, the Senators under the sharpest attack may look back on this episode with considerable pride.

Franklin Roosevelt generally gets credit for reversing the old Yankee imperialist, Colossus of the North Jingoist stance toward Latin America. The second Roosevelt upending the interventionist policies of the first: It made for instant political mythology.

In fact, FDR's "good neighbor policy did mark a new era in Latin American relations. That first year of his presidency he dispatched a U.S. delegation to an International Conference of American States meeting at Montevideo. Out of that came a formal document on "The Rights and Duties of States," which the United States signed. Article 8 declared: "No state has the right to intervene in the internal or external affairs of another."

It was a sweeping renunciation of the right of intervention that had been troubling the hemisphere during the era of gunboat diplomacy and the dispatching of the Marines to protect our interests—mainly private investments—for so many years.

But the truth is it was Roosevelt's predecessor, the historically unlucky Herbert Hoover, who should get the praise for putting America on a different course toward its neighbors. Until Hoover's presidency, American policy was militaristic and arrogant: we did what we pleased, whenever and however we wished.

Hoover changed that. Not long after taking office he stated flatly that it "ought not to be the policy of the United States to intervene by force to secure or maintain contracts between our citizens and foreign states or their citizens." In other words, he promised never to intervene to protect American property rights abroad. Even despite the great pressures of the Depression, when debts were repudiated throughout Latin America, he never wavered in his resolve.

His Republican administration had made possible the acceptance of FDR's further pledges and policies.

From that point on, the United States repeatedly reiterated its approval of the principle of nonintervention. Roosevelt traveled to a celebrated Buenos Aires conference in 1936 at which a new treaty strengthening the pledge not to intervene "directly or indirectly" was signed by 22 nations, including the United States.

Over the decades those principles have been reaffirmed legally and in writing, again and again by this nation—and not only as regards the hemisphere. In the U.N. charter, in the charter of the Organization of American States, in declarations signed at Chapultepec, Mexico in 1945, in the Treaty of Rio de Janeiro after World War II—all these brought fresh United States pledges against intervention.

Nor does the record end there. In the Helsinki accords, signed three years ago by President Ford, similar statements received our pledges. When he spoke to the Helsinki conference after signing the documents, Ford said "The United States gladly subscribes to this document because we subscribe to every one of these principles." Nonintervention was first among the basic principles of relations between states he cited. It was followed by, in Ford's words, "sovereign equality, self-determination, territorial integrity, inviolability of frontiers."

That same year a new protocol to the Rio Treaty was signed at San Jose. A new article provided that: "Nothing stipulated in this treaty shall be interpreted as limiting or impairing in any way the principle of nonintervention . . ." And the United States also voted in favor of a resolution then which reaffirmed "solemnly the principle of nonintervention."

All in all, hardly an ambiguous record.

Before the Senate voted on the first Canal treaty last month, the president struck a bargain with a little-known Democratic senator from Arizona. The deal: the senator, Dennis DeConcini, would vote for the treaty if the president would support an amendment DeConcini proposed. Carter agreed, the arrangement was made public.

DeConcini's amendment which the Senate adopted, gives the United States the unilateral and perpetual right to intervene in Panama militarily if the canal is closed or its operations are in any way interfered with, as defined by the United States. As DeConcini told the Senate:

"There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as the means necessary to insure that the canal remain open and accessible."

And, his key passage on the use of military force:

"These words are absolutely crucial because they establish the American right . . . to take military action if the case so warrants. It further makes it clear that the United States can take military action on Panamanian soil without the consent of the Panamanian government."

As Sen. Edward M. Kennedy (D-Mass.) said at the time, Panama was being asked "to accept an amendment which has the right of military interventionism—not just during this century, but for all time."

Whether Panama finally accepts or rejects that outrageous interference in its sovereign affairs is not the point here—although that language clearly holds disturbing implications for all nations with which the United States has relations. The point is whether this country's repeated pledges mean what they say.

It's inconceivable that a single U.S. senator would accept such intrusion in the affairs of his state, by any force, anywhere, anytime. It should also be inconceivable for the Senate to fail to recognize that this language establishes an unworthy, and unnecessary, principle.

Mr. GRAVEL. Now, how do we get ourselves out of this dilemma? I think it is not going to be an easy task to get out of this dilemma, because the Senator from Alabama is a very bright parliamentarian and he sees the flaw in what has taken place. We can be sure we are not going to have an easy time in correcting the situation.

I think what we have to look forward to is some degree of difficulty. I would suggest there are ways to correct it and that is to face the music. When we have made a mistake, just confess it and go forward. Here is the music we have to face—the Senate of the United States may not be mature enough to vote the right thing.

I think it would be a terrible tragedy, a national tragedy, to have these treaties fail, but we may not be mature enough to vote it. There may not be enough courage on this floor to vote for what is right.

We can do one thing. We can pack these treaties up, if we cannot carry the vote straight out without watering it down, which would require that the Panamanians then vote the treaties down. We owe it to ourselves to give them a decent agreement. We negotiated one and we have one before us.

Now, I do not think it is going to be very wise to pack up an agreement and send it down to them and they vote against it. Let us be honest, at least, about that and bring it for an up or down vote. If we do not have the votes, fine. That does not stop the leadership of the Senate from trying to work its craft, and that is to effect compromise, to make little turns so we could pick up some votes. There is nothing wrong with that. That is what leadership is all about, and what they are trying to do. I commend them for that and I hope in the next few days they will be able to work something out, that is, something that will correct the DeConcini reservation.

There will be no way of slipping by it. If we do not have the votes, the treaties will fail, and the failure will clearly be with this body. It will not be sloughed off on somebody in Panama, or sloughed off on President Carter, or sloughed off on the House. It will be our responsibility, if we were not courageous enough or mature enough to vote it.

I would also recommend, if that is the case, what we do is take the treaties back to the Foreign Relations Committee and leave them there until after the election. This issue would surface as a big issue in the election. Some people would win and some would lose on it. And after, take them out next February and have another vote. There might be a little more courage in this body since the election would be 2 years away, and there might be enough votes to go ahead and pass the treaties.

It is always going to be a question of passing the treaties or not passing the treaties, because this issue is going to have to correct itself.

Those opposed to the treaties are living in another world that does not exist and it will not come back. So we have to go with change that will accommodate justice between ourselves and Panama.

There is another possibility and I just thought of it today. I have spoken of it privately to my colleague from Alabama, because one thing sort of rankles me a little bit, and it is a simple little thing. We are so proud of our democracy in the United States and we vilify, unfortunately, Mr. Torrijos so badly, and his leadership, dictators, and that kind of government, but, in point of fact, on this treaty he had a plebiscite.

He was more democratic in the handling of the treaty in Panama than we have been in the United States. This is not to criticize ourselves, because we are structurally bound in the Constitution on the way we do a thing. But I think a person from Mars looking at the way both nations handled the issue, would have to admit that "dictatorship" handled it a lot more democratically than the "democratic" government did.

So it might not be a bad idea to have a little experiment in the Nation, and let us have a plebiscite. I do not know but I will do some research in the next few days, and if it looks legally possible maybe I will offer it to my good friend from Alabama to cosponsor it with me and we will have a plebiscite in the United States.

Why should the Senate of the United States take all the heat from its constituents in voting for this very difficult issue?

That is the reason why the treaties cannot pass. We are afraid to vote for what is right. So why not just let the people make that decision? That is very dangerous—I say that sincerely, not with tongue in cheek.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. GRAVEL. I am almost finished, may I have another 2, 3, 4, or 5 minutes?

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield an additional 5 minutes to the distinguished Senator from Alaska without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska is recognized for an additional 5 minutes.

Mr. ALLEN. Mr. President, following that, I ask unanimous consent I might yield to the distinguished Senator from Virginia (Mr. SCOTT) such time as he may request without losing my right to the floor.

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

Mr. GRAVEL. I thank my colleague. He is most generous.

As I stated, I would hope, if we do decide that a U.S. plebiscite might be worth while, that he would join me. I think it is something at this point to investigate.

I do not say it lightly, that this would be an unusual event, because I think——

Mr. SCOTT. Will the Senator yield very briefly?

Mr. GRAVEL. No. If I might just finish.

Is it for an unanimous-consent request? I want to finish what I am saying.

Mr. SCOTT. It is on the question of the plebiscite. There has been a plebiscite in one city in California. The treaty was defeated by a margin of more than 5 to 1.

Mr. GRAVEL. That is fine. In fact, that is the point I want to make right now.

If we had had a plebiscite, let us say, about in the 1880's or 1870's on the Indian policy that was undertaken by the United States of America, I think that Indian policy might best be characterized by General Sherman's statement at a dinner in New York when he held up a nickle and made the statement that the best Indians were dead Indians.

I think if we had had a plebiscite in the United States of America at that time, the American people would have voted for that policy. Very tragic.

I think if we had had a plebiscite on the Vietnam War in 1965, 1966, 1967, 1968, 1969, or 1970, that probably the American people would have voted for that holocaust, that murderous event we had in Southeast Asia. I think that would have been a tragedy.

I think that 6 months ago if we had had a plebiscite on the treaties, they probably would have been defeated, and that would have been a terrible tragedy for American foreign policy.

But the test of a democracy and the test of the people and the test of the Senate is all the same test. It is, are we mature enough to handle representative government? That is the test. Are we mature enough to have a better society with justice? That is the test.

I would be prepared to put the American people to that test.

I am not too sure that the Senate of the United States is mature enough to vote for these treaties without mirrors. We are just playing with some mirrors and it has backfired in our faces.

I will submit that we are just beginning to get the rumblings out of Panama. There will be a lot more than that. So if we cannot pass the treaties without the DeConcini-type amendments, we cannot pass the treaties and we ought to know that.

If the American people are not prepared to vote for these treaties, if there is a new regime of justice between ourselves and Panama, then the world ought to know that, because how else can we grow, how else can we improve ourselves if we do not know our deficiencies?

We can go ahead and spout the rhetoric of how great we are, what great things we do, how we do not believe in intervention, and then go ahead and

intervene through the CIA, go ahead and intervene with the Bay of Pigs. We may have had 40 years of nonintervention policy. The only problem is that we did not practice it.

The sooner we cut out these delusions that we have about what we are or are not, the sooner we are going to be a great people, greater than we are.

So I favor a rhetorical point of view this evening and can only say, what is the danger of having a plebiscite by the American people? Let them rip their guts out the way the Senate has been. Let the dialog take place with all the people. Let those who sit back and say, "I don't have time to get interested in this issue, and we'll give the money to the radical right to fight the issue"—if they want it taken over by the radical right, all they have to do is lay back.

There are no free rides in citizenship. This issue is so vital, affecting our relationship with the most important part of the world to us, this entire hemisphere, that we cannot skid by and slough off on this issue.

So if the American people think they can continue gunboat diplomacy, if that is what they want, then let them vote for it. I have a higher opinion of the American people than that. I cannot think of a better way to educate the American people than that by letting them be a part of the decisionmaking process. It would not be all that difficult. We could have a referendum, a plebiscite, in this country next November, when we are going to have national elections; and the people can vote for or against the treaties as they stand, the way the Panamanian people have done.

After an investigation, I will come back to this body and report whether that is a feasible alternative. I certainly will counsel with my colleagues from Alabama, who is fond of plebiscites for Panama. If they are good for Panama, they are good for us.

I thank my colleague for his accommodation on this subject. I am sure I am giving him food for thought and reason for dialog, and I will listen to his views attentively. I thank him.

Mr. ALLEN. I thank the Senator.

The PRESIDING OFFICER. The additional 5 minutes of the Senator from Alaska (Mr. GRAVEL) have expired.

Mr. ALLEN. Mr. President, I yield to the distinguished Senator from Virginia (Mr. SCOTT), with the understanding that I do not lose my right to the floor.

Mr. SCOTT. Mr. President, I appreciate the distinguished Senator from Alabama yielding to me briefly.

I speak now only because of the statements made by my friend from Alaska. It seemed quite obvious that he was being critical and in complete opposition to the views of the distinguished Senator from Alabama.

One thing about a government such as we have, with the two bodies of Congress, is that we can say almost anything we wish to say on either the floor of the House or the floor of the Senate, and that is part of the legislative process. We can have a difference of opinion without being disagreeable with one another.

While I do have the highest respect for my distinguished friend from Alaska, I have a very minimum of high regard for the position he has taken and the words he has spoken for the last 20 minutes or so. I disagree with the Senator from Alaska in almost everything he said.

He has referred to the opponents of the treaty as being desirous of toppling the government of Torrijos. He has referred to some Members of the Senate as mentioning that Torrijos is a dictator. I believe everybody knows that we have a lawful government in Panama, an elected government in Panama. There was a coup, and the present chief of state of Panama, through the use of the Guardia Nacionale, the National Guard of Panama, assumed the position he now occupies.

I think he is a dictator. I do not believe there is any doubt that General Torrijos is a dictator. Why not say "the Dictator in Panama"? He is a dictator. We say, "the President of the United States." He is the President of the United States.

The distinguished Senator speaks of putting America to the test. I agree with this statement, but in a way different from that of the distinguished Senator from Alaska. I think America is being put to the test. America is put to the test in many ways.

We are thought of as being one of the leaders of the free world. If we submit to the wishes of the Government of Panama, of Dictator Torrijos, is that going to mean that in the world of public opinion, the United States is going to stand a little higher? I think not. I think the nations of the world will doubt whether the United States will stand up for itself.

Under the treaty that is now under consideration, we would give away $9.8 billion worth of U.S. Government property, and we would pay the Republic of Panama for taking it: about $1.5 billion in tolls; and approximately $750 million in either tax revenue or loss of tax revenue by the United States between now and the time the treaty would end.

It was said that Panama might reject the treaty, as if that would be a bad thing; that Panama might reject the treaty, because of the amendments. To my knowledge, there have been no amendments. The DeConcini amendment was not an amendment; it was an understanding. There is considerable doubt as to whether it has any binding authority.

I believe the disturbance we hear about is very much like the Uncle Remus story of Brer Rabbit: "Please don't throw me in the briar patch." After he was thrown in the briar patch, he mentioned that he was born and bred in the briar patch.

I think the Panamanian Government wants the sovereignty, the title, the control of the Canal Zone. I believe that once they have the sovereignty, the title, and the control, they can say, much like Brer Rabbit said—that that is really what they had in mind.

When we speak of demogoguery, of cowering to public opinion, of listening to the voice of the people of this country, that is the kind of government I believe we have. I believe that is the kind of government our Founding Fathers obtained for us when we won our independence. We have a republican form of government or a representative democracy. We are here to act on behalf of the American people.

I had a poll taken of the people of Virginia as to how they felt about this canal. I posed the simple question: "Do you favor the ratification of the canal treaties?" Eighty-seven percent of the people of Virginia who responded said they favored rejection of the treaty. Only 13 percent favored ratification.

The Senator speaks of returning this to the committee and having a vote after the election. I would support him in any move such as that because I think that after the election and after each Senator has been assured of how the people felt, we would have no difficulty in rejecting these treaties. I believe that after the election, some of the Senators in the class that is up for election this time will not be here to vote on the treaty.

We can read from the Federalist Papers and we can read from the letters that Thomas Jefferson wrote the statements made by some of the early Americans who were prominent in the formulation of our Government; and we find such statements as, "The only safe depository for the government is in the people themselves."

So while we are Senators and while we are elected to exercise our own judgment to a certain extent, I do not believe we are elected to fly—or would be elected if the people felt that we were going to fly—in the face of the overwhelming majority of the people of America.

To me the people of this country do not want this giveaway treaty, and I am not really concerned about the people of Panama. I was elected by the people of Virginia, the people of the United States and I feel that it is the duty of every Member of this Senate to do what is best in his judgment for the United States. We are U.S. Senators. Sometimes I hear voices on this floor that speak in such a way as one, a stranger to this body, might think that they were Senators from Panama rather than the Senators from particular States.

I am not going to attribute that to any individual Senator, but basically we are here to listen to the voice of the people and we are here to represent the people who elected us to office. In a nation of 215 million or 220 million people, of course, it is impossible to have a true democracy, but I would like for us to have representative government as closely as we can to representing the will of the people. The people are opposed to this treaty, and I feel that the treaty should be rejected.

Mr. President, I have talked with the distinguished majority leader, and I expect that he is probably listening to the discussions here on the floor over the device in his office, and I told him that I would like to have time after the vote on the Stevens amendment on Wednesday. I understand the vote is to be not later

than 4 o'clock on Wednesday of this week. And I ask unanimous consent that I might be recognized after the vote on the Stevens amendment to discuss the treaty and to offer an amendment if I see fit to do so at that time.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland reserves the right to object.

Mr. SARBANES. Did I understand from the Senator that he discussed this request that he has just made with the majority leader and the majority leader acceded to it?

Mr. SCOTT. He indicated he would make the request on my behalf if I wanted him to do it. So there is no conflict with the majority leader.

Mr. SARBANES. Mr. President, on, as I understand it, that understanding, that the majority leader has acceded to the unanimous-consent request which the Senator from Virginia has just propounded, I will, of course, not object.

The PRESIDING OFFICER. Is there objection?

The Chair hears none. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I appreciate the distinguished Senator from Alabama yielding this time to me, and certainly I would not want to infringe further upon his time, but I did want to take the opportunity of making the unanimous-consent request while I was on the floor.

I yield.

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

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, the hour is growing late, and I shall not detain the Senate a great while.

We have been discussing this afternoon the DeConcini amendment to the Neutrality Treaty, and my interest in the amendment at this time is caused by the fact that the distinguished Senator from Idaho (Mr. CHURCH) was seeking by an expression of views on the floor at this time, some 3 weeks after the agreement on the DeConcini amendment and the approval of the Neutrality Treaty, to establish legislative history with respect to the DeConcini amendment.

Of course, it is not possible to establish legislative history with respect to something that has already taken place, because legislative history is supposed to give the background of and to explain the reasons why the Senate acted as it did with respect to a particular legislative matter, and the legislative history must be created before the action on the legislative proposal, because it explains why the Senate did what it did when it took such action.

So the door is closed now to creating legislative history with respect to the DeConcini amendment.

The second proposal that the distinguished Senator from Idaho suggested was that something must be done in this treaty to indicate, in effect, that the DeConcini amendment means something other than what the DeConcini amendment provides. How we are going to be able to do that I do not know. It cannot be done and obtain the approval of this treaty, in my judgment. Of course, I know the leadership has more than 51 Senators who would vote for a proposal submitted by the leadership as a solution of this dilemma. But in doing so, Mr. President, I feel confident that the leadership would lose enough votes of Senators who voted for the first treaty on account of the DeConcini amendment and do not want any weakening of that amendment.

Also, Mr. President, it seems to me that it would be, in effect, going back on a trade, and we will have to admit that trading took place, that the DeConcini amendment was approved by the administration, in return several Senators voted for the treaty who would not have voted for the first treaty without the DeConcini amendment. Having obtained the approval of the first treaty by agreeing to the DeConcini amendment, it comes with poor grace, it seems to the Senator from Alabama, to suggest that we must undercut the DeConcini amendment, make it say something that the words do not say, that were not said here on the floor, because, after all, a trade should be a trade, I assume. And the distinguished Senator from Alaska seemed to be pretty well of that opinion that we made a mistake, the Senate made a mistake, when it agreed to the DeConcini amendment, but it was necessary to pass the treaty.

Having obtained the benefits of the passage of the DeConcini amendment, and having obtained the approval of the treaty by this device, how can the leadership, the managers of the treaty, come forward and say that the DeConcini amendment does not mean what it was thought to have meant and what it says that it means by a mere reading of the wording of the DeConcini amendment?

Mr. President, one of the chief reasons given for the approval of these treaties by the Senate was that it was necessary in order to remove the danger of sabotage to agree to these treaties, to eliminate riots, insurrection, guerrilla action against the canal.

Well, it seems somewhat anomalous that it seems likely, based on the fact that some riots and demonstrations were already taking place in Panama, that the approval of the Senate of these treaties will result in riots in Panama and not eliminate them.

I commend the distinguished Senator from Alaska for his praise of the President in regard to these treaties. He has taken an unpopular issue and has pushed it to near approval by the Senate. But, as the distinguished Senator from Alaska says, a mistake was made. The proponents of the treaties have made their bed and now they should lie in it. They agreed to the DeConcini reservation to pass the treaty, and now they do not know what to do with it except to try to undercut it.

My authority for that is the distinguished Senator from Idaho (Mr. CHURCH) who said there is something that has got to be done, and it has got to be done in the next few days, to indicate a different meaning to the DeConcini reservation from what has been attached to that reservation.

You tamper with this treaty in that regard, try to undercut DeConcini, and you are going to lose this treaty.

I would say, Mr. President, that Dictator Torrijos—I say that with apologies to my distinguished friend from Alaska (Mr. GRAVEL)—must be a most unhappy man in Panama at this time. If he presents this treaty to the Panamanian people I believe, just as does the distinguished Senator from Alaska (Mr. GRAVEL), that the people of Panama will overwhelmingly defeat the treaty.

If it goes the other route, as head of state ratifying the treaty, he is going to be toppled in Panama just as sure as can be, in the judgment of the Senator from Alabama.

So apparently the effort will be made to change the meaning of the DeConcini reservation to provide in some way that it does not have a meaning that the Panamanians attach to it and that a reading of the reservation would indicate.

Mr. President, the treaties were negotiated by American and Panamanian negotiators. They were submitted to the Senate. A memorandum was agreed to between the President and the dictator. That memorandum became the leadership amendment, which was accepted here in the Senate and, I might say, that it promised the most and delivered the least; that is, the leadership amendment, of any amendment, any major amendment, that I have seen presented here in the Senate.

So, Mr. President, if there are ambiguities—and they abound—if there are ambiguities in the treaties and in the amendment, whose fault is it? Is it the fault of those who have sought to strengthen these treaties or failing in that to defeat them? Well, hardly. We have not been able to pass a single amendment. So if we have a treaty full of ambiguities, it is the responsibility of the American negotiators, it is the responsibility of the administration, it is the responsibility of the leadership, and it is the responsibility of the managers of these treaties. They have controlled collectively every single word that has gone into these treaties or into the resolution of ratification, every single word. So do not let them say the opposition to the treaties has caused this sad state of affairs. The people of Panama do not want this treaty. Mr. GRAVEL, a strong supporter of the treaty, says the people of Panama would overwhelmingly defeat the treaties if submitted to them.

Well, all through this debate, Mr. President, the managers of the treaties have tried to indicate that the opponents of the treaties have spoken disparagingly or put in a poor light the Panamanians, whereas they have held up for the sovereign rights of the Panamanians, and far be it from them to say anything derogatory about the Panamanian people.

Well, Mr. President, let us examine that a moment. If there have been any

derogatory statement made of any Panamanian citizens it has not been something said about the people of Panama as such. But in the main it has been directed at the Panamanian dictator. As to the people of Panama it is our wish that they have an opportunity to vote on what the Senate has done.

The distinguished Senator from Alaska (Mr. GRAVEL) said:

Well, the Senator from Alabama wants a plebiscite because he knows the Panamanian people will vote down the treaty.

It is the position of the Senator from Alabama that I would not object to seeing them voting down the treaty, but it is the position of the Senator from Alabama that if the treaty is to be agreed to it needs to be agreed to by the people of Panama because that is the best opportunity, Mr. President, agreement by the people of Panama is the best opportunity, we have to prevent riots, to prevent demonstrations, to prevent sabotage because those who are protesting in Panama now against the treaties are protesting because that is something the U.S. Senate, they feel, is ramming down their throats.

But if we condition our approval on a plebiscite in Panama that would be the people of Panama acting, and the legs would be cut from under any demonstration against the treaties. But let Dictator Torrijos approve these treaties and you are going to see bloodshed in Panama. They do not like the treaty. They do not like the treaty as agreed to by the Senate. I first thought Mr. Torrijos was just engaging in a ploy to see to it that no further amendments were agreed to. But I can sense his great difficulty in Panama in satisfying the people with respect to the action that has been taken.

Now, is that done by the opposition to the treaties? Was the DeConcini amendment put in by any one of the 32 Senators who voted against the Neutrality Treaty? No, it was not. Were any of the reservations put in by any of the 32 Senators who voted against the treaty? No, not to my knowledge, and I was here all the time.

This treaty as it now exists is the product of the administration and the leadership, and I submit that with the tremendous majority they have had on votes here in the Senate, they find the treaties not giving satisfaction to a large percentage of the people of the United States—I believe a great majority—and they are not giving satisfaction to a great number of Panamanians, and I believe a majority there.

And who is responsible for it? Is it the opposition to the treaties? No; the proponents have had carte blanche to word the treaties as they wanted to. They have knocked down all amendments offered by the opposition. They have not improved the treaties in any way suggested by the opposition. They have shaped the treaties and the reservations to suit themselves; they had full control.

Now, after having done that, after having accepted and recommended the DeConcini amendment to the Senate, they are unhappy with what they have done.

I do not believe the Senate is going to get the matter out from under that difficulty. Oh, I do not mean they cannot pass an amendment saying that the DeConcini amendment is meaningless, it means nothing, it does not change the leadership amendments. But it does, Mr. President. It gives the United States the right unilaterally to keep the canal open when the United States deems it necessary, and to use military power to keep it open if that is necessary. And that is a departure from the leadership amendment, because it was couched in three limitations—the leadership amendment, mind you, has a paragraph in there put in by the Panamanians, put in by the dictator or his representative, that qualifies our right to intervene to protect the canal. In the first place, we could not interfere with the internal affairs of Panama; second, we could not interfere with the territory of Panama; and third, we could not interfere with the independence of Panama.

In effect, we agreed that the dictatorial regime of dictator Torrijos would be preserved. And, of course, the treaties start pouring in $100 million a year into Torrijos' coffers and, of course, they want that to get started right away.

So, Mr. President, I hate to see this treaty, with its supposed affront—I do not feel that it is—its supposed affront to Panama, to see the Panamanians reject it if a plebiscite is held, or, if not subjected to a plebiscite, to see the upheaval that seems certain to come about if the treaties are approved and submitted to Panama in their present form.

So, Mr. President, if the plebiscite is held, yes, I would hope that the Panamanians would reject the treaties, because I believe that the Panamanians should have the right to make the decision on this matter. It should not be made by Torrijos, and if it is made by Torrijos only, it is going to cause riots and demonstrations, and a probable upheaval in Panama.

Whether the people turn it down or whether the people approve it, it would come nearer having the backing of all Panamanians than if we turn it down. But it seems that if it is submitted to them all, it is going to cause considerable rioting in Panama.

Mr. President, after the President, and the leadership, and the Senators who voted for this first treaty have gone to such a great length to please the Panamanian people, to fight off amendments, to reach a compromise with some of the Senators on the DeConcini amendment, to be on the verge of giving them the canal, and then to have riots and demonstrations in Panama, with the President of the United States, who has stuck his neck out to get these treaties approved, hanged in effigy in Panama, I think certainly indicates a lack of appreciation of those who have cast their lot with Torrijos and who have sought to prevent any changes in these treaties. And yet, because they are not liked by all in Panama, we see this demonstration against them.

Mr. President, like it or not, the DeConcini amendment is part of this treaty, and——

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. I take it the Senator is going to support the treaty now with the DeConcini amendment attached?

Mr. ALLEN. The DeConcini amendment has been voted on. It is a part of the Neutrality Treaty.

Mr. ROBERT C. BYRD. But I say, I take it the Senator is going to support this treaty with the DeConcini amendment?

Mr. ALLEN. I believe the Senator has heard my statement. I have indicated no such thing.

Mr. ROBERT C. BYRD. Yes, I have listened to the Senator today expound on the DeConcini amendment, and I have been utterly amazed, as I am sure the people of Panama must be amazed, to find that they have such a friend as the very able Senator from Alabama has demonstrated himself to be.

Mr. ALLEN. Yes, I am trying to protect their right to have a voice in this treaty. I surely am.

Mr. ROBERT C. BYRD. The Senator has demonstrated his friendship for the Panamanians today, and I am sure that my amazement has been surpassed only by that of the Panamanians.

Mr. SARBANES. If I could say——

Mr. ALLEN. I believe the people of Panama will come nearer approving of the position of the Senator from Alabama than they will approving of the position of those who are sending these treaties down to Panama against which they are now demonstrating.

Mr. ROBERT C. BYRD. The Senator has even predicted, and I have heard him predict today more than once—several times—that if the treaties are submitted by plebiscite to the people of Panama, they will reject them. Not only that, but there will be riots and demonstrations in Panama; that Torrijos will get his walking papers. Did I hear the Senator predict that?

Mr. ALLEN. If the Senator listened carefully, I said that, in my judgment, the public sentiment was so strong in Panama against the treaty, as finally agreed to here in the Senate, that if the matter is not submitted to plebiscite and dictator Torrijos ratifies it on his own, that will result in toppling dictator Torrijos, on account of public sentiment in Panama. That is my opinion.

Mr. ROBERT C. BYRD. The Senator is going out on a limb.

Mr. ALLEN. That is all right. The Senator from West Virginia has gone out on a limb in sending a treaty down to Panama which will meet with so much popular disapproval. He has gone out on a limb and the limb is being chopped off by Dictator Torrijos.

Mr. ROBERT C. BYRD. The Senator from Alabama predicted the other day that the amendment by Mr. HATCH would garner more votes in the Senate than any other amendment had to date.

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. That was a prediction.

Mr. ALLEN. Yes, it was. I will answer that. I thought the distinguished Senator from West Virginia would be one of those voting for it. Back in 1975 he was a cosponsor of a resolution that called for there to be no cession to Panama or other divestiture of U.S.-owned property, tangible or intangible, without prior authorization by the Congress, the House and Senate, as provided in article IV, section 3, clause 2 of the U.S. Constitution.

The distinguished Senator from West Virginia, I recognize, might change his position with regard to a treaty, but I did not feel that he would change his mind with respect to a constitutional issue and his view of that constitutional issue as expressed in this resolution back in 1975, of which the distinguished Senator from West Virginia was a cosponsor.

Mr. ROBERT C. BYRD. Yes, but——

Mr. ALLEN. Can I finish, please?

Mr. ROBERT C. BYRD. Will the Senator let me respond?

Mr. ALLEN. I had not finished. I thought that the Senator, along with seven other Senators who voted for the first treaty but were cosponsors of this resolution, both as to House action being required and as to their being no agreement on the Panama Canal treaty, would go along with what they had advocated back in 1975.

Mr. ROBERT C. BYRD. What the distinguished Senator from Alabama did is he did not wait for any hearings; he did not wait to hear what the Joint Chiefs might say; he did not even wait until we had a treaty before the Senate. He announced his opposition. He did not wait for any hearings; he did not wait for any testimony.

He did not wait for any evidence; he did not wait for anything to change his mind. He made up his mind in the beginning. I respect him. He has stuck by his guns. But he is determined to defeat these treaties one way or another by amendment. We can adopt every amendment the Senator has offered to this treaty, and I dare say—of course, I do not know—I would venture to say that he would still vote against the treaties. He announced that in the very beginning. He made 24 speeches last year that he was against the treaties.

Now that the Senate has turned down most of the amendments thus far, he is grasping at a straw. He continues to grasp every little straw that comes along in the wind. Now he talks about demonstrations in Panama. He talks about submitting the treaty to another plebiscite. The constitution of Panama provides that the treaty be submitted to the people for a plebiscite, and that was done. Now he seeks to write into this treaty an amendment that would force on the people of Panama what in essence would be a constitutional change in that country.

The Senator from Alabama did not change his mind. His mind is not subjected to being changed on this.

I have twice laid on the record my response to what the Senator has just read.

Mr. ALLEN. Did the Senator take one view in 1975 of the constitutional issue about whether the House needed to act, whether it needed action by the Congress? Did he change his mind on that constitutional issue as well as on the desirability of the treaty?

Mr. ROBERT C. BYRD. I will ask the Senator a question. Did the Supreme Court ever change its mind on a constitutional issue?

Mr. ALLEN. That is not what I asked the Senator. Has the Senator changed his mind?

Mr. ROBERT C. BYRD. I am asking the Senator from Alabama.

Mr. ALLEN. If the Senator declines to state it——

Mr. ROBERT C. BYRD. I do not decline to state it. But if the Supreme Court can change its position on a constitutional issue and with good reason——

Mr. ALLEN. I am not asking that question.

Mr. ROBERT C. BYRD. I am giving the answer.

Mr. ALLEN. I am not asking about the Supreme Court.

Mr. ROBERT C. BYRD. I heard the Senator. I am answering this as I want to answer it, if he wants me to. If the Supreme Court changed its position on a constitutional question, I think that any Senator should retain the same right, and he has the same duty, to change his position on a constitutional question if, in his judgment, after more thorough study of that question he sees that he was wrong the first time. He should change. I did see that I had not considered that question the first time. I just signed a resolution. Someone came around and asked, "Will you sign this resolution?"

Mr. ALLEN. It does not sound like the distinguished Senator from West Virginia would sign something without knowing what is in it.

Mr. ROBERT C. BYRD. No; he does not, ordinarily. I submit I did not give it the careful thought I should have. Beside that, I did not have the treaties before me at that time.

Mr. ALLEN. I am talking about the constitutional question. It has nothing to do with the treaties.

Mr. ROBERT C. BYRD. That is all right. I have studied the constitutional question thoroughly. I have made two or three speeches on that constitutional question lately. I have thought it over. I have done some research and I have come to what I think now is the right conclusion. So like the Supreme Court of the United States, which reverses itself from time to time, I retain that same right. I think it is my duty. I did change my view.

Mr. ALLEN. I asked has the Senator changed his mind?

Mr. ROBERT C. BYRD. Yes. But I was not required to answer the Senator's first question. I dealt with it, built on it block by block, and then my peroration, and then the final sentence. And the court of appeals has upheld my position. They upheld my position.

Mr. ALLEN. The Senator changed his mind from his 1975 position on both scores, on the advisability of the treaty and on the constitutional issue involved, is that correct?

Mr. ROBERT C. BYRD. On the advisability of the treaty, I did not have the treaty before me.

Mr. ALLEN. The Senator said something about somebody changing his mind. My opinion was announced back under President Nixon. My opinion was announced in a newsletter that I sent out to some of my constituents over the State back in October 1971. I saw the treaties coming on, just as the distinguished Senator from West Virginia did, in 1975. I guess he had an idea about whether the canal was going to be given to Panama or not when he joined in this resolution. The Senator from Alabama did not form his opinion just recently. Obviously, he did not change his mind.

I appreciate the Senator saying the Senator from Alabama has not changed his mind.

Mr. ROBERT C. BYRD. And is not going to.

Mr. ALLEN. Not on this particular issue, no.

Mr. ROBERT C. BYRD. No.

Mr. ALLEN. I have made up my mind on it. My position is justified by the facts and by the confusion in which the supporters of the treaties now find themselves.

Mr. SARBANES. Will the Senator from Alabama yield for a question?

Mr. ALLEN. If the distinguished Senator from West Virginia is through propounding his question.

Mr. ROBERT C. BYRD. I have temporarily withdrawn from the field.

Mr. ALLEN. I think it might be well.

Mr. ROBERT C. BYRD. But I am going to witness the continuing engagement. I had to leave my weary steed at the door, where they required that I hitch him to the hitching post, and my blunted sword I have thrown aside for a moment. I just wish I had that blue blade that the king's son bears from Alabama. I can fully defend the position which I take today——

Mr. ALLEN. I know the Senator has answered to his satisfaction.

Mr. ROBERT C. BYRD (continuing). On the treaty and on the constitutional question. And I am supported by the recent decision of the court of appeals, which I realize chagrined the distinguished Senator from Alabama and those who supported him in their unsound position vis-a-vis the constitutional question. I feel rather good that the court of appeals supported me, and I am sure that the Senator from Alabama recognizes that what the appeals court has done will probably stand if it should go to the Supreme Court.

Mr. ALLEN. I am glad the distinguished majority leader knows what the Supreme Court is going to do, because very few of us know.

Mr. ROBERT C. BYRD. I have as much right to make a judgment as to what the Supreme Court will do as the

Senator from Alabama has as to the Panamanian people.

Mr. ALLEN. I have some indication as to the Panamanian people. If the Senator has been reading about the riots down in Panama and the burning of the President down there in effigy, he would have some feeling about the opinion of the people in Panama. I doubt if the Senator has any pipelines into the thinking of the Supreme Court.

Mr. ROBERT C. BYRD. I need only to look at previous decisions.

Mr. ALLEN. Oh, I see. So the Senator is confident that the Supreme Court is going to sustain that.

Mr. ROBERT C. BYRD. I have no doubt; no doubt.

Mr. ALLEN. I am glad the distinguished majority leader has no doubt.

I am highly honored that the distinguished Senator comes in from time to time and propounds questions to me and, in addition to propounding questions, makes lengthy comments on the remarks of the Senator from Alabama. I do not recall his so honoring any of the other Senators who have sought to approve these treaties or, in the alternative, to defend them. I feel highly honored that the distinguished majority leader does come in from time to time to engage me in colloquy. I appreciate that.

Mr. ROBERT C. BYRD. The Senator recognizes my great respect for the Senator from Alabama. I have the greatest respect. I do not say that facetiously; I do have. But I just felt constrained, as I listened to the Senator's stentorian voice, almost in dulcet tones as it came across public radio, to come in and just ask on what basis the Senator could predict, as he has predicted, some of the things that he has stated today.

Mr. ALLEN. Yes, I have predicted that if this matter is submitted to plebiscite, it will be defeated. I am backed up in that opinion by the distinguished Senator from Alaska, who supports the treaty. He states unequivocally that, in his judgment, these treaties, if submitted to plebiscite in Panama, would be overwhelmingly defeated. He made that remark within the last 45 minutes.

Mr. ROBERT C. BYRD. The Senator from Alaska has a right to that opinion. I personally do not have any way of knowing.

Mr. ALLEN. I feel that is an indication of the view of the leadership from the fact that the distinguished manager of the treaty, the distinguished Senator from Idaho (Mr. CHURCH) has said on this floor, do not approve this amendment, because any amendment will result in the defeat of the treaties. I assume he meant by that that the people of Panama would reject a treaty that had been amended. I believe, if I am not mistaken, that the distinguished majority leader has argued that point on the floor of the Senate, making that very same argument.

Mr. ROBERT C. BYRD. I am not sure.

Mr. ALLEN. I am rather sure, I say to the distinguished majority leader.

Mr. ROBERT C. BYRD. I remember an occasion or two before, when the Senator thought that I had said something and we had the transcript read and we found that the Senator from Alabama was wrong. I do not think I have——

Mr. ALLEN. I do not recall that occasion. But I accept that the distinguished Senator does.

Mr. ROBERT C. BYRD. Well, maybe I am wrong again. But I do not think I have made that argument. Maybe I have.

Mr. ALLEN. That has been the Senator's opinion, has it not, that the treaty should not be amended?

Mr. ROBERT C. BYRD. Oh, no; I offered a joint leadership amendment.

Mr. ALLEN. I understand that, but that was based on the memorandum between the dictator and the President. But aside from the so-called leadership amendment, which, with all due respect—and the Senator did not write those amendments or I would not make this statement—promise the most and give the least of any amendments that have been offered heretofore, I might say.

Mr. ROBERT C. BYRD. Of course, that is the opinion of the Senator from Alabama, because his one objective here is to defeat the treaties one way or another. And if he can demean the leadership amendment, he would do it anyway to achieve that basic goal of defeating the treaties. The Senator would not vote for these treaties if the Senate had adopted every one, every one of the amendments that the Senator from Alabama has offered, and he knows that.

Mr. ALLEN. The distinguished Senator said that the Senator from Alabama would defeat these treaties any way that he could. Of course, the Senator from Alabama would defeat the treaties any way that he honorably could. But I recall——

Mr. ROBERT C. BYRD. I agree.

Mr. ALLEN. I am not stating this as honorable or dishonorable, but the facts can speak for themselves.

Mr. ROBERT C. BYRD. It is not dishonorable, and I did not mean to impute anything like that.

Mr. ALLEN. I understand. But we do know that the DeConcini amendment was accepted by the leadership, because the President had agreed on the DeConcini amendment and had used that in order to get at least one and possibly two or three votes for the treaties. That is the point that the Senator from Alabama has been making this afternoon, that, having accepted the DeConcini amendment, based on what the distinguished Senator from Idaho (Mr. CHURCH) has said, an effort is going to be made in this treaty to put in a provision to indicate that the DeConcini amendment means something somewhat different from what it meant at the time the DeConcini amendment was agreed to. The Senate, thereafter, agreed to the treaty and the cosponsors of the DeConcini amendment were found voting for the treaty.

I do not think the Senator from Alabama is doing anything other than arguing this matter on its merits. If he can contribute to the defeat of the treaties, I believe that he has rendered a public service. But the Senator from Alabama has no concessions to make to anybody. He cannot ask them if they have any concerns about the treaty. He cannot have meetings of doubtful Senators and inquire about their concern. All he has is the logic, which I believe is backed by the people of the United States; whereas, of course, the administration has other facts that they can call into play——

Mr. ROBERT C. BYRD. And the leadership.

Mr. ALLEN (continuing). In an effort to get votes.

Mr. ROBERT C. BYRD. Do not leave out the leadership.

Mr. ALLEN. That is the Senator saying that. I would not suggest that the distinguished majority leader would make any concession to any Senator to get him to vote for the treaty; far from it.

Mr. ROBERT C. BYRD. I hope the Senator from Alabama will not underestimate his capabilities and the resources that he has at his command. He is chairman of a subcommittee. He conducted hearings on the constitutional aspect.

Mr. ALLEN. Yes; we have done that and made our report.

Mr. ROBERT C. BYRD. They have had lengthy hearings; he has made his report. So he does, he is not disarmed by the support that he has to depend on, logic alone. He does an excellent job in conducting hearings. He brought forth a report. So let it not be said that the Senator from Alabama is without spear or buckler or shield or sword. I would not want the Senator from Alabama to leave us with that impression.

Mr. ALLEN. He certainly is not heavily armed, I say to the distinguished majority leader, who has so much power in this body. The Senator knows I am one of his staunchest supporters.

Mr. President, I yield the floor.

● Mr. THURMOND. Mr. President, Luis Kutner, a Chicago attorney and president of the Commission for International Due Process of Law, has written an excellent article entitled, The New Panama Canal Treaties: A Potential Diplomatic Pearl Harbor.

Mr. Kutner is an internationally famous attorney and author on Habeas Corpus and Human Rights. He is the author of World Habeas Corpus and chairman of the World Freedom Centers. He was nominated for the 1975–76 Nobel Peace Prize and has been extremely active worldwide promoting human rights.

Mr. Kutner's article is very informative on the canal issue and concludes that the United States should not abandon the Panama Canal and give back the sovereignty over the Canal Zone to Panama.

Mr. President, I ask that this article be placed in the RECORD at the conclusion of my remarks.

The article follows:

THE NEW PANAMA CANAL TREATIES: A POTENTIAL DIPLOMATIC PEARL HARBORS

(By Luis Kutner)

The New Panama Canal treaties have become the subject of one of the most emotional political debates in years, perhaps the most controversial issue since the Vietnam

War.[1] It has been described as an issue which touches "the nerve endings of American citizens" as few issues ever have.[2] At the heart of the controversy is the 1903 Hay/Bunau-Varilla Treaty[3] under which the Canal was built—and which the new treaties replace,[4] for it is the source of the major issue of debate here: the sovereignty question.[5] Thus, in order to fully understand this and other related issues involved, we must first understand the historical events that led up to the treaty of 1903.[6]

Interest on the part of the United States in building a Panama canal, out of recognition of the strategic importance of this area in Central America (just as the Spanish had recognized it centuries before when Balboa crossed the Isthmus to discover the Pacific Ocean), came about as early as 1821, at the time Panama signed a formal agreement declaring independence from Spain and unified with Colombia then called New Granada).[7] Five years later Henry Clay, as Secretary of State, publicly stated that he favored construction of such a canal across Panama[8] to extend trans-isthmian transit "to all parts of the globe upon the payment of just compensation and reasonable tolls."[9]

What might be called the first basic Panama Canal treaty[10] was negotiated in 1846 with New Granada by the U.S. Minister there, Benjamin A. Bidlack, and was subsequently ratified in 1848.[11] Under the terms of this "Treaty of Peace, Amity, Navigation, and Commerce"[12] New Granada agreed to grant to the U.S. a "free and open" transit or right of way "across the Isthmus of Panama" *via* any "modes of communication that now exist, or that may be, hereafter, constructed" in exchange for a U.S. guarantee to protect New Granada's territorial integrity within its province of Panama. President Polk, in his submission of the Mallarino-Bidlack Treaty for Senate ratification, emphasized its advantages to American commerce in that such a Panamanian passage would shorten the route to "our possessions on the northwest coast of America," as well as to Asia. The year after the treaty was ratified, a New York company began to build a railway across Panama that was completed in 1855. This first trans-continental railroad was also the first specific step toward the construction of the Panama Canal.[13]

By the 1850s, however, the U.S. had cause to worry about the efforts of a stronger naval and commercial rival, the British, who were seeking to establish a protectorate over all of Central America and, thereby, obtain control over any ship canal in that region. So, to prevent such a monopoly, the U.S. entered into a cooperative agreement with the English, known as the Clayton-Bulwer Treaty, to share equally in the construction, operation, and defense of any such canal to be built in the future. Although later Presidents and Congresses came to feel that this country should have a canal solely under American control rather than sharing it with England, the Clayton-Bulwer Treaty remained in force until the turn of the century, attempts to negotiate an end to it before that time having failed. In 1901 England finally consented to give up its claims to the U.S. and terminate the pact. In its place, the Hay-Pauncefote Treaty allowed the U.S. a free hand in building, controlling, and fortifying an isthmian canal.[14] This treaty of 1901 gave to the United States "the exclusive right of providing for the regulation and management of the canal" when completed and set certain guidelines for the canal's operation[15] (such as being "open to the vessels . . . of all nations," similar to the "free navigation" rule for the Suez Canal under the 1888 Constantinople Convention).[16] The Hay-Pauncefote Treaty is still operative today[17] and, hence, remains legally obligatory on both Britain and the U.S.,[18] "the High Contracting Parties under the . . . Treaty."[19]

The emergence of the U.S. from the Spanish-American War as a power in the Caribbean and Pacific had generated new enthusiasm for an isthmian canal, since a water passage now seemed essential if America was to take full advantage of the trade opportunities that had opened-up to it in the Pacific.[20] Thus it was that in the year after Hay-Pauncefote was ratified President Theodore Roosevelt, under authority provided by Congress through the Spooner Act, took steps to acquire from Colombia "perpetual" control of a strip of land at least six miles across the Isthmus of Panama, still a part of Colombia, in order to construct a canal. A Columbian representative, Herran, agreed in 1903 to give the U.S. a six-mile-wide zone for a $10 million dollar cash payment, plus another payment of $250,000 annually to Colombia. But the government at Bogata rejected the proposed treaty because it felt the money offered was insufficient and it feared the agreement would seriously impinge on Colombian sovereignty in the Province of Panama.[21]

Panama itself now saw an opportunity to attain its goal of independence which it had been unsuccessfully seeking ever since Colombia had revoked its autonomy.[22] The Panamanians had made 53 previous attempts to gain independence;[23] all failed. On several occasions the U.S. landed troops in Panama, in accord with the Bidlack Treaty, to help Colombia put down the revolts. But this time President Roosevelt was angered at the rejection of the canal treaty by Colombia, which the U.S. had always supported in the past; he now referred to the Colombians as "the blackmailers of Bogota." So, when Panamanian nationalists again revolted in 1903, Roosevelt had the *U.S.S. Nashville* present in the Isthmus waters off Colon, Panama. This protective gunboat provided indirect encouragement to the Panamanian insurrectionists in that the show of force by the U.S. Navy kept Colombian troops and ships from suppressing the rebellion. It was a bloodless revolution in which Panama declared its independence and formed the Republic of Panama. The new government was quickly recognized by the U.S., which was also to protect the new country against its former master.[24]

Roosevelt was later to boast "I took Panama,"[25] which is certainly more of an admission than a defense of his own action here. But Roosevelt did not foment the revolution,[26] the fervor for separation from Columbia having been deeply rooted in Panama. Nonetheless, this "gunboat" diplomacy of the U.S. did help Panama to become the independent nation it is today.[27]

Almost immediately after the establishment and recognition by the U.S. of Panama, negotiations began on a canal treaty between the two nations.[28] The Panamanian government authorized Phillipe Bunau-Varilla to act as its Ambassador Extraordinary and Plenipotentiary in negotiating the treaty.[29] The negotiations concluded in the Hay/Bunau-Varilla Treaty to govern administration, operation, and control over the canal and its zone,[30] a strip of land 10 miles long granted to the U.,S. "in perpetuity" by Panama.[31] The treaty draft was signed on November 15, 1903,[32] at 7 o'clock p.m.—hardly "in the dead of night," as President Carter would have the American people believe.[33] Later, on December 4, 1903, the formal signing took place, with the three members of Panama's junta and six Panamanian cabinet members as signatories to the treaty.[34] The treaty was subsequently ratified by Panama in February of the following year,[35] and in May, after ratifications had been exchanged, the Foreign Minister of Panama notified our government that his country considered its jurisdiction over that area of land within the Canal Zone to have ceased.[36]

In exchange for the right to occupy this zone and build a canal therein, the U.S. initially paid Panama $10 million for this transfer of territory—a cost far exceeding the purchase price of the Louisiana District or Alaska, or, for that matter, any other such territorial acquisition. In addition, the U.S. acquired complete ownership of all parcels of privately-owned land wthin the Zone by paying every individual land-owner or squatter for title to their land in fee simple; all deed instruments were recorded and became a part of official U.S. court records. Further, $40 million was paid to a defunct private French company for whatever rights they had to the ditch they had begun to dig in an earlier attempt (from 1881 to 1889) to build a canal; the tremendous cost of construction had forced the French company into bankruptcy which rendered it incapable of completing its project. The total acquisition costs at this point were over $54 million for the U.S.[37]

Further still, as an aid in the construction of the canal, the U.S. assumed a $250,000 annual obligation previously paid by a private railroad company for the right-of-way of a rail line it had built across the Isthmus. Out of agreement in the Hay/Bunau-Varilla Treaty arose the misconception that the U.S. was paying Panama for renting the Zone.[38] Indeed, in his television speech on the new Panama Canal treaties, President Carter claimed that the U.S. has to "pay rent" to Panama in order to "use their land."[39] Yet there is no specific language in Hay/Bunau-Varilla which even hints that the Canal Zone is a leasehold, and neither Panama nor the U.S. has accepted the idea that the annual annuity (since incresed to $1,500,000) is an obligation on a lease for use.[40] Moreover, while the term "lease" is nowhere to be found in the treaty, the term "grant" is used no less than 14 times and, since the grant was "in perpetuity," there is no provision for renegotiation or termination as might be found in a lease agreement. The transfer of territory seems specific and absolute. The boundaries of the Canal Zone, in implementation of the treaty, were first defined through a provisional agreement, ratified by Panama's National Assembly; by that agreement Panama specifically "ceded" the land to the U.S., and the boundary lines were made permanent upon the completion of the canal.[41]

After ten years involving American financing, engineering, and other resources, the building of the Panama Canal had finally been accomplished by 1914 at an outlay of some $387 thousand tax monies.[42] In the early 1920s the U.S. finally reached an agreement with the disgruntled Colombian government to compensate it in the amount of $25 million for the loss of its Panamanian province; in return, Colombia officially recognized the independence of Panama and that the title to the Canal Zone rested "entirely and completely" with the U.S. Over the past seven decades the U.S. has invested almost $2 billion in the Canal Zone, including ridding this once mosquito-infested jungle of malaria.[43]

The foregoing historical summary of the Panama Canal and the original treaty with Panama has been necessary not only to understand the arguments made for turning the Canal over to Panama, but to refute those arguments as well. It has certainly shown that, in terms of Article II of the 1903 treaty, the U.S. clearly has "control" of the Canal Zone "in perpetuity."[44] The U.S. surely has ownership of the Canal Zone,[45] and the moral and legal right—the root of all property rights—of a creator in that which it has created: the Canal itself.[46]

Sovereignty, however, should not be confused with ownership. Sovereignty is supreme and independent authority; it is the right to make decisions not subject to the approval of others; hence, the ultimate exer-

Footnotes at end of article.

cise of power over a territory. As it pertains to the Panama Canal Zone, it would include the management, operation, and defense of the Canal.[47] Without such sovereignty, the U.S. would have no rights at all in the Canal Zone.[48] Of course, the U.S. does have sovereignty in the Zone, and the sovereign rights it has been exercising were received through the treaty of 1903,[49] to wit:

"The Republic of Panama grants to the United States all the rights, power and authority within the Zone . . . which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located *to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.*[50] (Emphasis added.)

Of the two new treaties, the basic one surrenders all U.S. sovereign rights over the Canal Zone to Panama.[51] The preamble acknowledges "Panama's sovereignty" and Article I(a) abrogates the 1903 convention, which will be replaced by this new treaty six months after the exchange of ratification instruments by both nations. On that effective date of the treaty, Panama assumes general territorial jurisdiction over the Zone; and, at noon on December 31, 1999, Panama further assumes control of Canal operations and defense as U.S. military presence ceases.[52] This negotiated transfer of sovereignty [53] repudiates a 75-year-old legal understanding.[54]

Although sovereignty cannot be transferred unless one exercises it to begin with,[55] proponents of the new treaties have advanced the claim that the U.S. never had full sovereignty over the Canal Zone, but was merely given certain "rights" by the original 1903 treaty.[56] In so doing, the proponents have adopted an argument almost as old as the Hay/Bunau-Varilla Treaty itself. Some have always felt that the U.S. was never meant to be the ultimate sovereign, with titular, or residual, sovereignty retained by Panama. This question of who holds sovereignty revolves around Article III of the 1903 treaty, cited above. Those who adhere to the notion of titular sovereignty read the phrase "*if* it were sovereign" (emphasis added) as a qualification on the Article II grant. Yet when the final words of Article III denying Panama "the exercise * * * of any * * * sovereign right, power or authority" are taken in the context of the entire article, it offers proof that the U.S. is sovereign in the Canal Zone. Still, the sovereignty debate goes on today.[57] Indeed, U.S. Ambassador At-Large Ellsworth Bunker (who helped negotiate the new agreements with Panama) spoke of Panama's "titular sovereignty over the Zone" in a speech to the World Affairs Council.[58] But John Hay, Secretary of State at the time the 1903 treaty was signed, dismissed the theory of titular sovereignty as a "barren scepter." [59]

The courts entered the sovereignty debate as early as 1907.[60] In that year the U.S. Supreme Court interpreted the Hay/Bunau-Varilla Treaty as "ceding the Canal Zone" to the U.S. in the case of *Wilson* v. *Shaw*.[61] Mr. Justice Brewer, speaking for a unanimous Court, refused to accept plaintiff's contention that the U.S. had not acquired title to and the exercise of sovereignty over the Canal Zone in the absence of described boundaries in the treaty; he forthrightly declared:

"It is hypercritical to contend that * * * the territory * * * does not belong to this nation, because of the omission of the technical terms used in the ordinary conveyance of real estate. * * *" [62]

And Justice Brewer stated further that disputes "as to the exact boundary on either side" were not infrequent in the "cessions of territory" and, thus, "immaterial," adding, by way of comparison, that—

Alaska was ceded to us 40 years ago, but the boundary between it and the English possessions were not settled until within the last two or three years. Yet no one ever doubted the title of this Republic to Alaska."[63]

The opinion in the Shaw decision is especially interesting in light of President Carter's assurances to the public in his fireside chat of February 1, 1978, that the Supreme Court has "repeatedly acknowledged the sovereignty of Panama over the Canal Zone" and that "(t)he Canal Zone cannot be compared with United States territory. We bought Alaska from the Russians. * * *" [64]

The Supreme Court again addressed the sovereignty issue in regard to Article III of Hay/Bunau-Varilla nine years after it had decided. *Shaw*. Here the plaintiffs sought an injunction to restrain the defendants from seizing plaintiffs' property in the Canal Zone for public use so as to prevent dispossession of the owners until they received the compensation required by the Panamanian constitution. The plaintiff's contended that inhabitants of the Canal Zone had not lost any of these constitutional guarantees under the 1903 treaty with the U.S. The Court, though, ruled, in affirming the Canal Zone District Court, "that where a government by treaty, parts with sovereignty of a part of its possessions, . . . the new sovereignty is equally empowered to legislate therefor without regard to pre-existing laws or conditions." [65]

To be sure, Congress had previously provided in the Panama Canal Act of 1912 [66] that the Zone was to "be considered . . . an organized territory of the United States" for purposes of extradition.[67] Later in the *Luckenbach* case,[68] the Supreme Court determined that the Canal Zone was a "foreign port" as it related to the setting of rates for mail carriage—but, clearly, *only* for this purpose of mail transportation. The Court here cited the *Wilson* v. *Shaw* precedent and chose not to examine the sovereignty issue further.[69] When a defendant accused of committing a wrong in the Canal Zone subsequently sought in a New York case [70] to dismiss the complaint of the ground that the Zone was, in reliance upon *Luckenbach*, a foreign country where that court had no jurisdiction, the court itself denied the motion to dismiss, noting that *Luckenbach* involved special circumstances: *i.e.*, ports relating to the mails; it did not involve places.[71] Moreover, a British court even took note of the special circumstances involved in the *Luckenbach* holding when it found the Canal Zone to be a U.S. possession and, consequently, the town of Cristobal within the Zone to be a U.S. port for the carriage of goods by sea.[72]

Divergent opinions on the sovereignty question are seen in a 1948 Supreme Court case. Mr. Justice Reed observed that the Canal Zone was a territory of the U.S., but then added, rather inconsistently, that it was "territory over which we do not have sovereignty." [73] Albeit dictum, Mr. Justice Jackson dissented from that dictum, saying:

"To such an extent, indeed, are we sovereign in the Canal Zone that Panama has been granted special commercial rights only by express and formal concession, and this Court has reviewed the history of the acquisition and concluded that the title of the United States is complete and perfect." [74]

The most recent Supreme Court decision on the status of the Panama Canal Zone was handed-down in 1972.[75] The Court upheld the ruling of the Fifth Circuit Court of Appeals which declared that "(t)he Canal Zone is an unincorporated territory of the United States over which Congress exercises 'complete and plenary authority'." [76] This case not only referred to the 1903 treaty but also to the treaty of 1936, which stated that the Canal Zone was a "territory of . . . Panama under the jurisdiction of the United States . . ." [77] and which the State Department now claims recognized the sovereignty of Panama over the Zone.[78]

The treaty signed in 1936 (Hull-Alfaro), the first substantial revision of the 1903 treaty, took 40 months to ratify. Negotiated under the administration of President Franklin D. Roosevelt as a part of his "Good Neighbor" policy, the treaty made a number of concessions in order to improve relations with Panama. The annual annuity was raised to 430,000 devalued dollars, and the U.S. relinquished, at the request of Panama, its guarantee of that nation's independence, along with its right to intervene in Panama's affairs by maintaining order in those Panamanian cities located near the Atlantic and Pacific entrances of the Canal. More important, though, were the elimination of the United States' right under the original treaty to use any defense sites it required outside the Zone and a provision that the defense of the Canal would become the joint responsibility of the U.S. and Panama. The Army at first opposed the new pact. Given the growing effectiveness of the airplane, the defense of the Canal had to depend on fighter planes and bombers based outside the Zone, in addition to large fixed guns and a mobile Navy. There was also some fear of the expanding Japanese fleet. Finally, in 1939, three years after the treaty had been signed, the strongly Democrat-controlled Senate ratified it on a largely party-line vote—but not before there was included an exchange of notes making it clear that the U.S. had both the right to take unilateral steps to defend the Canal when a sudden crisis precluded joint consultation and to hold military maneuvers outside the Zone if such operations were warranted for the security of the waterway.[79]

Although both the Panamanian Foreign Minister and Ambassador told then-Undersecretary of State Sumner Welles that their country was so satisfied with what it had received from the 1936 treaty it would not request any further concessions, more concessions were later granted to Panama through another treaty revision in 1955 as a result of a prior meeting between President Eisenhower and President Remon of Panama at Washington. The new agreement, signed in Panama, again increased the annuity, this time to $1.9 million; it also sought to ameliorate inequities in wage rates for similar work performed by Americans and Panamanians alike in the Canal Zone. In return, Panama was to permit the U.S. to establish military bases, which the U.S. had paid Panama the price of about $1 billion to obtain during World War II to be evacuated within a year after the war ended. Panama had also wanted the U.S. to rescind the "perpetuity" clause of the 1903 treaty for a 99 year concession to the Canal Zone instead. However, this right the U.S. refused to relinquish.[80] As a matter of fact, the 1955 treaty reconfirmed our rights and sovereignty in the Zone.[81] Perhaps, the lesson of current events had not been lost here. In 1953 Egypt had unilaterally abrogated British rights to maintain a base at Suez and station troops along the canal route. The next year the United Kingdom itself renounced its treaty rights and promised to remove its armed forces within 20 months.[82] Then in 1956, a month after the British had withdrawn from the Suez Canal, Egypt nationalized the Suez Canal Company and kept the profits. It also kept the Canal closed to Israeli ships in spite of treaty commitments, an Anglo-French attack, and a U.S. condemnation.[83]

Although a decided shift in U.S. policy on the sovereignty of the Canal Zone can be clearly detected in the State Department since the Suez Crisis of 1956, one of the first

Footnotes at end of article.

symbolic actions occurred a decade earlier when Alger Hiss, a Communist agent at that time heading the Department's Office of Political Affairs, included the Canal Zone on a list of "U.S.-occupied territories" which he sent to the newly-created United Nations. His action was supported by Secretary of State Dean Acheson.[84]

From 1959 to 1964 the growing demand that the U.S. acknowledge Panama's claim of sovereignty over the Canal Zone, led to outbursts of violence. In 1959 a mob of several hundred student rioters attacked the U.S. Embassy in Panama City and ripped down our flag, then attempted to invade the Canal Zone, intent on planting the Panamanian flag at several locations in Zone territory. To placate the Panamanians, President Eisenhower reacted the following year by ordering that their flag be flown at the Shaler Triangle located within the Zone. The government of Panama took this action as symbolic recognition of its residual sovereignty over the Canal Zone. although Congress, by resolution, had advised Eisenhower that it opposed the flag concession. President Kennedy later authorized flying the Panamanian flag at 17 different locations in the Zone.[85]

A far more serious disturbance exploded early in 1964 when Panamanian street mobs, consisting of members of communistic parties in Panama and Cuba led by persons communist-trained in political action, rioted along the Canal Zone border. Four U.S. soldiers and over 20 Panamanians were killed in the bloodshed; 700 persons were wounded and more than 200 seriously injured; property damage was estimated to be over $2 million. The Panama National Guard took no steps whatever to stop the rioters—and, in fact, some guardsmen even took part in the riot themselves, using their weapons against American troops and sniping at targets in the Zone. As a result of this incident, and at the insistence of the State Department that the Canal Zone really was the sovereign territory of Panama, President Lyndon Johnson near the end of the year publicly committed the U.S. to negotiate a new, fixed-term canal treaty with Panama.[86] The terms of this treaty were to be similar to the subsequent statement of principles found in the Kissinger-Tack Agreement of 1974, which implied that the Canal Zone was Panamanian territory.[87] As a Congressman, Gerald Ford expressed concern over such a treaty, noting that "(w)ith Cuba under the control of the Soviets through its puppet Castro and with increased communistic subversion in South America, a communistic threat to the Panama Canal is clearly a grave danger. . . ." [88] Yet, as President, Ford endorsed the reversion of U.S. sovereignty over the Canal Zone to Panama.[89]

The process of treaty negotiations started with Panama by President Johnson were concluded under President Carter.[90] The details of the treaties, written in secret, were kept secret from Congress and the American people until 24 hours before they were signed.[91] Mr. Carter staged the ceremonial signing of the treaties with Panama's dictator, Omar Torrijos, at Washington on September 7, 1977. Whereupon Gov. Meldrim Thomson of New Hampshire declared September 7 to be a "Second Day of Infamy." [92] To be sure, the new Panama Canal treaties hold all the potential of a diplomatic Pearl Harbor.

The national defense is one of the legitimate purposes of government—and it is of the highest order when it comes to preserving freedom. Foremost to any defense policy is the capability to use and control the seas if a nation's freedom is challenged. That is surely vital to the security of the United States.[93] Especially critical to the defense interests of the U.S. is the Caribbean area.[94] Strategic control of the Caribbean in both war and peace has been essential to U.S. security ever since the Monroe Doctrine was enunciated. That security has already been weakened by the communization of Cuba, 90 miles off our shore. Abandoning sovereignty over the Panama Canal and its Zone will further threaten U.S. security.[95]

The Canal Zone has almost uniformly been included as a part of the U.S. in matters relating to the national defense and security,[96] and there can be no doubt that the Canal itself is quite necessary to U.S. security and defense.[97] Indeed, the Canal, as an inter-ocean waterway, has grown more important than ever to the U.S. today. Soviet sea power is expanding throughout the world, based on a naval doctrine of cutting-off U.S. lines of sea communication.[98] With the Communists out to dominate or influence global maritime "choke points." [99] future control of the Panama Canal Zone is a real concern [100] since the Canal is one of those choke points. [101] Moreover, even as the Soviet Navy has expanded, the U.S. Navy is shrinking to the point where it is currently out-numbered in submarines and surface ships by the Soviets. This reduction in the size and power of the U.S. Navy's active fleet means that, while it may have a two-ocean responsibility, the U.S. does not really have a two-ocean Navy; it is a one-ocean Navy, at best one-and-a-half. Thus the great need of the Panama Canal to the U.S. Navy is readily apparent. In order to compensate for the limited adequacy of its combat elements, the Navy must obtain maximum combat effectiveness. Moving naval ships, personnel, and supplies between the Pacific and Atlantic Oceans through a shorter route with greater speed and quicker response time enables the Navy, with a steady flow of logistic support, to meet a sudden crisis or conflict. For example, during the Cuban Missile Crisis, Marines and supplies from the West Coast were ferried through the Panama Canal.[102] Acknowledging the Canal as an essential defense link between the Atlantic and Pacific, General V. H. Krulac, U.S. Marine Corps (ret.), has said that "(i)t is only because of the waterway that we are able to risk having what amounts to a bare-bones, one-ocean Navy." [103]

In making for an effective U.S. Navy in both oceans, every naval vessel now on active duty (including nuclear-powered, ballistic-missile firing submarines, attack subs, combat surface ships, and support and supply ships for aircraft carriers) can transit the Panama Canal, save for 13 of our largest carriers—too large to pass through the present locks. However, the trend in naval shipbuilding is toward smaller, though more effective, ships; and well before the year 2000 these new, smaller-sized ships will have begun to replace those larger crafts.[104]

Although there is overwhelming agreement among the majority of high-ranking military experts on the strategic importance of the Canal to U.S. security, there is still disagreement over ratification of the new treaties.[105] The Joint Chiefs of Staff support for ratification is understandable. Secretary of Defense Harold Brown has stated that any of the Joint Chiefs who opposed the treaties should resign.[106] Obviously, any officer on active duty who does not wish to jeopardize his military career will simply adhere to the views of those over them.[107] However, retired Admiral Thomas H. Moorer told the Senate Foreign Relations Committee that "(a) large majority of our war and contingency plans are totally infeasible unless one assumes that full priority use of the Canal will be available." [108] And, appearing before the Senate Armed Services Committee to oppose the disposal of the Panama Canal by reason of the fact that its "defense and use . . . is wrapped unextricably with the overall global strategy of the United States," [109] Moorer concluded:

" . . . A maritime link between the Atlantic the Pacific is vital to the security of the United States and will always be so. * * * A permanent U.S. presence will provide the best defense and the best insurance against a major conflict in the Caribbean area." [110]

Together with three other former Chiefs of Naval Operations (Admirals Arleigh Burke, Robert Carney, and George Armstrong), Moorer had earlier written to President Carter on the importance of "this interoceanic waterway." Drawing on their own experiences in active service, the admirals emphasized the strategic value of the Panama Canal. "As Commander-in-Chief," they informed Mr. Carter, "you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict." The four also warned of an "existing military threat," noting the "close ties" the present regime in Panama had with Cuba, "which in turn is closely tied to the Soviet Union"; and they cautioned the President further that "the loss of the Canal . . . a serious set-back in war, would contribute to the encirclement of the United States by hostile naval forces and threaten our ability to survive." [111]

Nevertheless, President Carter asked the Senate to aprove the two new Panama Canal treaties that would relinquish U.S. control over this most strategic of waterways in the world to a pro-communist country. Upon implementation of the treaties only four of the 14 U.S. military bases presently in the Canal Zone will remain and these bases willl come under the direct civil and political jurisdiction of Panama even before the U.S. is technically scheduled to leave in 1999, since sovereignty over the Zone passes to Panama with treaty ratification.[112] While paragraph 2 of Article IV in the basic Canal treaty grants to the U.S. the "primary responsibility" to protect and defend the Canal "(f)or the duration" of that treaty (or until December 31, 1999), it is contradicted by paragraph 1, which gives both the U.S. and Panama an *equal* role in the protection and defense of the Canal "from an armed attack or other actions which threaten . . . (its) security . . ."; under those circumstances Panama could thwart any U.S. defense effort. After 1999, when the basic treaty expires and the U.S. no longer has any bases, troops, or other forms of military presence or power in the Isthmus to prevent a blocking of the Canal, only the second treaty, the so-called "Neutrality Treaty," will remain in effect. Just what defense role the U.S. will then have in upholding its interests in the Canal is unclear due to the vaguely-worded treaty itself, particularly Article IV.[113]

The language of Article IV of the Neutrality Treaty is as ambiguous as that of Article VI in the first treaty, posing problems of interpretation.[114] The possibility of differences or variations between the language used in the English and Spanish texts of the treaty could well alter the meaning of the provisions and create a controversy relating to the interpretation of key clauses in this document.[115] The controversy over Article IV is whether or not the U.S. has the right of intervention to protect the Canal's neutrality.[116] The Carter Administration claims that Article IV guarantees the U.S. permanent and unilateral legal right to re-intervene and take whatever steps it deems necessary in order to ensure the Canal's neutrality and open access if it is subject to an attack or closure by hostile forces—even if that threat comes internally from Panama. That planation has been flatly rejected publicly by Torrijos and the Panamanian treaty negotiators, who assert that the U.S. has the right to defend the Canal only if it is threat-

Footnotes at end of article.

ened by a foreign power and Panama requests assistance against the aggression; the treaty "does not say," in the words of Panama's chief negotiator, Dr. Romulo Escobar Bethancourt, "that it falls to the United States to decide when neutrality is violated or not." [117] What Article IV actually states is merely that the U.S. and Panama—

"agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral . . .".[118]

This is extremely ambiguous and imprecise. But it was deliberately intended to be so because neither U.S. nor Panamanian negotiators seemed willing to give up their respective positions on the right of intervention—although Escobar, in a speech to the Panamanian General Assembly on August 19, 1977, reported that the U.S. "gave up on the idea of its having a guarantee of neutrality over the Canal," just as Bunker insisted, "Our own military defense options are not restricted. We will be free to defend the canal's neutrality as now. . . ." It is all very confusing, to be sure.[119] In the case of disputes over treaty interpretation, reconciliation of differences is provided for through consultation or, perhaps, mediation—a tacit acknowledgement that both interpretations legally have the same weight or validity.[120]

At least one thing is clear about this neutrality treaty: it would force the U.S. to give free passage through the Canal to nations at war with it or its allies. Article II provides that in time of war the Canal "shall remain open to peaceful transit by vessels of all nations," and Article III, section 1(e), specifically adds that "vessels of war of all nations shall . . . be entitled to transit the Canal" without being required to submit to inspection, search, or surveillance. It is certainly not a reassuring thought to have the U.S. committed, for example, to allowing Soviet ships and submarines to peacefully pass through the Canal when we might be at war with Russia.[121]

In an attempt to eliminate the ambiguities over the right of the U.S. to defend the Panama Canal under the Neutrality Treaty, Torrijos met with Carter at the White House on October 15, 1977, and the two issued a joint "Statement of Understanding" on what Article IV was supposed to mean. The statement indicates that the U.S. has the right to act against any "threat directed against the Canal," yet at the same time it does not permit the U.S. the right of intervention in the "internal affairs" of Panama, violating its territorial integrity. Thus, should the U.S. intervene to protect the Canal, which was then a part of Panama, it would have to intervene in Panama's internal affairs. So, the ambiguities persist [122]—even though President Carter has proclaimed, on the basis of the statement of understanding, that the U.S. "can take whatever military action is necessary to make sure the Canal always remains open and safe." [123]

Still the Carter-Torrijos statement is nothing more than a personal interpretation on the part of these principals. It does not change the treaty language [124] nor the contractural relationship between parties to the treaty. As a statement of "understanding," it merely explains a position on a given matter in the treaty; it is only a tangent to the treaty's basic operation.[125] Because such a statement is not part of a treaty, it has no binding effect on the parties under international law.[126] The real understanding of a treaty will be limited to the very language in the treaty itself.[127] Hence, in the event the U.S. found it necessary to intervene for whatever reason, only the treaty language would count—and this particular treaty conveys no specific right of intervention to the U.S. at all.[128] Moreover, neither Carter nor Torrijos signed their statement of understanding (a fact Torrijos later boasted about) and it remains entirely informal.[129] While adding the substance of the understanding to the treaty *via* a Senate amendment makes it formal,[130] this only begs a fundamental question: if the Panama Canal is vital enough to the freedom and security of the American people that we want the right to send U.S. forces back there after it is turned over to Panama, then why shouldn't we hang on to it in the first place?

It has been said that approval of the treaties will remove an age-old irritant to U.S.-Panamanian relations and buy the goodwill of the people of Panama, thereby avoiding future violence.[131] Indeed, Defense Secretary Brown admitted to an audience in Phoenix, Arizona, that the treaties had to be accepted in order to keep Panama as a friend.[132] About this whole transaction there is an implication of blackmail diplomacy. Even though the opponents of the new Panama Canal treaties would like better relations with Panama, how absurd it would be strategically to surrender our rights to operate and defend the Canal into the hands of a potential enemy.[133] Making such a major concession as this will only compound the errors of our past policies.

If, after a series of defeats and retreats from the Bay of Pigs to Vietnam, there is somewhere the U.S. is going to stand steadfast and draw a line beyond which it adversaries, who, as Solyzhenitsyn warns, are out to destroy it, will not cross, then the Panama Canal must be that place.[134]

The Republic of Panama originally ceded to the United States by treaty territory running through the heart of that country for the purpose of constructing a canal, and within that territory the U S. did, indeed, construct such a canal wholly at its own cost. Panama also conferred upon the U.S. the necessary sovereignty and jurisdiction over the Canal Zone occupied by this world canal enabling the U.S. to maintain, operate, and protect it. That the U.S. enjoys the absolute right of ownership and control of the Canal has been decided by the Supreme Court. This should satisfy those who feel that titular sovereignty is at least reserved to Panama In conclusion, it is the view of this writer that the U.S. should not abandon the Panama Canal and give back the sovereignty over the Canal Zone to Panama.[135]

FOOTNOTES

[1] Adam Clymer, "Panama Canal Controversy and Its 75-Year History: Some Questions and Answers," New York Times (Feb. 9, 1978), at A14; Michael Mandelbaum, "Big Ditch Debate," N.Y. Times Book Review (Feb. 19, 1978), at 11.

[2] "Final Countdown on the Panama Canal —Him or Me?" American Legion National Security-Foreign Relations Bulletin, printed in Congressional Record (Jan. 19, 1978), p. 187.

[3] "Historical Background on the Panama Canal," statement issued by Sen. Pearson, Feb. 3, 1977, printed in *Cong. Rec.* (Feb. 6, 1978), at p. 2258. Hereinafter cited as "Historical Background."

[4] Clymer, *loc. cit.*

[5] "The Panama Canal Issue," Senate Republican Policy Committee study printed in Cong. Rec. (Dec. 6, 1977), at pp. 38536–38541; Sen. Strom Thurmond, "Should Canal Treaties be Approved?—No," Chicago Tribune (Sept. 11, 1977), sec. 2, at 1.

[6] "Historical Background," *supra* note 3; Clymer, *loc. cit.*.

[7] Statement of Jules Davids before the Senate Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978), at pp. 267–68; statement of Cong. Eldon Rudd before Foreign Relations Committee, Jan. 25, 1978, in Cong. Rec. (Jan. 25, 1978), at p. 760.

[8] "Historical Background," *loc. cit.*

[9] Quoted in Davids, *supra* note 7, at p. 267.

[10] Daniel J. Flood, "Panama Canal Giveaway Treaty Crisis—A Challenge to the Congress," address at Wilkes-Barre, Pa., Nov. 21, 1977, printed in Cong. Rec. (Jan. 19, 1978), at p. 144.

[11] Davids, *loc. cit.*

[12] 9 Stat. 881, T.S. No. 54.

[13] Davids, *loc. cit.*; Flood, *supra* note 10.

[14] Davids, *ibid.*; statement by Richard W. Leopold before Foreign Relations Committee, Jan. 19, 1978, printed in Cong Rec. (Jan. 20, 1978), at p. 267; "Historical Background," *loc. cit.*

[15] Hanson W. Baldwin, "The Panama Canal: Sovereignty and Security," 44 AEI Defense Review 12 (1977), re-printed in Cong. Rec. (Sept. 16, 1977), at p. 29738.

[16] Treaty Between the United States and the United Kingdom to Facilitate the Construction of a Ship Canal of 1901, Article III.

[17] Baldwin, *loc. cit.*

[18] Statement by John Norton Moore before Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978), at p. 267.

[19] *Supra* note 16, Art. IV.

[20] "Historical Background" *loc. cit.*; Leopold, *supra* note 14.

[21] Davids, *loc. cit.*; Rudd, *supra* note 7; Baldwin, *loc. cit.*; Clymer, *loc. cit.*; "Historical Background," *ibid.*

[22] Baldwin, *ibid.*; Davids, *id.*

[23] Rudd, *loc. cit.*

[24] Davids, *loc. cit.*; "Historical Background," *loc. cit.*; Baldwin, at S15133–4; Leopold, *loc. cit.*; Rudd, *loc. cit.* See also Theodore Roosevelt "Fear God and Take Your Own Part" (1914), ch. XI.

[25] H. S. Commager, "Presidential Power: The Issue Analyzed," N.Y. Times Magazine (Jan. 14, 1951), at 23.

[26] Rudd, *loc. cit.*

[27] Davids, *loc. cit.*; "The Panama Canal Issue," *supra* note 5, at S19335.

[28] Baldwin, at S15134; Leopold, *loc. cit.*

[29] Clymer, *loc. cit.*; Cong. Rec. (Feb. 2, 1978), at p. 1968.

[30] Baldwin, *loc. cit.*

[31] Convention for the Construction of a Ship Canal to Connect the Waters of the Atlantic and Pacific Oceans, Nov. 18, 1903, U.S.-Panama, 33 Stat. 2234, T.S. No. 431, Art. II. In legal terms, "perpetuity" is defined as "endless duration; forever." Black's Law Dictionary (1951), at 899. Perhaps, it was defined more plainly by a constitutional law professor (Dr. L. A. Wehling of Valparaiso University) who once said perpetuity was "a hell of a long time."

[32] Leopold, *loc. cit.*

[33] Opening statement of John Nicholaides in debate at San Diego University, printed in Cong. Rec. (Jan. 25, 1978), at p. 930.

[34] Cong. Rec., *supra* note 29.

[35] "Historical Background," *loc. cit.*

[36] Baldwin, *loc. cit.*

[37] Rudd, at pp. 1347–48; *ibid.*, at pp. 29738–39; "Historical Background," *loc. cit.*; "The Panama Canal Issue," *loc. cit.*

[38] Baldwin, at p. 29739; see also Cong. L. P. McDonald, "Giveaway," Review of the News (Jan. 25, 1978).

[39] N.Y. times (Feb. 2, 1978), at A14.

[40] Martha Jane Shay, "The Panama Canal Zone: In Search of a Juridical Identity," 9 International Law and Politics 15 (Spring 1976), at 45, 48.

[41] Baldwin, *loc. cit.*; Rudd, at S475; Sen. Orrin G. Hatch, "Panama Canal Giveaway Violates Constitution," Conservative Digest (Sept. 1977) reprinted in Cong. Rec. (Sept. 7, 1977), at p. 27983.

[42] "The Panama Canal Issue," *loc. cit.*

[43] "Historical Background," *loc. cit.*; Baldwin, *loc. cit.*; Rudd, *loc. cit.*; *ibid.*; M. N. Buechner, "Why We Must Keep The Canal," Washington Report (Dec. 1977), reprinted in Cong. Rec. (Jan. 27, 1978), at p. 1253.

[44] Baldwin, at pp. 29739–40.
[45] Thurmond, *supra* note 5.
[46] Buechner. *supra* note 43.
[47] Thurmond, *loc. cit.*
[48] Rudd, at 476.
[49] Thurmond, *loc. cit.*
[50] *Supra* note 31, Art. III.
[51] Thurmond, at 2; Rudd, *loc. cit.*
[52] "The Panama Canal Treaties of 1977," 11 International Lawyer 771 (Fall 1977), at 771; N.Y. Times (Sept. 7, 1977), at A16; Charles A. Wheeler, "What the Canal Treaties Mean," Chicago Sun-Times (Feb. 22, 1978), sec. 2, at 2; "New Panama Canal Agreement: Basic Elements," GIST (Aug. 1977).
[53] Baldwin, at S–15135.
[54] Rudd, *loc. cit.*
[55] Baldwin, *loc cit.*
[56] "Why a New Panama Canal Treaty?", speech by Sol M. Linowitz, The Department of State (Aug. 19, 1977), at 3; Ellsworth Bunker, "Should Canal Treaties be Approved?"—Yes," Chicago Tribune (Sept. 11, 1977), sec. 2 at 2; Hatch, *supra* 41.
[57] Shay, at 15–8, 21; "The Panama Canal Issue," at pp. 38536, 38542.
[58] Congressional Digest (April 7, 1976), at 119.
[59] Letter to J. D. de Obaldia, 1 *For. Rel. U.S.* 613 (1904).
[60] Thurmond, at 1.
[61] 204 U.S. 24.
[62] *Ibid.*, at 33, 27 St. Ct. 233, at 235.
[63] *Id.*
[64] N.Y. Times (Feb. 2, 1978), at A14.
[65] *Dixon, et al.* v. *Goethals, et al.*, 242 U.S. 616 (1916).
[66] 37 Stat. 560.
[67] *Ibid.* S 12, ch. 390.
[68] *Luckenbach Steamship Co.* v. *U.S.*, 280 U.S. 173 (1929).
[69] *Ibid.*, at 181, 177–8. In case another case involving the Luckenbach Co., it was noted that Congress enacts laws for the Canal Zone because it has no local legislature. 196 F. Supp. 835 (D.C.C.Z. 1961), Aff'd 303 F. 2d 252 (5th Cir. 1962).
[70] *Taylor* v. *Insurance Co. of North America*, 9 F. Supp 574 (S.D. N.Y., 1934).
[71] *Ibid.*, at 575.
[72] *Stafford Allen and Sons Ltd.* v. *Pacific Steam Navigation Co.*, 2 All E.R. 716 (C.A. 1956), at 719.
[73] *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377 (1949), at 381.
[74] *Ibid.*, at 402.
[75] *U.S.* v. *Husband R.*, 453 F. 2d 1054 (5 Cir. 1971); *cert.* denied 406 U.S. 935 (1972). The defendant, Jonathan Howell R. (Roach) appealed his conviction of a misdemeanor for operating his bus in violation of Canal Zone regulations restricting non-franchised bus operations so that a franchised company would have exclusive access (or almost so) to several areas while still allowing any bus operator to carry on his business along otherwise prohibited routes by obtaining a permit.
[76] *Ibid.*, 453 F. 2d at 1057.
[77] General Treaty of Friendship and Cooperation, March 2, 1936, United States-Panama, 53 Stat. 1807, T.S. No. 945.
[78] Baldwin, at S15134.
[79] Davids, *loc. cit.;* Leopard, at S173; *ibid.*
[80] Baldwin, *id.;* Leopold, *id.;* Davids, at S171; Agreement for the Lease of Defense Sites in the Republic of Panama, 1942, 57 Stat. 1232, Art. V; "Panama Canal: The New Treaties" (Dept. of State publication, 1977), at 5.
[81] Flood, *supra* note 10, at H36; Thurmond, *loc. cit.*

The 1955 treaty also provided for the disposition of some property in the Canal Zone to Panama, but required implementing legislation by Congress for the transfer in accord with the Federal Constitution. Article IV, Section 3, clause 2, of the Constitution empowers Congress "to dispose of . . . the Territory or other Property belonging to the United States." One of the Framers, Randolph of Virginia, stated that this was "a most express restriction" on the treaty-making authority, serving as a check against sacrificing the nation's property rights to a foreign power without consideration by both houses of Congress. In *Geofroy* v. *Riggs*, 133 U.S. 258 (1890), the Court said that "a treaty, which purported to exercise power exclusively granted to Congress would require implementing legislation." Courts have repeatedly ruled that the Article IV grant of authority to act on the disposal of public territory is an exclusive power of the full Congress to which all other power over property is subordinate in such cases as *Wisconsin Central R.R. Co.* v. *Price County*, 133 U.S. 496 (1890), and *Sioux Tribe* v. *U.S.*, 316 U.S. 317 (1942). Unfortunately, the basic new Panama Canal treaty conveys U.S. property to Panama *sans* any such joint congressional action, thus by-passing the constitutional role and right of the House of Representatives in disposing of federal property interests. Kenneth Merlin, "Panama—The Constitutional Question," printed in Cong. Rec. (Feb. 7, 1978), at pp. 2660–61; remarks by Sen. Goldwater, Cong. Rec. (Feb. 23, 1978), at pp. 4293–4, and (Mar. 3, 1978), at pp. 5469–70; Hatch, at p. 27984; Raoul Berger, Memorandum Re. Panama Canal Treaty: Dean Louis Pollock's Reply, printed in Cong. Rec. (Feb. 6, 1978), at pp. 2301–2; W. M. Whitman, "Panama Canal Treaty Problems," a study printed in Cong. Rec. (Feb. 6, 1978), at p. 2236.
[82] Leopold, *loc. cit.*
[83] Minority views of Sen. Robert P. Griffin in Foreign Relations Committee report on Panama Canal treaties, printed in Cong. Rec. (Feb. 6, 1978), at p. 2664.
[84] Baldwin, at p. 29744 infn 6, p. 29739; McDonald, *supra* note 38.
[85] Davids, *loc. cit.;* Baldwin at p. 29739; L. Ealy, "Yanqui Politics and the Isthmian Canal (1971), at 110, 112.
[86] Davids, *ibid.*, Mario Lazo, "Panama Canal Giveaway" (1971), at 12; Baldwin, "The Panama Canal Treaties: Are They Salvageable?", paper printed in Cong. Rec. (Feb. 1, 1978), at p. 1898 (hereinafter cited as Baldwin, "The Panama Canal Treaties"); "Panama Canal: The New Treaties," *loc. cit.;* Shay, at 42.
[87] Baldwin, "The Panama Canal: Sovereignty and Security," *supra* note 15, at p. 29744 (hereinafter cited as Baldwin, "Sovereignty and Security"); Leopald, *loc. cit.*, Thurmond, *loc. cit.*
[88] Quoted in Lazo, *loc cit.*
[89] Baldwin, "Sovereignty and Security," *loc. cit.*
[90] Davids, *loc. cit.;* Clymer, *loc. cit.;* "Panama Canal: The New Treaties," *loc. cit.*
[91] Rudd, at S477–8.
[92] Nicolaides, *supra* note 33.
[93] Gen. Andrew J. Gatis, "The Canal's Vital Defense Role," article in Veterans of Foreign Wars magazine (Jan. 1978), reprinted in Cong. Rec.. (Feb. 22, 1978), at pp. 4261–62.
[94] "The Panama Canal Issue,," at p. 38542.
[95] Baldwin, "Sovereignty and Security," at pp. 29736–7, 29743. Sen. Stennis has called the new Canal treaties "an unnecessary gamble with our national security interests." Cong. Rec. (Mar. 8, 1978), at p. 5989.
[96] Shay, at 26.
[97] Views of Hon. Robert J. Lagomarsino on the Issue of the Panama Canal," Cong. Rec. (Jan. 31, 1978), at p. 1673; "The Panama Canal Issue," at pp. 38542–3.
[98] Griffin, *supra* note 83, at p. 2259; Gatis, at 789; "The Panama Canal Issue," at p. 38542.
[99] Baldwin, "Sovereignty and Security," at p. 29743.
[100] Griffin, *loc. cit.*
[101] Paul B. Ryan, "The Panama Canal Controversy" (1977), at 50.
[102] Griffin, *loc. cit.;* Baldwin, "Sovereignty and Security," at p. 29736; Gatis, *loc. cit.;* "The Panama Canal Issue," at p. 38542; statement by Adm. Thomas H. Moorer, U.S.N. (Ret.), before Senate Armed Services Committee, Jan. 31, 1978, printed in Cong. Rec. (Jan. 31, 1978), at p. 1529. The U.S. Navy with 461 ships now, is at half the size it was a decade ago. Col. R. D. Heine, Jr., "Panama Canal Treaty Seen As Vital Issue for U.S.," Detroit News (Aug. 21, 1977), re-printed in Cong. Rec. (Mar. 7, 1977), at 5783.
[103] Quoted in Griffin and in Baldwin, *ibid.*, and in Rudd, at p. 761.
[104] Griffin, at p. 2260; Baldwin, *id.*, pp. 29736–7; "The Panama Canal Issue," *loc. cit.;* Rudd, *id.*; Lagomarsino, *supra* note 97.
[105] Griffin, at p. 2259; Rudd, id.
[106] Arizona Republic, Jan. 25, 1978.
[107] Gatis, *loc. cit.*
[108] Quoted in Griffin, *loc. cit.*
[109] Moorer, *supra* note 102, at p. 1528.
[110] *Ibid.*, at 899.
[111] Ryan, at 142–4.
[112] "Do New Treaties Give U.S. Right to Defend Canal?" Human Events (Sept. 17, 1977), printed in Cong. Rec. (Sept. 19, 1977—daily ed.), at p. 29909. Hereinafter cited as "Right to Defend Canal?".
[113] "The Panama Canal Issue,," at pp. 38538–41; Griffin, at pp. 2260–1; statement of Richard Falk before the Senate Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978) , at p. 271; Baldwin, "The Panama Canal Treaties," at p., 1900; *ibid.*, at p. 29909.
[114] Whitman, *supra* note 81, at pp. 2238.
[115] Sylvia Costellanos, analysis printed in Cong. Rec. (Jan. 25, 1978), at pp. 754–5.
[116] The Panama Canal Issue," at p. 38540.
[117] Griffin, at S1256–7; "Right to Defend Canal?" supra note 112; Rudd, at pp. 761–2; "Panama Canal Treaty Problems," at pp. 2238–9; Lagomarsino, at p. 1674.
[118] "The Panama Canal Treaties of 1977," at 789; N.Y. Times (Sept. 7, 1977), at A17.
[119] "The Panama Canal Issue," *loc. cit.;* Rudd, *loc. cit.;* "Right to Defend Canal?" at pp. 29909–10; Bunker, *supra* note 56.
[120] Costellanos, at p. 755.
[121] Thurmond, "The Case for Rejection," The Retired Officer (Dec. 1977), printed in Cong. Rec. (Jan. 19, 1978), at p. 100; "The Panama Canal Treaty," a preliminary analysis printed in Cong. Rec. (Sept. 14, 1977), at p. 29323; Jenkins Lloyd Jones, "Panama Bug-Out," Los Angeles Times, printed in Cong. Rec. (Feb. 23, 1978), at pp. 4408–9.
[122] Whitman, at p. 2239; Rudd, at pp. 762; "The Panama Canal Issue," at 38541; "Right to Defend Canal?" at p. 29909; Baldwin, "The Panama Canal Treaties," *loc. cit.*
[123] N.Y. Times (Feb. 2, 1978), at A14.
[124] Whitman and Baldwin, *supra* note 122.
[125] "Understandings, Reservations, and Amendments to the International Treaties," report prepared by Library of Congress, printed in Cong. Rec. (Jan. 31, 1978), at pp. 1546–7.
[126] "The Panama Canal Issue," *loc. cit.*
[127] Costellanos, *loc. cit.*
[128] "The Panama Canal Issue," at p. 38540; Baldwin, "The Panama Canal Treaties," *loc. cit.*
[129] Rudd, at pp. 762–3; Whitman, *loc. cit.;* "The Panama Canal Issue," at p. 38541.
[130] Falk, *supra* note 113. The Senate did, in fact, overwhelmingly adopt an amendment of this nature. Washington Star (Mar. 11, 1978), at A–5.
[131] Thurmond, "Should Canal Treaties be Approved?—No," supra note 5, at 1–2; Baldwin. "The Panama Canal Treaties," at p. 1898 and "Sovereignty and Security," at p. 29743.

[132] *Supra,* note 106.

[133] Thurmond, *supra* note 131; Baldwin, "The Panama Canal Treaties," *loc. cit.;* Buechner, at pp. 1252–3; Rudd, at pp. 760–1.

[134] Baldwin, "Sovereignty and Security," *loc. cit.;* "The Panama Canal Issue," at p. 38543; John Davis, "The Canal: A Rampart," N.Y. Times (Nov. 29, 1977), re-printed in Cong. Rec. (Mar. 8, 1978), at p. 6142.

[135] On March 16th, 1978 with only one vote to spare, the Senate yesterday approved the first of two Panama Canal treaties, saving President Carter from a potentially devastating defeat. The vote, one of those few tallies likely to go down in the history books, was 68 to 32. Treaty opponents immediately vowed a full scale effort to defeat the other canal treaty, which provides for a gradual turnover of the canal to Panama during the next 22 years. The opponents professed optimism about their chances to kill the second treaty on which the Senate is expected to vote next month. Reaching into Shakespeare for allusions to Brutus and Cassius at the battle of Philippi, Senate Majority Leader Robert Byrd declared: "The Rubicon of decision on the treaty is now to be crossed." ●

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, with statements limited therein to 10 minutes each, with the period not to extend beyond 30 minutes.

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 MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–3316. A communication from the Secretary of the Navy, reporting, pursuant to law, relating to a claim by General Dynamics Corporation, Electric Boat Division, Groton, Connecticut, submitted in December 1976, under Contract NOOO24–71–0268 requesting an increase in ceiling of more than $100 million, in addition to financing costs of more than $20 million, for a total of more than $120 million; to the Committee on Appropriations.

EC–3317. A communication from the Secretary of the Interior, transmitting a draft of proposed legislation to provide for the establishment of the New River Gorge National River in the State of West Virginia, and for other purposes; to the Committee on Energy and Natural Resources.

EC–3318. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, a prospectus for alterations at the Nashville, Tennessee, Union Station, in the amount of $7,152,000; to the Committee on Environment and Public Works.

EC–3319. A communication from the Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report on laboratories needed to support long term research in the Environmental Protection Agency; to the Committee on Environment and Public Works.

EC–3320. A communication from the Acting Secretary of the Treasury, transmitting a draft of proposed legislation relating to the application of certain provisions of the Internal Revenue Code of 1954 to specified transactions by certain public employee retirement systems created by the State of New York or any of its political subdivisions; to the Committee on Finance.

EC–3321. A communication from the President of the United States, transmitting, pursuant to law, a proclamation extending nondiscriminatory treatment to the products of the Hungarian People's Republic; to the Committee on Finance.

EC–3322. A communication from the Chairman, United States International Trade Commission, transmitting, pursuant to law, its thirteenth quarterly report on trade between the United States and the nonmarket economy countries; to the Committee on Finance.

EC–3323. A secret communication from the ACIS Chairman, Interagency Working Group, United States Arms Control and Disarmament Agency, transmitting, pursuant to law, errata sheets for FY 1979 ACIS, Set III; to the Committee on Foreign Relations.

EC–3324. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "The Navy's TRIDENT Fleet—Some Success But Several Major Problems," April 7, 1978; to the Committee on Governmental Affairs.

EC–3325. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Unemployment Insurance—Need to Reduce Unequal Treatment of Claimants and Improve Benefit Payment Controls and Tax Collections," April 5, 1978; to the Committee on Governmental Affairs.

EC–3326. A communication from the Chairman, National Advisory Council on the Education of Disadvantaged Children, transmitting, pursuant to law, its 1978 annual report; to the Committee on Human Resources.

EC–3327. A communication from the Chairman, National Arthritis Advisory Board, transmitting, pursuant to law, its annual report; to the Committee on Human Resources.

EC–3328. A communication from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, orders entered in 1,008 cases in which the authority contained in section 212(d)(3) of the Immigration and Nationality Act was exercised in behalf of such aliens; to the Committee on the Judiciary.

EC–3329. A communication from the Attorney General, transmitting a draft of proposed legislation to clarify and revise various provisions of title 28 of the United States Code relating to the judiciary and judicial procedure regarding judicial review of international trade matters, and for other purposes; to the Committee on the Judiciary.

EC–3330. A communication from the Assistant Attorney General, Department of Justice, transmitting a draft of proposed legislation to enable the Department of Justice and the Administrative Office of the United States Courts to provide services and special supervision to drug dependent federal offenders in an efficient and effective manner; to the Committee on the Judiciary.

EC–3331. A communication from the Assistant Attorney General, Department of Justice, transmitting a draft of proposed legislation to provide for nationwide service of subpoenas in all suits involving the False Claims Act, and for other purposes; to the Committee on the Judiciary.

EC–3332. A communication from the Administrator, Veterans Administration, transmitting a draft of proposed legislation to amend section 3103 of title 38, United States Code, to extend the time period within which the board of review concerned, on its own initiative, shall determine whether a person who has been awarded a general or honorable discharge as specified in clause (A)(i), (ii), or (iii) of paragraph (2) of subsection (e) of such section 3103 would be entitled to an upgraded discharge under standards meeting the requirements of paragraph (1) of such subsection; to amend section 5 of Public Law 95–126 to extend the time during which a former serviceperson may continue to receive Veterans Administration benefits pending such determination; and for other purposes; to the Committee on Veterans' Affairs.

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions, which were referred as indicated:

POM–583. A resolution adopted by the Legislature of the State of Hawaii; to the Committee on Finance:

"HOUSE RESOLUTION No. 372

"Whereas, until 1972, the investment income of state and local public pension plans were implicitly exempt from federal taxation and former public employees receiving public pension benefits were allowed preferential tax treatement whether the plans were qualified or not; and

"Whereas, although there are no explicit statutes providing the exemption or nonqualified preferential tax treatment, Congress was aware of and the U.S. Internal Revenue Service (IRS) practiced this implicit exemption and authority; and

"Whereas, since 1972, however, the IRS has changed its policy and chose to ignore the implicit exemption and authority; thus, some public pension plans have become subject to the qualification requirements and taxation of investment income; and

"Whereas, furthermore, in 1977, the IRS stated its intention of requiring public pension plans, whether qualified or not, to file annual returns containing certain financial information; and

"Whereas, these policies are unacceptable to state and local governments; and

"Whereas, besides the financial impact on the public pension plans and former public employees, the National Conference of State Legislatures, in a policy paper representing the consensus of state and local governments, states that the policies are contrary to Congressional intent and the doctrine of sovereignty of states; and

"Whereas, the policy paper states that Congress has had ample opportunity to make explicit statutory amendments subjecting public pension plans to federal requirements; and that the lack of such statutes indicate Congress's approval of the implicit exemption; and

"Whereas, the policy paper further states that even if Congress had specifically subjected public pension plans to federal requirements, it is questionable, under the doctrine of state sovereignty, whether the federal government has the constitutional right or power to regulate intrastate public employee benefits or to tax state and local governments; and

"Whereas, the 95th Congress is currently considering two bills, H.R. 9118 and S. 1587, which would specifically exempt public pension plans from federal taxation and reporting requirements; now, therefore,

"Be it resolved by the House of Representatives of the Ninth Legislature of the State of Hawaii, Regular Session of 1978, that Congress and the President are requested to enact either H.R. 9118 or S. 1587 into law; and

"Be it further resolved that certified copies of this Resolution be transmitted to the Honorable Jimmy Carter, President of the United States, Senator James O. Eastland, President Pro Tempore of the U.S. Senate, Senator Robert Byrd, Majority Leader of the U.S. Senate, Senate Howard Baker, Minority Floor Leader of the U.S. Senate, Representative Thomas P. O'Neill, Speaker of the U.S. House of Representatives, Representative James C. Wright, Majority Leader of the U.S. House of Representatives, Representative John J. Rhodes, Minority Leader of the U.S. House of Representatives, and to each member of Hawaii's congressional delegation."

POM–584. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Energy and Natural Resources:

SENATE CONCURRENT RESOLUTION No. 11

"Whereas, the United States Congress currently has under consideration proposed legislation on a national energy policy which relates to the regulation of public utilities across the country; and

"Whereas, many states have unique regulatory problems, particularly the State of Hawaii because of its geographic location and climatic conditions; and

"Whereas, state regulatory commissions across the country, in general, and the State of Hawaii Public Utilities Commission, in particular, appear to be doing a competent job because they are able to adapt to the special regulatory problems of their respective geographic areas and one set of regulatory standards for the entire country would seem totally impractical; and

"Whereas, the U.S. Senate and House conferees have reached a tentative conference agreement on the Public Utility Energy Policies Act, which establishes a national energy policy relating to the regulation of public utilities; and

"Whereas, under such Act, federal standards for electric utility rate structures are enumerated and the Act states that these standards must be considered by state regulatory commissions; and

"Whereas, the Secretary of Energy is authorized under the Act to intervene in state regulatory proceedings to raise the issue of one or more of the enumerated federal standards as well as other concepts which contribute to the purposes of the Act; and

"Whereas, the proposed Act, as agreed to by the U.S. Senate and House conferees, already represents a certain degree of federal preemption of state public utility regulatory authority; and

"Whereas, further federal preemption would result in a serious infringement upon state legislative responsibility in matters which have historically been deemed best left to the attention of individual states and would completely undermine the rights currently reserved to the states, including the State of Hawaii; now, therefore,

"Be it resolved by the Senate of the Ninth Legislature of the State of Hawaii, Regular Session of 1978, the House of Representatives concurring, that the United States Congress is requested to refrain from any further federal preemption of the regulation of public utilities, thus allowing the Hawaii Public Utilities Commission to carry out the responsibilities delegated to it by the Legislature of the State of Hawaii; and

"Be it further resolved that certified copies of this Concurrent Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of Hawaii's delegation to the United States Congress."

POM–585. A resolution adopted by the City Council of San Diego, California, relative to deferred compensation; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on the Judiciary:

Special Report of Antitrust and Monopoly Subcommittee Activities, 1977 (together with individual views) (Rept. No. 95–730).

By Mr. JACKSON, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 130. An act to provide for the protection of franchised distributors and retailers of motor fuel and to encourage conservation of automotive gasoline and competition in the marketing of such gasoline by requiring that information regarding the octane rating of automotive gasoline be disclosed to consumers (together with minority and additional views) (Rept. No. 95–731).

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. McGOVERN:

S. 2863. A bill to authorize fiscal year 1979 appropriations for the Department of State, the International Communication Agency, and the Board for International Broadcasting, and for other purposes; to the Committee on Foreign Relations.

By Mr. MATHIAS (for himself and Mr. BAYH):

S. 2864. A bill to amend the Internal Revenue Code of 1954 to provide that trusts established for the payment of product and professional liability claims and related expenses shall be exempt from income tax, and that a deduction shall be allowed for contributions to such trusts; to the Committee on Finance.

By Mr. NELSON:

S. 2865. A bill to amend the Internal Revenue Code of 1954 to provide a more equitable estate tax treatment of joint interests in farm and closely held business property; to the Committee on Finance.

By Mr. RANDOLPH (for himself and Mr. ROBERT C. BYRD):

S. 2866. A bill to provide for the establishment of the New River Gorge National River in the State of West Virginia, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GOLDWATER (for himself and Mr. MATHIAS):

S. 2867. A bill to remove residency requirements and acreage limitations applicable to land subject to reclamation law; to the Committee on Energy and Natural Resources.

By Mr. PERCY:

S. 2868. A bill to provide a remedy against the United States for torts arising under the Constitution or laws of the United States committed by officers or employees of the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. TALMADGE (by request):

S. 2869. A bill to authorize the establishment of an international emergency wheat reserve, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. PELL:

S. 2870. A bill to amend title 38 of the United States Code in order to require the Administrator of Veterans' Affairs to pay a $150 allowance to any State or any agency or political subdivision of a State in reimbursement for expenses incurred in the burial of each veteran in any cemetery owned by such State or agency or political subdivision of a State, if the cemetery or section thereof is used solely for the interment of veterans; to the Committee on Veterans' Affairs.

By Mr. PEARSON:

S. 2871. A bill to create a rural community development bank to assist in rural community development by making financial, technical, and other assistance available for the establishment of expansion of commercial, industrial, and related private and public facilities and services, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MATHIAS (for himself and Mr. BAYH):

S. 2864. A bill to amend the Internal Revenue Code of 1954 to provide that trusts established for the payment of product and professional liability claims and related expenses shall be exempt from income tax, and that a deduction shall be allowed for contributions to such trusts; to the Committee on Finance.

PRODUCT AND PROFESSIONAL LIABILITY INSURANCE TAX EQUITY ACT OF 1978

● Mr. MATHIAS. Mr. President, I am pleased to introduce today, with my colleague Senator BAYH, the Product and Professional Liability Insurance Tax Equity Act. This legislation is designed to end Federal tax discrimination against individuals or companies that self-insure for professional and product liability. This bill was first introduced during the last session of the Congress by Congressman CHARLES WHALEN and six colleagues to address problems encountered by manufacturers with costly liability insurance premiums. This legislation has received the bipartisan backing of 63 Members of the House, and has been endorsed by 45 national trade and professional associations.

Last week the Commerce Department announced proposals that came out of its 2-year task force study into the growing problems involving product liability. Commerce proposed a liability insurance plan similar to my bill in that it provides a tax break for businesses which establish self-insurance reserve funds. The Commerce Department accurately cites the issue of product liability as "a problem of national importance that must be addressed."

A study by Congressman WHALEN revealed that of those companies that want to obtain product liability insurance coverage, approximately one out of five said that they either cannot afford it or cannot find an insurance carrier willing to sell it to them. The study also found that

the average increase in product liability costs, for those who were able to obtain coverage, was 944 percent in the period since 1970. The average increase in sales volume for the same company for the same period was 162 percent. Hence, premiums grew at a rate 5.8 times greater than sales.

This study, presented last year to the House Small Business Committee, concluded that one out of every three companies surveyed said that they have been forced to increase the price they charged for at least one product line as a direct consequence of increased product liability premiums. The report also revealed that one out of every six firms surveyed had been forced to abandon at least one product line as a direct result of product liability insurance problems.

A problem also exists for professionals—doctors, lawyers, engineers, and architects—who are forced to conduct their practices without any commercial insurance coverage, or to settle for a policy with a prohibitively high deductible provision. Many private practitioners find it very difficult to cover the deductible portion of a future claim. A study by the Rand Corp. revealed that between 19 and 25 percent of the physicians practicing in Southern California in 1976 had no commercial insurance coverage. The best estimate available was that between 10 and 15 percent of all doctors in the country were practicing without any insurance.

Manufacturers who have not been able to obtain product liability insurance coverage are turning to establishing self-insurance reserve funds. Companies with policies that have high deductibles have also established reserve funds to cover the cost of the deductible portion of the policy. These deductibles sometimes run into the hundreds of thousands of dollars.

The Federal tax laws affect these self-insurance funds in two ways. First, a business expense deduction is not available to the company that pays into its own reserve fund. A comparable payment as an insurance premium would entitle the company to a deduction in that amount. Second, as the self-insurance reserve fund builds up, the interest it earns is taxed, and the fund becomes vulnerable as an "unreasonable" accumulation of capital.

The large firms establish captive insurance companies. Others deal with expensive outside insurance companies. These options, however, are closed to many small companies and individuals.

My bill addresses these problems in two ways. First, it exempts from Federal income tax interest earned on those funds placed in a self-insurance trust fund. Second, the money paid into the fund can be deducted as a cost of doing business, as an insurance premium can be.

These trust funds may be established by groups as well as single persons. Thus, law firms or trade associations would be able to create self-insurance pools for their members, with fewer tax complications than are now encountered. The bill also establishes guidelines for limits on how much money can be placed in the trust. Furthermore, it restricts the use of money placed in the eligible reserve funds, making the money taxable as income if it is withdrawn or used for any other purpose.

The bill puts people who self-insure on the same footing as those who purchase from name carriers. It gives no special benefits to self-insurers.

Mr. President, I ask unanimous consent that my bill be printed in the RECORD.

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

S. 2864

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Product and Professional Liability Insurance Tax Equity Act of 1978".

SEC. 2. TAX EXEMPT PRODUCT LIABILITY TRUSTS.

(a) GENERAL RULE.—Subsection (c) of section 501 of the Internal Revenue Code of 1954 (relating to organizations exempt from tax) is amended by adding at the end thereof the following new paragraph:

"(22)(A) A trust providing for the payment of product and professional liability claims against one or more persons (or against any employee of such a person) who are engaged in any trade or business, if, under the terms of the trust, it is impossible for any past of the corpus or income of the trust to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the payment of such claims, any administrative expenses of such trust, and any expenses directly related to the investigation and settlement (or opposition) of such claims.

"(B) Under regulations prescribed by the Secretary, a trust (otherwise meeting the requirements of subparagraph (A)) shall be considered to meet such requirements notwithstanding the fact that the terms of the trust permit corpus and income to be withdrawn from the trust by any person who made any contribution to the trust and used for any purpose other than the payment of such claims and expenses. The preceding sentence shall apply to a trust only if the aggregate amount which may be so withdrawn and used by any person may not exceed the aggregate amount of contributions by such person to the trust. Any amount so withdrawn and used by any person shall be included in the gross income of such person for the taxable year in which withdrawn.

"(C) For purposes of this paragraph, the term 'product and professional liability' means—

"(i) in the case of any person engaged in any trade or business or manufacturing, distributing, or selling any manufactured good, any liability arising from any defect in or use of such good; and

"(ii) in the case of any person engaged in any trade or business of providing any service, any liability arising from the providing of or the failure to provide) such service."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 3. DEDUCTION FOR CONTRIBUTION TO TAX-EXEMPT PRODUCT AND PROFESSIONAL LIABILITY TRUST.

(a) General Rule.—Part VI of Subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 192. CONTRIBUTIONS TO CERTAIN PRODUCT AND PROFESSIONAL LIABILITY TRUST."

"(a) GENERAL RULE.—In the case of a taxpayer who is engaged in any trade or business, there shall be allowed as a deduction an amount (determined under subsection (b)) contributed during the taxable year to a trust described in section 501(c)(21) which provides for the payment of product and and professional liability claims against the taxpayer and arising in connection with the trade or business of the taxpayer.

"(b) Limitation on Amount of Deduction.—Under regulation prescribed by the Secretary, a taxpayer shall be allowed a deduction under subsection (a) for any contribution duringthe taxable year to any trust only to the extent that such contribution does not exceed the reasonable cost to the taxpayer (but for such trust) for insurance for such year for the payment of product and professional liability claims and expenses directly related to the investigation and settlement of such claims.

"(c) Product and Professional Liability Defined.—For purposes of this section, the term 'product and professional liability' has the meaning given such term by section 501(c)(21)."

(b) Clerical Amendment.—The table of sections for such part VI is amended by adding at the end thereof the following new item:

"SEC. 192. CONTRIBUTIONS TO CERTAIN PRODUCT AND PROFESSIONAL LIABILITY TRUSTS."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

● Mr. BAYH. Mr. President, among the many strengths of our great Nation are the numerous and diversified small companies and individuals who provide us with a variety of goods and services. These organizations and individuals are finding it increasingly difficult to compete because of discriminatory regulations or inequities. One such inequity is the present Federal tax structure which discriminates against individuals or companies that self-insure for professional and product liability.

The soaring number of product liability suits in recent years has driven the cost of product liability insurance up so high that many small businessmen can no longer afford coverage or in some cases cannot find an insurance carrier willing to sell it to them. When available, businesses find that insurance premiums have increased at a rate four to six times greater than sales.

A similar problem exists for many professionals, particularly lawyers, engineers, architects, and doctors. They are forced to conduct their practices without any commercial insurance coverage, or settle for a policy with extremely high deductible provisions. This situation has resulted in many professionals practicing without any insurance. Those who are able to obtain coverage with the unusually high deductible provisions find it very difficult to maintain the financial resources necessary to cover the deductible portion of a future claim.

This unfortunate situation has a number of adverse impacts on the consumer. Many companies have been forced to increase the price they charge for the affected products as a direct result of in-

creased product liability premiums. In some instances, firms have been forced to abandon some product lines because of product liability insurance problems.

Many companies and individual professionals who are not able to obtain liability insurance coverage are establishing self-insurance reserve funds. Likewise, companies with policies that have high deductibles have also established reserve funds to cover the cost of the deductible portion of the policy. Unfortunately, the present Federal tax code puts those who self-insure in a double bind. First, a business expense deduction is not available to the company or professional that pays into its own self-insurance reserve. Second, the interest earned by this reserve is taxed and the fund becomes vulnerable as an "unreasonable" accumulation of capital.

The legislation I am today introducing, with my colleague Senator MATHIAS, the Product and Professional Liability Insurance Tax Equity Act, addresses these problems. The bill exempts those funds paid into a self-insurance trust fund from Federal income tax. These trust funds may be established by groups as well as single persons. Thus, law firms or trade associations would be able to create self-insurance pools, with fewer tax difficulties. In addition, the bill provides that money paid into the fund can be deducted as a cost of doing business, just as an insurance premium can be. Guidelines set limits on how much money can be placed in the trust and there are restrictions placed on the use of these funds, making the money taxable as income if it is withdrawn or used for any other purpose.

This bill gives no special benefits to the business or professional that self insures. It simply eliminates an inequity and puts them on the same basis as those who purchase insurance.●

By Mr. NELSON:

S. 2865. A bill to amend the Internal Revenue Code of 1954 to provide a more equitable estate tax treatment of joint interests in farm and closely held business property; to the Committee on Finance.

ELIMINATE THE "WIDOW'S TAX"

● Mr. NELSON. Mr. President, I am introducing today a bill to do away with the "widow's tax." This is an excess estate tax which is not found in the Internal Revenue Code, but is levied all too often on surviving spouses in farm and small business families under present interpretations of the tax law.

WHAT THE BILL WOULD DO

The bill would allow a surviving wife (or husband) to treat as earned for estate tax purposes up to a 50-percent share of any joint farm or small business property, at the rate of 2 percent a year if that spouse actually participates in the operation of the farm or small business. The bill would not, of course, permit encroachment upon the portion of the property which the other spouse owned before marriage.

DESCRIPTION OF THE PROBLEM

During consideration of the Tax Reform Act of 1976, farm wives and their organizations made the Congress aware of the so-called "widow's tax."

The "widow's tax" is the amount of estate tax which results from the inclusion of the entire value of jointly-held property in the estate of the first spouse to die, even though the spouse may have worked a farm side by side for an entire adult lifetime. The legal cause of this situation is the rule that the survivor (in most cases the wife) is required to show that she "furnished consideration" that is, defined as "money or money's worth") before the IRS would consider her an owner of any part of the property for estate tax purposes. Working a farm or small business full time with the husband is not counted as "consideration furnished."

The imposition of the widow's tax is particularly a problem of unincorporated businesses in light of a tax court decision which decided that if a business is in partnership form, a surviving spouse would be entitled to ownership of joint property in proportion to the allocation of the partnership tax return. Estate of Otte, 31 T.C.M. 301 (1972). If the joint farm or small business property was in a corporation, the percentage of stock held by the widow would be evidence of ownership.

Thus, it is only the smallest and least organized element of the business population that suffers from the problem. But 12 million of the total of 14 million U.S. enterprises, that is, 85 percent of the total, are unincorporated.

EFFORTS AT RELIEF IN THE TAX REFORM ACT OF 1976

In 1976, the Senate Small Business Committee and the Senate Finance Committee combined to initiate a thorough reform in the estate tax laws for the first time since 1942. This helped widows' problems in three ways: First, Congress raised the marital deduction for widows to $250,000. Second, general estate tax allowance was tripled from $60,000 to $175,000 (by 1981). Third, converting this allowance from an exemption into the form of a credit, makes it more beneficial to small and moderate-sized estates than the previous law.

The Tax Reform Act of 1976 addresses the surviving spouse's problem specifically in section 2002. That provision permits a husband to elect to treat one-half of the purchase price of a farm as a gift to his wife. The filing of a gift tax return at the time of marriage, whether or not any tax is due, would eliminate the widow's tax. The election would presumably be exercised by an addendum to the couple's income tax form for that year which would reference or attach the gift tax return.

This left several gaps in the operation of the legislation. One of these was addressed in section 3(K) of the pending Technical Corrections Act, H.R. 6715. This technical amendment would clarify the right of making a gift as to property owned by the husband and wife jointly before the passage of the act.

SHORTCOMINGS OF PRESENT LAW

The 1976 and H.R. 6715 provisions should be adequate for those farmers, small business owners, and others, who are affluent and sophisticated enough, and have time enough, to obtain competent tax-planning advice and assistance. But, as a practical matter, this is likely to extend to a minority of farm and small business families.

For example, the Wisconsin Farmers Union study of their county officers in 1976 revealed that less than 50 percent have wills. Many farm and other working families may not seek such advice until retirement age. Also, there is an inequity in requiring a farmer to pay a gift tax on the 1978 value of property when he acquired or inherited the land 30 or 40 years earlier at far lower prices, and his wife had been helping operate the farm during that period.

Thus, in a letter to the Senate Finance Committee during consideration of the Technical Corrections Act in November 1977, I pointed out that section 2002 was inadequate to resolve the "widow's tax" problem for the following reasons:

Many farm and small business families do not have the resources to seek expert counsel;

If advice is sought, it is usually not at the time of marriage, but much later when the family is close to retirement;

By that time inflation will have pushed the value of the farm and small business property far beyond what it was at the time of marriage, by substantially increasing the possibility that a gift or estate tax will be imposed.

It is only fair that a widow who has contributed a lifetime of effort to the paying off of a mortgage on a farm or small business, and is able to show the IRS that she has done this, should be treated as owner of up to 50 percent of the property and the husband's estate should not be taxed on its entire value. For these reasons, we are now seeking a way to achieve that result through an amendment to the Federal estate tax statute.

The bill would work this way. In the event of death of a husband or wife who is a joint owner of property, and who has been working a farm jointly with his or her spouse, this proposal would deem the survivor, for estate tax purposes, to have "furnished consideration" for their joint property at the rate of 2 percent a year, up to a maximum of 50 percent of the portion of the property which has not been paid for at the time of marriage.

This would permit the wife who did not furnish any of the downpayment (and the farm may have been inherited before marriage) to "earn out" 50 percent of the remaining share within 25 years.

Of course, the spouse could not earn by operation of this law a share of what the other spouse owned outright at the time of marriage. Thus, if a husband had made a downpayment of 50 percent on some farm acreage before marriage from his own funds, the wife would be entitled to "earn out" only half of the remaining 50 percent.

By the same token, if a wife inherited a farm free and clear, there would be no remaining balance for the husband "to earn out" under this measure.

The bill would only apply to that share which was unpaid for at the time of mar-

riage, and that was earned by their joint labor which could be demonstrated to the tax authorities.

SUPPORTING ARGUMENTS

In addition to the distinction drawn by the law between proprietorship businesses and other kinds, which I feel is unjustified, there are other considerations which I would advance in behalf of this bill.

It would assist the least sophisticated taxpayers which include the majority of farm and small business taxpayers facing the potential hardship of a "widow's tax," who deserve relief equally as much as those who can afford expensive counsel. The proposed amendment would therefore treat rich and poor the same before the law.

It would appear that the joint legal ownership, length of the relationship, and the labor of both parties, are clear signals of the intent of the parties that such property should be jointly owned for all purposes.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 2040 of the Internal Revenue Code of 1954, relating to joint interests, is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL RULE FOR CERTAIN FARM AND CLOSELY HELD BUSINESS PROPERTY.—

"(1) IN GENERAL.—For purposes of subsection (a), in the case of any qualified joint interest, the spouse of the decedent shall be deemed to have furnished consideration with respect to the property in which the qualified joint interest is held in an amount equal to—

"(A) 2 percent of the unpaid mortgages on, or any indebtedness in respect of, such property at the time the qualified joint interest was created, multiplied by

"(B) the number of years the property was held by the decedent and the decedent's spouse as a qualified interest and in which the decedent's spouse materially participated in the operation of the farm or closely held business in which the qualified joint interest is held.

"(2) LIMITATION ON AMOUNT.—The amount of consideration which the spouse is deemed to have furnished under paragraph (1) shall not exceed an amount equal to—

"(A) 50 percent of the unpaid mortgages on, or any indebtedness in respect of, such property at the time the qualified joint interest was created, minus

"(B) the amount of consideration such spouse is determined under this section (without regard to this subsection or any consideration attributable to material participation in the operation of a farm or closely held business in which the qualified joint interest is held by the spouse) to have furnished with respect to such property.

"(3) COORDINATION WITH SUBSECTION (a).—The amount of consideration deemed furnished under this subsection shall be the minimum amount of consideration attributable to material participation in the operation of a farm or closely held business in which the qualified joint interest is held by the spouse taken into account under this section. If, without regard to this subsection, a greater amount is determined, then such greater amount shall apply and this subsection shall not apply.

"(4) DEFINITION; SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED JOINT INTEREST.—The term 'qualified joint interest' means any interest in any property which—

"(i) is devoted to use as a farm, or used, for farming purposes (within the meaning of sections 2032A(c) (4) and (5)), or ,

"(ii) constitutes, or is used in, a closely held business (within the meaning of section 6166A(c)) other than the business of farming,

held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if such joint interest was created by the decedent, the decedent's spouse, or both, and in the case of a joint tenancy, only if the decedent and the decedent's spouse are joint tenants.

"(B) MATERIAL PARTICIPATION.—Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).".

(b) The Amendment made by subsection (a) shall apply with respect to decedents dying after the date of enactment of this act.●

By Mr. GOLDWATER (for himself and Mr. MATHIAS):

S. 2867. A bill to remove residency requirements and acreage limitations applicable to land subject to reclamation law; to the Committee on Energy and Natural Resources.

REPEAL OF ACREAGE LIMITS AND RESIDENCY REQUIREMENTS OF RECLAMATION LAW

Mr. GOLDWATER. Mr. President, I am introducing today, with the senior Senator from Maryland (Mr. MATHIAS), a bill to repeal the acreage limits and residency requirements of reclamation law.

The bill is a companion to H.R. 11944, which has been introduced by Congressman STUMP in the House.

Mr. President, I feel so strongly about the need for correcting the antiquated 1902 Reclamation Act that I believe the best solution is to repeal the offensive provisions entirely.

In my opinion, no magic figure, such as 600 or 1,000 acres, will work.

It is impossible to apply a flat rule to every type of crop. Even if we could devise an average acreage needed for efficiency of production as to specific crops in specific areas of the country, today's figure might not be adequate for the future. Today's 1,000-acre efficient farm might be a 2,000-acre farm in the future due to changing technology and inflationary costs of production.

The current 160-acre restriction on individual ownership of irrigable land that can be supplied with reclamation project water is absurd. Even if family ownerships are taken into account, an artificial rule of this kind is inadequate to modern agriculture. And, why, I would ask, should a farmer who does not have a large family be put at a disadvantage with his neighbors solely on the basis of family size?

Mr. President, as an example, let me discuss cotton, which is the most valuable crop in Arizona.

Arizona's 1977 cotton crop totaled 1,110,000 bales. The value of our cotton and cottonseed was $355 million last year, 40 percent of the value of all crops grown in the State. When we add the usual multiplier effect to this value, we can see that the 1977 cotton and cottonseed income added approximately $1½ billion to Arizona's economy.

About 90 percent of our cotton is exported. These exports help to counter the massive deficit in our Nation's trade account caused by fuel imports.

To these statistics, let me add that the average size cotton farm in Arizona dependent solely upon farm income is about 1,200 acres. This is the most economic family-size unit in our State at this time. However, this figure will increase in the future as farming production costs increase.

Alfalfa and grain crops are also two major crops grown in Arizona. Arizona cash receipts for these crops in 1977 totaled about $160 million. These crops, too, require expensive machinery that must be economically utilized.

For example, an average size tractor with plowing, planting, and cultivating equipment now costs $50,000. A two-row cotton picker costs about $58,000. A grain combine about $60,000. Haying equipment costs about $35,000.

So the large size of farms in producing these crops did not just happen. They grew out of necessity and they will have to grow larger to stay efficient as production costs rise.

Today, almost every aspect of farming is mechanized, along with the development of new, higher yield crops. All of this costs a great deal of money and is generally more than the small farmer can afford.

So we have a choice. We either increase the cost of farm products way beyond the pocketbook of the average household, and at the same time we price ourselves out of the export markets, or we put some commonsense into an archaic and restrictive farm law.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2867

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, (a) notwithstanding any other provision of law, to any entryman, lessee, or owners of land subject to the Federal homestead laws shall apply to such land if it is also subject to the reclamation law.

(b) Notwithstanding any other provision of law, no condition of residency shall apply to any entryman, lessee, or owner of land subject to the reclamation law.

SEC. 2. The limitation on acreage in the following provisions of law is repealed:

(1) Section 2 of the Act of February 2, 1911, entitled "An Act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purpose of that act" (43 U.S.C. 374).

(2) Section 2 of the Act of May 20, 1920, entitled "An Act to provide for the disposition of public lands withdrawn and improved under the provisions of the reclamation laws, and which are no longer needed in connection with said laws" (43 U.S.C. 375).

(3) Section 2 of the Act of March 31, 1950, entitled "An Act to authorize the disposal

of withdrawn public tracts too small to be classed as a farm unit under the Reclamation Act" (43 U.S.C. 275c).

(4) Sections 44 and 46 of the Act of May 25, 1926, entitled "At Act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes" (43 U.S.C. 423c, 423e).

(5) Section 2 of the Act of May 16, 1930, entitled "An Act to authorize the disposal of public land classified as temporarily or permanently unproductive on Federal irrigation projects" (43 U.S.C. 424a).

(6) Sections 3 and 5 of the Act of June 17, 1902, entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands" (43 U.S.C. 431, 434).

(7) Section 2 of the Act of February 21, 1911, entitled "An Act to authorize the Government to contract for impounding, storage, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects and for other purposes" (43 U.S.C. 524).

(8) Section 3 of the Act of July 30, 1947, entitled "An Act to relocate the boundaries and reduce the areas of the Gila Federal reclamation project, and for other purposes" (43 U.S.C. 613b).

(9) Section 3 of the Act of September 2, 1964, entitled "An Act to provide for the construction, operation, and maintenance of the Savery-Pot Hook, Bostwick Park, and Fruitland Mesa participating reclamation projects under the Colorado River Storage Project Act" (43 U.S.C. 616jj).

(10) Section 9 of the Boulder Canyon Project Act (43 U.S.C. 617h).

(11) Sections 5 and 6 of the Act of August 11, 1916, entitled "An Act to promote the reclamation of arid lands" (43 U.S.C. 627–628).

(12) Section 4 of the Act of August 18, 1894, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes" (43 U.S.C. 641).

(13) The first section of the Act of August 30, 1949, entitled "An Act to authorize the sale of the public lands in Alaska" (43 U.S.C. 687b).

SEC. 3. The following sections are repealed:

(1) Sections 12 and 13 of the Act of August 13, 1914, entitled "An Act extending the period of payment under reclamation projects, and for other purposes (43 U.S.C. 418, 435, 443).

(2) Section 9 of the Act of August 13, 1953, entitled "An Act to permit the exchange and amendment of farm units on Federal irrigation projects, and for other purposes" (43 U.S.C. 451h).

(3) Section 501(d) of the Colorado River Basin Project Act (43 U.S.C. 620a–2).

SEC. 4. For the purposes of this Act, the term "reclamation law" shall have the meaning prescribed for it by subsection A of section 4 of the Act of December 5, 1924 (43 U.S.C. 371).

By Mr. PERCY:

S. 2868. A bill to provide a remedy against the United States for torts arising under the Constitution or laws of the United States committed by officers or employees of the United States, and for other purposes; to the Committee on the Judiciary.

FEDERAL TORT CLAIMS ACT AMENDMENTS OF 1978

Mr. PERCY. Mr. President, today I am introducing a bill amending the Federal Tort Claims Act (FTCA) to broaden the liability of the United States for tortious acts committed by its employees including violations of the U.S. Constitution, such as illegal search and seizures. This legislation will also make the remedy against the Federal Government almost entirely exclusive of any action against the individual who committed the tort. It further provides that the agency whose employee committed the tort shall pay damages from appropriations available to that agency.

The FTCA derives from the concept of sovereign immunity, a privileged status which English common law has always accorded to its rulers. The principle that the sovereign should enjoy immunity against civil suit developed from two beliefs: first, the idea that the "king can do no wrong"; and second, the apparent contradiction of allowing the power which makes the laws to be sued under those laws. It was, therefore, established that the King could not be sued unless he gave his consent; otherwise, he was immune from suit.

In 1821 this anomalous concept found its way into American jurisprudence. By the mid-10th century, it became apparent that absolute governmental immunity was impractical, and several laws were passed permitting a cause of action against the Government on issues concerning contracts, patents, and maritime rights. In 1946, a major departure from tradition came with the passage of the FTCA. This law allows a victim of governmental negligence, trespass, or invasion of privacy to sue the United States for actual, verifiable damages resulting from certain tortious acts of Federal employees. (28 U.S.C. 1346(b))

Mr. President, the legislation I am proposing today would correct three major problems with the amended 1946 FTCA. The first of these is the scope of Government liability. Generally, the United States is liable as if it were an individual, according to the law of the place where the tortious act of the Federal employee occurred. However, the final section of the FTCA, 28 U.S.C. 2680, maintains immunity for many broad areas of Government activity.

The two largest areas covered are intentional torts and discretionary functions. I believe that Government immunity for intentional torts can in no way be justified. Section 2680 of the original FTCA maintained immunity for assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, and interference with contract rights—a victim of these intentional torts and committed by Government agents and could not recover damages from the United States.

These exemptions were in effect on the evening of April 23, 1973, when 12 Federal and State narcotics agents mistakenly raided the homes of two innocent families in Collinsville, Ill. The provisions of section 2680 prevented these families from collecting compensation from the Federal Government for the humiliation and abuse they suffered. The agents themselves were sued individually (under the reasoning of *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971)), but were successful in asserting that they were acting in good faith, thereby absolving themselves of liability for the torts they intentionally committed. In the end, these two families were unable to collect any compensation for the wrongs they had suffered.

In response to the gross injustices of Collinsville, then-Senator Sam Ervin and I introduced an amendment to the FTCA to make the Federal Government liable for certain intentional torts of Federal investigative and law enforcement officers. This legislation was signed into law on March 16, 1974. However, its coverage is limited to designated intentional torts committed by a narrowly defined group of law enforcement agents. The bill I introduce today would expand Government liability to all intentional torts committed by all Federal officers or employees, thus better insuring that victims of these types of incidents will be adequately compensated.

Immunity for discretionary functions is a more complex issue. The Supreme Court reasoned in *Dalehite* v. *United States*, 346 U.S. 15 (1953), that some type of governmental immunity for discretionary functions is necessary in order that Government not be sued for undertaking those policymaking activities which are part and parcel of governing. Allowing the Government to be sued for undertaking these decisionmaking activities in good faith could lead to overly cautious and ineffective Government. This discretionary exemption to Government liability is often justified, for the gain to society in Government effectiveness often outweighs the costs of unremedied injuries.

In Bivens, the Supreme Court expressed the simple proposition that when a citizen's constitutional rights are violated by a Government official, he has the right to sue that official for damages. It would seem incongruous for an aggrieved citizen whose rights have been violated to be able to sue the individual employee but not the Government in whose name the wrongs were committed.

The discretionary exception should not allow the Government to avoid responsibility for respecting the constitutional rights of the American people. The Bill of Rights was intended to be inviolable. I propose therefore, to continue the discretionary exemption for common law torts. However, violations of constitutional rights, even those committed in the course of discretionary functions, would not be immune from Government liability.

This bill therefore expands Government liability for so-called constitutional and statutory torts and makes it clear beyond question that citizens will be able to recover damages for constitutional violations, such as illegal search-and-seizures by Government agents. Presently, the Government is expressly liable only for those actions which would be torts under the State or local law. Uncertainties arise, however, when the local common law of torts does not explicitly cover infringements of rights guaranteed by the U.S. Constitution or Federal statutes that regardless of local laws, vio-

lations of federally insured rights by employees of the United States will be a tort under Federal law and will require the payment of appropriate damages.

The second major flaw in the 1946 FTCA is the nature of its remedy. Currently, a plaintiff may sue the Government and the responsible Federal employee jointly, or each individually. In practice, the Government, under the theory of respondeat superior, almost always pays the damages even where the individual employee shares in the liability. Nevertheless, concern has developed that some Federal employees may be hesitant to carry out their duties as vigorously as possible for fear of being named a defendant in a lawsuit. The time-consuming court procedures and the possibility, no matter how remote, of a financially ruinous judgment, could lead to mediocre Government, rather than innovation and vigor.

The bill I offer today would provide an election of remedies. In cases where the employee was acting in good faith and within the scope of his office, remedy against the United States would be exclusive. In cases where the employee is alleged to have acted in bad faith or in a reckless manner, the victim could elect to sue either the Government, or the employee, but not both. The Government would be prohibited from asserting as a defense the good faith belief of the employee in the lawfulness of his conduct. This would act as a strong incentive for the victim to sue the Government. However, in cases where the employee allegedly acted in bad faith, the victim could elect to sue him personally. Although the plaintiff would have less assurance of actual recovery than if he sought compensation from the "deep pockets" of the U.S. Treasury, he may decide that more is at stake than the simple recovery of damages. An employee who uses his position as a shield behind which he willfully commits tortious acts or woefully neglects his responsibility should, if the victim so desires, be made accountable for his actions in court.

This legislation would make a third major improvement over the present FTCA: It would create more direct accountability, giving agencies the needed incentive to properly train and discipline their employees. Under current law, administratively settled claims over $2,500 and all damage judgments are paid from general revenues. Most payments are made in this manner, greatly weakening the impact which the payment of these damages could have on the future conduct of the individual tortfeasor or the policies of the agency employing him. Under the amendment, successful claims would be paid from the appropriations available to the agency whose employee committed the tort. Agency heads would have an incentive to prevent tortious behaviour of Federal employees. Congress could and should look into operations of any agency which failed to do so.

The measure also stipulates a minimum award of $1,000 for constitutional torts, providing a special deterrent to intrusions upon fourth and fifth amendment rights. This provision is also designed to insure that violations of individual rights are not ignored or passed over in cases where no tangible monetary damages occur. The plaintiff would be entitled to all actual damages, and to provide for more serious intangible harms, such as pain and suffering, the amendment permits payment of general damages of up to $100,000. Punitive damages up to $50,000 are authorized to be awarded at the discretion of the court. Finally, so as not to require an innocent victim of a tort to bear the burden of attorney fees and other litigation costs, the court could award reasonable compensation to a successful plaintiff for legal expenses.

Mr. President, I believe the time has come to thoroughly reform the FTCA. There have been several bills introduced during the last two sessions of Congress which attempted to do away with one or another anachronistic aspects of sovereign immunity. Among the supporters of such bills have been former Senator Hruska (S. 2558, 93d Congress), Senator KENNEDY (S. 800, 94th Congress), and Representative RODINO and former Representative Hutchinson (H.R. 10439, 93d Congress).

In September, 1977, Senator EASTLAND introduced on behalf of the administration S. 2117, which is in agreement with many of the provisions of the legislation I am submitting today. There are three basic differences, however. First, the administration proposal would extend immunity to individual agents in every case, including those involving intentional misconduct and reckless acts. This, I believe, is a major flaw with that measure. Why should an employee who has seriously abused the authority vested in him be immune from a lawsuit? If there has been bad faith or extreme negligence involved, the employee should be accountable for the wrong he has done. As a matter of simple justice, my proposal would deny immunity to employees who act in reckless disregard of their responsibilities or in bad faith. While it is important to encourage employees to carry out their duties as energetically as feasible, there must remain a mechanism to make accountable those who would overstep this broad authority. We must not, in the interest of reform, invite the reoccurrence of the official lawlessness which has come to light over the last few years.

The second difference is that the administration bill would provide that practically all settlements and awards paid under the FTCA be drawn from general revenues rather than from the appropriations of the affected agency. I support the latter approach for it would make each agency more directly accountable for the actions of its employees.

Finally, there is no provision under S. 2117 for third party suits by the Government against employees who have acted recklessly or in bad faith. I must again state my strong belief that in these extreme cases, the employee must bear the consequences for his actions. My proposed legislation would give the Federal Government, in cases where the victim of such torts elected to sue the United States and not the employee, the right of indemnity against the employee for all or part of the liability.

The measure I offer today builds on recent reforms in the FTCA and incorporates many of the reforms proposed in the above-mentioned bills. I believe this legislation is a workable compromise between those who desire absolute immunity for Federal employees and those who desire the system as it now exists.

Mr. President, I hope that prompt action will be taken on this bill so that the important changes it would make in the Federal sovereign immunity law can be enacted without undue delay. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 2868

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1346(b) of title 28, United States Code, is amended—

(1) by striking the comma immediately following "1945" and inserting in lieu thereof a dash and "(1)";

(2) by striking the period at the end of the subsection and inserting in lieu thereof a semicolon and "or";

(3) by adding at the end thereof the following:

"(2) for any tort arising under the Constitution or laws of the United States caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, or under color thereof, such liability to be determined in accordance with applicable Federal law.".

SEC. 2. Section 2672 of title 28, United States Code, is amended—

(1) by inserting a dash and "(a)" in the first paragraph immediately before "for injury":

(2) by inserting in the first paragraph immediately before the colon the following: ", or (b) for any tort arising under the Constitution or laws of the United States caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment, or under color thereof, such liability to be determnied in accordance with applicable Federal law; and

(3) by striking out the third paragraph and inserting in lieu thereof the following:

"Any award, compromise, or settlement made pursuant to this section or made by the Attorney General pursuant to section 2677 or 2679 shall be paid by the head of the Federal agency concerned out of appropriations available to that agency.".

Sec. 3. Section 2674 of title 28, United States Code, is amended—

(1) by striking out the first paragraph and inserting in lieu thereof the following:

"(a) (1) Except as otherwise provided in this section, the United States shall be liable, respecting the provisions of this title relating to claims for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circum-

stances, but shall not be liable for interest prior to judgment or for punitive damages.";

(2) by inserting "(2)" in the second paragraph immediately before "If"; and

(3) by adding at the end thereof the following:

"(b)(1) The United States shall be liable, respecting the provisions of this title relating to claims for any tort arising under the Constitution or laws of the United States or for any intentional tort, for actual damages to the same extent as entitlement to such damages is recognized under the law of the place where the act or omission occurred, for a reasonable attorney's fee and other litigation costs reasonably incurred, for general damages relating to mental and physical pain and suffering not to exceed $100,000, and, in the discretion of the court, for punitive damages not to exceed $50,000, and reasonable interest prior to judgment. In any claim for a tort arising under the Constitution, damages awarded shall not be less than $1,000.

"(2) The United States may not assert as a defense to an action arising under the Constitution the absolute or qualified immunity of the employee (except Members of Congress, judges, or prosecutors, or agents thereof) or the good faith belief of the employee in the lawfulness of his conduct.

"(c) For purposes of this section—

"(1) a tort is intentional only if the act or omission giving rise to such tort is knowing and willful; and

"(2) any award of damages, interest, or attorneys' fees under this section shall be paid by the head of the Federal Agency whose employee committed such tort out of appropriations available to that agency.".

SEC. 4. Section 2675 (a) of title 28, United States Code, is amended—

(1) by inserting immediately after "employment," the following: "or upon a claim against the United States for money damages arising under the Constitution or laws of the United States caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment or under the color thereof,";

(2) by inserting immediately after the first sentence the following: "Upon a claim against the United States for money damages arising under the Constitution of the United States, class actions in conformity with the requirements of the Federal Rules of Civil Procedure may be instituted provided that the claim presented to the appropriate Federal agency expressly asserts the representative nature of the claim and specifically describes the members of the class, the common interests of the claimant and such members, and the basis upon which the claimant believes he can fairly and adequately protect the interests of the class as their representative.".

SEC. 5. Section 2676 of title 28, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided in section 2679(b)(2), the".

SEC. 6. Section 2679 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) the remedy against the United States provided by section 1346(b) and 2672 of this title with respect to claims for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding, arising out of or related to the same subject matter, against the employee whose act or omission gave rise to the claim or against the estate of such employee.

"(2) The remedy against the United States provided by sections 1346 (b) and 2672 of this title with respect to claims for any tort arising under the Constitution or laws of the United States or for any intentional tort, caused by an employee of the Government while acting within the scope of his office or employment, or under color thereof, is exclusive of any other civil action or proceeding, arising out of or related to the same subject matter, against the employee whose act or omission gave rise to the claim or against the estate of such employee, unless such employee acted recklessly or did not in good faith believe the lawfulness of his conduct. For any such tort claim in which such employee acted recklessly or in which such employee did not in good faith believe the lawfulness of his conduct, an action may be brought against either the United States as provided in sections 1346(b)(2) and 2672, or against such employee (or the estate of such employee) in his individual capacity. Whenever the action is brought against the United States under sections 1346(b)(2) and 2672, the remedy is exclusive of any other civil action or proceeding, arising out of or related to the same subject matter, against the employee whose act or omission gave rise to the claim or against the estate of such employee. Whenever the action is brought against such employee (or the estate of such employee) in his individual capacity, the remedy is exclusive of any other civil action or proceeding, arising out of or related to the same subject matter, against the United States under sections 1346(b)(2) or 2672.

"(3) For the purposes of this section, a tort is intentional only if the act or omission giving rise to such tort is knowing and willful.";

(2) in subsection (c), by adding at the end thereof the following: "This subsection is not applicable to any action brought against such employee (or the estate of such employee) in his individual capacity.";

(3) by amending subsection (d) to read as follows:

"(d)(1) Except as provided in paragraph (4), upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment, or in claims arising under the Constitution or the laws of the United States that the employee was acting within the scope of his office or employment or under the color thereof, at the time of the act or omission out of which the action arose, any such civil action or proceeding commenced in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. After such substitution the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States under this chapter and section 1346(b).

"(2) Except as provided in paragraph (4), upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment, or in claims arising under the Constitution or the laws of the United States that the employee was acting within the scope of his office or employment, or under the color thereof, at the time of the act or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be removed, without bond, at any time before trial, by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and be deemed an action brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. After such substitution the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States under this chapter and section 1346(b). The certification of the Attorney General shall conclusively establish scope of office or employment and in claims arising under the Constitution or laws of the United States, scope of office or employment or acting under color thereof, for purposes of such initial removal. Should a district court of the United States determine on a hearing on a motion to remand held before trial on the merits that the employee defendant was not acting within the scope of his office or employment, and in claims arising under the Constitution or laws of the United States, acting within the scope of his office or employment or under color thereof, the case shall be remanded to the State court in which it was initially filed.

"(3) Where an action or proceeding under this chapter is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the action or proceeding shall be dismissed, but in that event the running of any limitation of time for commencing, or filing an application or claim in, such proceeding for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this chapter.

"(4) Paragraphs (1) and (2) of this subsection shall not apply to any action brought against an employee (or the estate of such employee) in his individual capacity for a tort arising under the Constitution or laws of the United States or for any international tort, in which it is alleged that the employee acted recklessly or did not in good faith believe the lawfulness of his conduct.";

(4) by adding at the end of such section the following:

"(f) Whenever an action is brought against the United States under sections 1346(b)(2) and 2672 rather than against the employee (or the estate of such employee) in his individual capacity, the United States shall have a right of indemnity against the employee whose act or omission gave rise to the claim or against the estate of such employee, for all or part of the amount of its liability. The United States may enforce such right of indemnity in a separate civil action or proceeding in any district court or by filing a third party complaint against such employee or his estate in the action brought by the claimant under this section, without regard to the amount in controversy.".

SEC. 7. Section 2680 of title 28, United States Code, is amended—

(1) by amending the matter preceding paragraph (a) to read as follows: "Except for tort claims arising under the Constitution of the United States or laws of the United States, the provisions of this chapter and section 1346(b) of this title shall not apply to—"; and

(2) by repealing paragraph (h).

SEC. 8. (a) Subsections (a) through (d) of section 4116 of title 38, United States Code, are repealed, and subsection (e) of that section is amended by deletion of the designation "(e)", by deleting the words "person to whom the immunity provisions of this section apply (as described in subsection (a) of this section)," and inserting in lieu thereof the words "employee of the Department of Medicine and Surgery".

(b) Subsections (a) through (e) of section 224 of the Public Health Service Act, as added by section 4 of the Act of December 31, 1970, and renumbered (42 U.S.C. 233 (a)

through (e)), are repealed, and subsection (f) is amended by deletion of the designation "(f)".

(c) Subsections (a) through (e) of section 1091 of the Foreign Service Act of 1946, as added by section 119 of the Act of July 12, 1976 (22 U.S.C. 817 (a) through (e)) are repealed.

(d) Subsections (a) through (e) of section 1089, title 10, United States Code, are repealed. Subsection (f) is amended by deleting the words "person described in subsection (a)" and inserting in lieu thereof the words "employee of the Armed Forces, the Department of Defense, or the Central Intelligence Agency,".

(e) Subsections (a) through (e) of section 307 of the National Aeronautics and Space Act of 1958, as added by section 3 of the Act of October 8, 1976 (42 U.S.C. 2458a (a) through (e)), are repealed, and subsection (f) is amended by the deletion of the designation "(f)", by the deletion of the words "person described in subsection (a)" and by the insertion in lieu thereof of the words "employee of the National Aeronautics and Space Administration".

SEC. 9. This Act shall apply to all claims filed or accruing on or after the date of enactment of this Act.

By Mr. TALMADGE (by request):

S. 2869. A bill to authorize the establishment of an international emergency wheat reserve, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

INTERNATIONAL WHEAT RESERVE ACT OF 1978

● Mr. TALMADGE. Mr. President, I am today introducing at the request of the administration a bill to authorize the President to establish and maintain a wheat reserve to provide for specified emergency and developmental food needs abroad and to fulfill any reserve stock obligations of the United States under a wheat trade convention of an international wheat agreement.

Mr. President, I ask unanimous consent that the text of the bill and the accompanying letter from Secretary Bergland be printed in the RECORD.

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

S. 2869

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 "International Wheat Reserve Act of 1978".

SEC. 2. The Congress hereby declares it to be the policy of the United States to develop a wheat reserve to provide for emergency humanitarian and developmental food needs abroad and to fulfill any reserve stock obligations of the United States under the Wheat Trade Convention.

SEC. 3. In order to carry out the policy and accomplish the objectives set forth in section 2 of this Act, the President shall establish a reserve stock of wheat of up to 6 million metric tons: *Provided,* That in the event the United States undertakes any reserve stock obligations under the Wheat Trade Convention, the maximum may be increased to such level as the President deems necessary to carry out section 5(a) of this Act.

SEC. 4. Stocks of wheat for such reserve may be acquired (1) through purchases from producers or in the market: *Provided,* That the Secretary of Agriculture (hereinafter referred to as "the Secretary") determines that such purchases will not unduly disrupt the market, and (2) by designation by the Secretary of stocks of wheat acquired by the Commodity Credit Corporation.

SEC. 5. (a) Notwithstanding any other provision of law, stocks of wheat so designated or acquired for the wheat reserve provided for by this Act may be released by the President for sale or donation for the following purposes:

(i) To provide humanitarian relief in any foreign country which suffers a major disaster as determined by the President;

(ii) to assist any developing country to meet its food requirements in any year in which the market price of wheat is high and the United States domestic supply of wheat is limited so as to warrant release from the reserve for this purpose; or

(iii) to fulfill any reserve stock obligations of the United States under the Wheat Trade Convention.

(b) In making the determination to release wheat for the purposes of clauses (i) and (ii) of subsection (a) of this section, the President shall take into consideration food assistance authorized under the Agricultural Trade Development Assistance Act of 1954.

(c) The President may designate a portion of the reserve to be utilized only for the purpose of clause (iii) of subsection (a) of this section.

SEC. 6. (a) Upon determination by the President under Section 5(a) that wheat shall be released from the reserve, the Secretary is authorized to make all necessary arrangements for the release and disposition thereof on such terms and conditions as the Secretary determines will effectuate the purposes of this Act.

(b) Wheat released from the reserve for the purposes of clauses (i) and (ii) of section 5(a) may, as determined by the President, be made available pursuant to agreements which the President enters into with representatives of foreign governments or under the Agricultural Trade Development and Assistance Act of 1954: *Provided,* That the last sentence of section 401(a) of such Act with respect to determination of availability shall not be applicable thereto.

(c) The Secretary is authorized to pay, with respect to stocks of wheat released from the reserve for donation for the purposes of clauses (i) and (ii) of section 5(a), costs of processing, transportation, handling, and other incidental costs to designated points abroad.

SEC. 7. The Secretary shall provide for the storage of stocks of wheat in the reserve and for the periodic rotation of stocks of wheat in the reserve to avoid spoilage and deterioration of such stocks, utilizing programs authorized by the Agricultural Trade Development and Assistance Act of 1954 and any other provision of law, but any quantity removed from the wheat reserve for rotation purposes shall be promptly replaced with an equivalent quantity.

SEC. 8. Stocks of wheat in the reserve shall not be considered a part of the total domestic supply including carryover, for the purposes of section 5(a)(ii) or for the purpose of administering the Agricultural Trade Development and Assistance Act of 1954, and shall not be subject to any quantitative limitations on export which may be imposed pursuant to section 3(2)(A) of the Export Administration Act of 1969 (50 U.S.C. App. 2413).

SEC. 9. (a) The funds and authorities of the Commodity Credit Corporation shall be utilized by the Secretary in carrying out this Act: *Provided,* That any restrictions applicable to the acquisition, storage or disposition of Commodity Credit Corporation owned or controlled commodities shall not apply with respect to the acquisition, storage or disposal of wheat for or in the reserve.

(b) The Commodity Credit Corporation shall be reimbursed from funds made available for carrying out the Agricultural Trade Development and Assistance Act of 1954 for wheat released from the reserve which is made available under such Act, such reimbursement to be made on the basis of actual costs incurred by Commodity Credit Corporation with respect to such wheat or the export market price of wheat, as determined by the Secretary, as of the time the wheat is released from the reserve for such purpose, whichever is lower. Such reimbursement shall be made from funds appropriated for that purpose in subsequent years.

SEC. 10. Any determination by the President or the Secretary under this Act shall be final.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., March 15, 1978.

The PRESIDENT OF THE SENATE,
U.S. Senate, Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for the consideration of Congress is a draft bill "To authorize the establishment of an international emergency wheat reserve, and for other related purposes." This proposal will authorize the President to establish and maintain a wheat reserve to provide for specified emergency and developmental food needs abroad and to fulfill any reserve stock obligations of the United States under a Wheat Trade Convention of an International Wheat Agreement.

This department recommends that the draft bill be enacted.

This bill would authorize stocks of wheat for the International Emergency Wheat Reserve (IEWR) to be acquired by designating wheat in the Commodity Credit Corporation (CCC) inventory to be part of the reserve and by purchasing wheat in the market or directly from farmers when the Secretary determines such purchases will not unduly disrupt the market. Wheat from the IEWR could be released for sale or donation only to (1) provide humanitarian relief in any foreign country which suffers a major disaster, as determined by the President; (2) assist any developing country to meet its food requirements in any year in which the market price of wheat is high and the United States domestic supply is limited so as to warrant release from the reserve for this purpose; or (3) to fulfill any reserve stock obligations of the United States under a Wheat Trade Convention.

If enacted, it is intended that this authority will be used, in combination with farmer-owned reserve authorities, to place into reserve up to 15 million metric tons (550 million bushels) of wheat before the beginning of the 1978 crop year. The IEWR share of this reserve will not exceed 6 million tons (220 million bushels), unless the United States undertakes reserve stock obligations under the Wheat Trade Convention currently being negotiated which, in combination with the food aid reserve objectives of this bill, would require a higher level of government-owned reserve stocks. If it is necessary to increase the IEWR to meet the intent of this legislation, acquisitions of 1976- and 1977-crop wheat under the price support program which have been designated as part of the IEWR will be supplemented to the extent necessary by purchases of wheat in the market or directly from farmers. Such purchases would be made, if necessary, after the farmer-owned reserve target has been met.

The President's budget, submitted to the Congress in January, includes funds for the establishment of 15 million tons of wheat reserves in fiscal year 1978, including a 6 million ton IEWR. Removing excess 1976- and 1977-crop wheat from the market and placing it in reserve, and lowering production through the 20 percent set-aside program for 1978, should result in higher prices for the 1978 crop. This should substantially reduce budget outlays for loan activities and deficiency payments in fiscal 1979, unless

weather conditions are unusually good. Costs of the IEWR in years beyond fiscal 1979 cannot be predicted reliably. They will depend on the quantity of wheat required to fulfill the purposes of this bill and on the extra CCC costs, if any, of replacing and storing these reserves.

An identical letter has been sent to the Speaker of the House of Representatives.

The Office of Management and Budget advises that enactment of this proposal would be in accord with the Program of the President.

Sincerely,

BOB BERGLAND, *Secretary.*●

By Mr. PELL:

S. 2870. A bill to amend title 38 of the United States Code in order to require the Administrator of Veterans' Affairs to pay a $150 allowance to any State or any agency or political subdivision of a State in reimbursement for expenses incurred in the burial of each veteran in any cemetery owned by such State or agency or political subdivision of a State, if the cemetery or section thereof is used solely for the interment of veterans; to the Committee on Veterans' Affairs.

● Mr. PELL. Mr. President, today I am introducing legislation identical to H.R. 7263, which was introduced in the first session of this Congress by my colleague from Rhode Island, Congressman BEARD, to provide for the Federal subsidization of veterans' cemetery sites throughout our country.

It is proper and fitting recognition for veterans who have served this Nation through both wartime and peacetime to be accorded the honor of burial in a cemetery area reserved and maintained in an appropriate manner exclusively for veterans. For decades this has been possible at specially designated cemeteries throughout our Nation, and this has meant a great deal to those veterans and their families.

With the increase in the number of interments, some of our older cemeteries have been filled and new cemeteries have been selected and opened.

My own State of Rhode Island has had for the last 3½ years a fine State veterans cemetery, located in Exeter. In the short time it has been opened, almost 1,000 burials have taken place, and the near future will see an even more rapid rate of interment according to statistics I have received from Louis P. Alfano, Jr., my State's Chief of Veterans' Affairs.

There are 152,000 veterans in Rhode Island, and 60 percent of them served in World War II. Their average age is 57 years, and this means that within the next 20 years the Rhode Island veterans cemetery will be an increasingly important part of our commitment to our veterans.

However, the cost of maintaining this State veterans cemetery and of purchasing additional land for its projected expansion is a heavy burden upon my State, and this legislation would be of enormous assistance, in this regard.

Accordingly, this legislation would mandate Federal assistance to this important veterans cemetery and to others throughout our country. It is a fitting and proper step to take to honor our veterans who have contributed so much and who certainly deserve an appropriate resting place near their home and their surviving family members.●

By Mr. PEARSON:

S. 2871. A bill to create a rural community development bank to assist in rural community development by making financial, technical, and other assistance available for the establishment of expansion of commercial, industrial, and related private and public facilities and services, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

RURAL COMMUNITY DEVELOPMENT BANK ACT OF 1978

Mr. PEARSON. Mr. President, I am introducing today a bill designed to assist the revitalization and continued economic growth of our rural communities. The bill would stimulate and support balanced economic growth in rural communities by establishing a Rural Community Development Bank, which would make financial, technical, and planning assistance available to small communities in nonmetropolitan areas.

Mr. President, past Federal initiatives for rural economic development have fallen short. Notwithstanding recent growth trends in some rural sections of our country, substantial disparities still exist between rural and metropolitan areas in terms of job opportunities, income levels, adequacy of housing, access to quality health, care, and other public facilities and services. Past Federal policies have been particularly remiss in the area of encouraging business and industry to invest in job-creating enterprises in rural areas. A recent review of rural development policy prepared by the assistant secretaries working group for rural development found that Federal programs for rural areas have concentrated on public facilities improvements and have not stimulated significant private sector employment.

The legislation I propose would encourage creation of new job opportunities in rural areas by attracting private capital through the mechanism of a federally chartered rural community development bank. Such a bank could support local financial institutions and insure that adequate credit resources were available to meet the needs of private enterprises that would expand or locate in small communities.

The development bank concept is not, of course, a new idea. I have sponsored similar rural development bank proposals in previous Congresses, as have others. I am reintroducing my rural development bank proposal today, because I sense a reawakening interest in the economic well-being, and quality of life in general, of rural America. Earlier this year, the White House Conference on Balanced National Growth and Economic Development, which was authorized by the Public Works and Economic Act Amendments of 1976, conducted a series of meetings attended by participants from all 50 States to study and make recommendations for national economic policies to foster sustained and balanced growth. More recently, the President has proposed creation of a National Development Bank as part of his urban policy. Although we will have to wait for the details, the National Bank would make assistance available to rural communities as well as urban areas. While this is a positive step for rural development, it should not represent the end, but the beginning, of discussion concerning ways to sustain economic growth throughout rural America.

Mr. President, the Rural Community Development Bank that I propose would be a self-financing, Government-chartered corporation. The bill provides that the bank would be capitalized through the sale of $1 billion in nonvoting stock to the U.S. Treasury. Initially, the Treasury would purchase 20 percent of this amount. As the bank's business developed, the Treasury would be authorized to purchase additional bank stock in amounts of up to $200,000 a year. The startup moneys paid in by the Federal Government would be financed through the sale of Treasury obligations to the public. Consequently, the $1 billion capitalization of the bank would not represent any direct appropriations from the Treasury. The bank could also require persons who received financial assistance to purchase bank stock.

With this capital surplus, the bank could issue bonds for sale in the private market to raise the funds it would use to provide loans, loan guarantees, and other financial assistance. The terms and conditions for such financial assistance would be set at a level to recover the bank's operating expenses.

Bank policies would be governed by a 17-member Board of Directors. Initially, 13 members would be appointed by the President, with the advice and consent of the Senate, from the Government and private sectors. The remaining four members would be elected by borrowers and other recipients of bank assistance who held bank stock. When the amount of voting stock exceeded the amount of nonvoting stock, five of the directors appointed by the President would be replaced by directors elected by recipients of bank assistance, giving them a majority voice in bank policy.

Mr. President, the bank would be authorized to make loans and loan guarantees to new or expanded private enterprises in small communities located in nonmetropolitan counties. Although small communities in some nonmetropolitan areas have been experiencing economic growth in recent years, these areas are primarily in counties adjacent to metropolitan areas. Other nonadjacent rural areas have experienced little or no growth. Consequently, the bank's principal focus would be upon communities located in nonmetropolitan areas that were more than 25 miles from an urban center. Nonetheless, a small community adjacent to a metropolitan area could qualify for assistance if the bank found there was a lack of credit resources available for investment in that community.

The bank would also be authorized to provide financial assistance to public

and quasipublic entities for the development, expansion, or improvement of industrial sites and other public facilities necessary to support a community's development effort.

Financial assistance could also be provided for housing construction if it was determined that additional housing was necessary for the employees of a new or expanding business.

In addition to loans and loan guarantees, the bill would authorize the bank to buy and sell its own obligations and to buy and sell obligations originated by other lenders for rural development purposes consistent with those outlined in the bill. The bank would be encouraged to involve other lending institutions in rural development loans and to create a secondary market for such loans.

Finally, the bill provides that the bank would make technical and planning assistance available to public bodies to enable them to maximize the benefits from rural investment in their communities.

Mr. President, the Rural Community Development Bank will not guarantee equality of economic opportunity between rural and urban areas. A rural development bank, however, can contribute to balanced national growth by insuring that adequate credit resources are available to rural communities to encourage and sustain their economic growth.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2871

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rural Community Development Bank Act of 1978".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the economic development of rural communities is essential to balanced national growth;

(2) many rural communities are in urgent need of economic development;

(3) such development can be assisted by the establishment or expansion of commercial or industrial enterprises and related public and private services and facilities;

(4) existing rural financial institutions do not have adequate resources to satisfy the capital needs for investment in rural development; and

(5) creation of a rural development bank will attract and support additional private investment in rural communities.

(b) It is the purpose of this Act to stimulate the economic development of rural communities by—

(1) providing financial assistance for the establishment and improvement of commercial and industrial facilities that increase job opportunities in such communities, supporting private and public development facilities, and housing related to rural development projects financed under this Act;

(2) encouraging private investment in such facilities;

(3) bringing together investment opportunities, public and private capital, and capable management;

(4) making available technical and other supportive assistance to aid rural economic development; and

(5) seeking to achieve these purposes through the establishment of a borrower-owned rural development bank, which will aid private investors, financial institutions, and public agencies to finance rural development projects.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "commercial or industrial facility" means a fixed place of business, in or from which a manufacturing, processing, assembling, sales, distribution, storage, service, or construction business is carried on.

(2) The term "supporting private or public development facility" means an element of infrastructure, including recreational and cultural facilities, typically developed and owned by a public agency or private utility, or other service or facility made available to the public which is necessary to support economic development activities under this Act.

(3) The term "housing necessarily related" means housing if all types in or near a rural community which will provide living quarters for the personnel of any new or expanded commercial or industrial facility if the governing body of the political subdivision in which development assisted under this Act will be undertaken, certifies that there exists a need for additional housing in or near the development.

(4) The term "rural community" means any community, whether or not incorporated, which—

(A) is located in a county that is not part of a standard metropolitan statistical area; and

(B) is not within 25 miles of a standard metropolitan statistical area with a population of more than 250,000; except that, not withstanding subparagraph (B), the bank may determine that a community is a rural community if it finds that (i) there is a lack of public or private financial resources available for investment in the community, and (ii) assistance under this Act is necessary for the continued economic development or redevelopment of such community.

ESTABLISHMENT OF BANK

SEC. 4. There is hereby created a corporation to be known as the "Rural Community Development Bank" (hereinafter referred to as the "bank") which shall be an instrumentality of the United States Government, and shall be subject to the provisions of this Act.

DIRECTORS AND OFFICERS

SEC. 5 (a) The bank shall have a Board of Directors consisting of seventeen individuals who are citizens of the United States of whom one shall be elected annually by the Board to serve as Chairman. Members of the Board shall be selected as follows:

(1) The President of the United States shall appoint, by and with the advice and consent of the Senate, seven members of the Board who shall be officials or employees of government, including Federal, State, and local government. The terms of directors so appointed shall be for four years, except that the terms of such directors first taking office, shall expire as designated by the President at the time of appointment, four at the end of two years, and three at the end of four years after such date. Any director appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. At the discretion of the President, any individual who ceases to be an official or employee of the Government during his term as director may, notwithstanding that fact, complete his term.

(2) The President of the United States, by and with the advice and consent of the Senate, shall appoint six members of the Board from among representatives of the private sector. Of the six persons so appointed, three shall be from among representatives of business and finance, one from among representatives of organized labor, one from among representatives of community development organizations and one from among representatives of the general public. The terms of directors so appointed shall be for four years, except that the terms of such directors first taking office shall expire as designated by the President at the time of appointment, three of the members at the end of two years, and three at the end of four years after such date. Any director so appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term and shall be chosen from among representatives of the same category as his predecessor.

(3) Four members of the Board will be elected by holders of class B stock. The terms of elected directors will be for four years, except that the terms of such directors first taking office shall expire as designated by the President at the time of appointment of directors under paragraphs (1) and (2), two of the members at the end of two years, and two at the end of four years after such date.

(4) At the first annual meeting of the Corporation after the amount of class B stock issued and outstanding exceeds the value of class A stock issued and outstanding, three of the members of the Board appointed by the President under subsection (a) (1) and two of the members of the Board appointed by the President under subsection (a) (2) shall, in accordance with the regulations of the Board, be subject to replacement by directors elected by the class B stockholders.

(b) The President, by and with the advice and consent of the Senate, shall appoint a president of the bank. The president of the bank shall be the chief administrative officer of the bank and shall perform all functions and duties of the bank, in accordance with the general policies established by, and subject to the general supervision of, the Board, and shall engage such other officers and employees as the bank deems necessary to carry out its functions. The appointment of the president and not more than two vice presidents may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and they may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. The president of the bank shall be an ex officio member of the Board of Directors and may participate in meetings of the Board, except that he shall have no vote except in case of an equal division. No individual other than a citizen of the United States may be an officer of the bank. No officer or employee of the bank other than members of the Board shall receive any salary, other than a pension, from any source other than the bank during the period of his employment by the bank.

(c) Members of the Board may receive the sum of $150 for each day or part thereof spent in the performance of their official duties, which compensation, however, shall not be paid (1) for more than seventy-five days (or parts of days) in any calendar year, (2) to any Board member who is a full-time officer or employee of the United States, or (3) if such payment is otherwise prohibited by law. In addition, such members shall be reimbursed for necessary travel, subsistence, and other expenses incurred in the discharge of their official duties without regard to the laws with respect to allowances which may be made on account of travel and subsistence expenses of officers and employed personnel of the United States.

CAPITALIZATION OF BANK

SEC. 6. (a) Subject to the provisions of this section, the bank is authorized to issue from time to time and to have outstanding class A capital stock of an aggregate purchase price not to exceed $1,000,000,000. Shares of such stock shall be nonvoting and without par value.

(b) The Secretary of the Treasury is authorized to and shall subscribe for and acquire on behalf of the United States, upon request of the Board of Directors, the class A capital stock of the bank of a total purchase price of $1,000,000,000. The subscription of the United States shall be paid as follows:

(1) Not more than 20 per centum shall be paid at the time the bank is organized, as provided for in an appropriation Act, and shall be available as needed by the bank for its operations.

(2) The remaining 80 per centum shall be paid on call by the bank only when required to carry out the provisions of this Act, except that not more than 20 per centum of the total amount may be called in any fiscal year, as provided for in an appropriation Act.

The Secretary of the Treasury is authorized and directed to pay the subscription of the United States to stock of the bank from time to time when payments are required to be made to the bank. For the purpose of making these payments, the Secretary of the Treasury is authorized to use as a public-debt transaction $1,000,000,000 of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this paragraph of the subscription of the United States to the bank and repayments thereof shall be treated as public-debt transactions of the United States.

(c) In addition, the Board of Directors is authorized from time to time to issue to the public and have outstanding class B stock of an aggregate purchase price not to exceed $1,000,000,000, or such larger amount as may be approved in an appropriation Act. Shares of such stock shall be nonvoting until such time as the amount of such stock issued and outstanding exceeds the aggregate amount of class A stock issued and outstanding.

(d) In providing for the issuance of class B stock, the Board is authorized to require a person receiving financial assistance from the bank to purchase a minimum number or amount of class B shares, but in no case shall such minimum amount exceed five per centum of the amount of the loan, loan guarantee, or other assistance provided by the bank.

(e) Stock and other securities issued by the bank pursuant to this section and section 7 shall be exempt securities under section 3 of the Securities Act of 1933 (15 U.S.C. 77C).

OPERATIONS AND POWERS OF THE BANK

SEC. 7. (a) In order to carry out the purposes of this Act, the bank is authorized to—

(1) make, participate in, or guarantee loans for real or personal property or for working capital to any individual, association, partnership, corporation, or public agency, including a cooperative, for the establishment, expansion, or preservation of any commercial or industrial facility, housing necessarily related thereto, or a supporting private or public development facility which is to be established or is located in or near a rural community;

(2) make, participate in, or guarantee loans, including interim financing, for the construction or improvement of such facilities to building contractors, subcontractors, or other persons engaged in such work;

(3) provide technical assistance to State and local governments in the preparation and implementation of comprehensive rural community development projects and programs, including the evaluation of priorities and the formulation of specific project proposals, and charge appropriate fees for such assistance;

(4) undertake research and information gathering, and to facilitate the exchange of advanced concepts and techniques relating to rural community growth and development among State and local governments;

(5) develop criteria to assure that projects assisted by it are not inconsistent with comprehensive planning for the development of the community in which the projects to be assisted will be located or disruptive of Federal programs which authorize Federal assistance for the development of like or similar categories of projects;

(6) seek to bring together investment opportunities in such facilities, capital, and capable management; and

(7) carry on such other activities as would further the purposes of this Act.

(b) To obtain indirect participation by private and public financial sources, the bank is authorized to—

(1) issue such obligations as it may determine on a competitive, negotiated or other basis at the discretion of the Board of Directors;

(2) invest funds not needed in its financing operations in such property and obligations as it may determine;

(3) purchase and sell securities or obligations it has issued or guaranteed or in which it has invested;

(4) guarantee securities in which it has invested for the purpose of facilitating their sale; and

(5) purchase and sell loans originated by private financial institutions to borrowers for rural development purposes consistent with the purposes of this Act.

(c) Whenever necessary to meet contractual payments of interest, amortization of principal, or other charges on the bank's own borrowing, or to meet the bank's liabilities with respect to similar payments on loans guaranteed by it, the bank may call an appropriate amount of the unpaid subscription of the United States in accordance with section 6(b)(2).

(d) If the bank finds that a default on financing provided by it may be of long duration, the bank may call an additional amount of such unpaid subscriptions for the following purposes—

(1) to redeem prior to maturity, or otherwise discharge its liability on, all or part of the outstanding principal of any loan guaranteed by it with respect to which the debtor is in default; or

(2) to repurchase, or otherwise discharge its liability on, all or part of its own outstanding borrowings.

(e) The bank is authorized to establish a principal office and branch offices in such locations as it may determine. It may establish regional offices and determine the location of, and the areas to be covered by, each regional office. It may make arrangements with public or private organizations at the regional, State, and local levels, including banking organizations and other financing institutions, to act as agents or otherwise to assist the bank in the conduct of its business.

(f) To carry out the foregoing purposes, the bank shall have such additional powers as are necessary or appropriate in carrying out this Act.

OPERATING PRINCIPLES

SEC. 8. The operations of the bank shall be conducted in accordance with the following principles:

(1) The bank shall undertake its financing, technical assistance, and other operations on such terms and conditions and for such fees as it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the bank, the benefits to the rural community or to the residents of such communities, and the conditions under which similar financing might be available from private investors.

(2) The bank shall maintain such liaison or consultation with other departments, agencies, or instrumentalities of the Government as may be necessary to insure that its operations are carried out in a manner which will supplement and not duplicate the operations and functions of any other department, agency, or instrumentality of the Government.

(3) The bank shall consult with and shall seek to encourage local banking and other financial institutions to participate in its financing and other activities.

(4) The bank shall, to the extent feasible, give emphasis in its activities to providing financing and other assistance to facilities owned in whole or in part by residents of rural communities or to facilities in which such ownership is made available to such persons.

(5) The bank shall seek to revolve its funds by selling its loans, loans guaranteed by it, and other investments to private investors whenever it can do so on satisfactory terms.

(6) The bank shall be subject to the Government Corporation Control Act (31 U.S.C. 841 et seq.) in the same manner and to the same extent as if it were included in the definition of "wholly owned Government corporation" as set forth in section 101 of that Act (31 U.S.C. 846).

(7) The bank shall pay a return out of net income, after providing for reserves and operating expenses, at the rate of 2 per centum per annum on the amounts of class A stock subscription actually paid into the bank. Such return shall be cumulative and shall be payable annually into miscellaneous receipts of the Treasury.

(8) The bank shall adopt such bylaws as may be necessary for the conduct of its business and the management of its affairs and may adopt such additional rules and regulations as are necessary and appropriate for carrying out the provisions of this Act.

LIMITATIONS ON FINANCING

SEC. 9. (a) The bank shall not provide financing or other assistance for any commercial or industrial facility, supporting public or private development facility, or housing necessarily related, unless it determines that—

(1) other public or private financing could not be obtained on reasonable terms and conditions;

(2) adequate arrangements have been made to insure that the proceeds of any loan or other financing are used only for the purpose for which the financing was provided, with due attention to considerations of economy and efficiency;

(3) the borrower or other recipient of financing has adequate equity or other financial interest in or income from the facility to insure his or its careful and businesslike management of the project;

(4) the governing body of the city or, as appropriate, the governing body of the county, parish, or other political subdivision in which the facility is located or is to be established, or an agency or other instrumentality of such political subdivision designated by such body, has certified to the bank its approval of (A) the establishment of the facility at the particular location, (B) the proposed standards of construction and design, and (C) provisions for the relocation of any residents or businesses to be displaced; and

(5) the establishment, expansion, or preservation of the facility in the particular location will contribute to the level of economic opportunity for residents of the community

and contribute to the general development of the community.

(b) The bank shall not provide financing for any commercial or industrial facility which has been relocated from one area to another, except that this requirement may be waived by the Board of Directors if it determines (1) that the establishment of such facility in the new location will not result in an increase of unemployment in the area of original location or in any other area where the enterprise conducts business operations, or (2) that such facility is not being established in the new location with any intention of closing down the operations of the enterprise in the area of original location or in any other area where the enterprise conducts its operations.

EXEMPTION FROM TAXES

SEC. 10. Except as specifically provided in this Act, the bank, including its capital and reserves or surplus and income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by the bank under the provisions of this Act. The security instruments executed to the bank and the bonds, obligations, debentures, issued under the provisions of this Act shall be deemed and held to be instruments of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

ANNUAL REPORT

SEC. 11. Not later than 120 days after the close of each fiscal year the bank shall prepare and submit to the President and to the Congress a full report of its activities during such year.

AMENDMENTS RELATING TO FINANCIAL INSTITUTIONS

SEC. 12. (a) The sixth sentence of paragraph Seventh of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by inserting before the comma after the words "or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association" the following: ", or obligations of the Rural Community Development Bank".

(b) Section 5200 of the Revised Statutes, as amended (122 U.S.C. 84), is amended by adding at the end thereof the following:

"(15) Obligations of the Rural Community Development Bank shall not be subject to any limitation based upon such capital and surplus.".

(c) The first paragraph of section 5(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464 (c)), is amended by inserting before the semicolon in the second proviso following "stock of the Federal National Mortgage Association" the following: "; or in obligations of the Rural Community Development Bank".

ADDITIONAL COSPONSORS

S. 1967

At the request of Mr. ROBERT C. BYRD, the Senator from New Hampshire (Mr. DURKIN) was added as a cosponsor of S. 1967, a bill to amend section 218 of the Social Security Act to require that States having agreements entered into thereunder will continue to make social security payments and reports on a calendar-quarter basis.

S. 2472

At the request of Mr. CASE, the Senators from Hawaii (Mr. INOUYE and Mr. MATSUNAGA) were added as cosponsors of S. 2472, a bill to authorize the Secretary of State to implement solar energy and other renewable energy projects in certain buildings owned by the United States in foreign countries.

S. 2484

At the request of Mr. BELLMON, the Senator from Alabama (Mr. ALLEN), the Senator from Oklahoma (Mr. BARTLETT), the Senator from North Dakota (Mr. BURDICK), the Senator from Florida (Mr. CHILES), the Senator from Nebraska (Mr. CURTIS), the Senator from Indiana (Mr. LUGAR), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Mexico (Mr. SCHMITT), the Senator from North Dakota (Mr. YOUNG), and the Senator from Nebraska (Mr. ZORINSKY) were added as cosponsors of S. 2428, to impose quotas on the importation of beef, including processed beef and beef quantities in the form of live cattle, when the domestic market price of cattle is less than 110 percent of parity and to impose custom duties on such articles when the domestic market price of cattle is less than 80 percent of parity.

S. 2487

At the request of Mr. CLARK, the Senator from North Carolina (Mr. MORGAN), and the Senator from Colorado (Mr. HASKELL) were added as cosponsors of S. 2487, a bill to amend the Public Health Service Act to provide for greater emphasis on rural health care needs in health planning.

S. 2503

At the request of Mr. BENTSEN, his name was withdrawn as a cosponsor of S. 2503, a bill to amend the Social Security Act and the Internal Revenue Code of 1954.

S. 2626

At the request of Mr. HODGES, the Senator from Mississippi (Mr. EASTLAND), the Senator from Washington (Mr. MAGNUSON and the Senator from Tennessee (Mr. SASSER) were added as cosponsors of S. 2626, the Consumer and Agricultural Protection Act of 1978.

S. 2645

At the request of Mr. WILLIAMS, the Senator from Maryland (Mr. MATHIAS), and the Senator from Minnesota (Mrs. HUMPHREY) were added as cosponsors of S. 2645, a bill to establish an Art Bank.

S. 2680

At the request of Mr. MATHIAS, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of 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.

S. 2699

At the request of Mr. MAGNUSON, the Senator from Minnesota (Mrs. HUMPHREY) was added as a cosponsor of S. 2699, a bill authorizing the preservation of historical and archeological data.

S. 2711

At the request of Mr. WILLIAMS, the Senator from Rhode Island (Mr. PELL), the Senator from Idaho (Mr. CHURCH), the Senator from Minnesota (Mrs. HUMPHREY), the Senator from Arkansas (Mr. BUMPERS), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2711, a bill to revise and extend the community education program, and for other purposes.

S. 2751

At the request of Mr. KENNEDY, the Senator from Rhode Island (Mr. PELL), the Senator from New Jersey (Mr. WILLIAMS), the Senator from New York (Mr. MOYNIHAN), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Iowa (Mr. CLARK), the Senator from Minnesota (Mr. ANDERSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Michigan Mr. RIEGLE), and the Senator from Minnesota (Mrs. HUMPHREY) were added as cosponsors of S. 2715, a bill to amend the Immigration and Nationality Act relative to refugees and displaced persons.

S. 2757

At the request of Mr. MAGNUSON, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 2757, the National Agricultural Lands Policy Act.

S. 2761

At the request of Mr. DOMENICI, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 2761, a bill to give State concurrence in siting of nuclear waste storage.

S. RES. 323

At the request of Mr. DOLE, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of Senate Resolution 323, condemning the human rights violations in Cambodia, and calling upon the President to seek international condemnation of the atrocities.

S. CON. RES. 73

At the request of Mr. DOLE, the Senator from Florida (Mr. STONE), the Senator from Nevada (Mr. LAXALT), the Senator from Pennslyvania (Mr. HEINZ), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Florida (Mr. CHILES) were added as cosponsors of Senate Concurrent Resolution 73, a resolution regarding the imposition of import fees on crude oil.

ADDITIONAL COSPONSORS

PANAMA CANAL TREATIES— EX. N, 95–1

AMENDMENT NO. 10

At the request of Mr. DOLE, the Senator from Nevada (Mr. CANNON) was added as a cosponsor of amendment No. 10 intended to be proposed to the Panama Canal Treaty, Ex. N, 95–1.

AMENDMENT NO. 67

At their request, the Senator from Utah (Mr. GARN), the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from Wyoming (Mr. HANSEN), the Senator from Alabama (Mr. ALLEN), the Senator from New Mexico (Mr. SCHMITT), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator

from North Carolina (Mr. HELMS), and the Senator from Nevada (Mr. LAXALT) were added as cosponsors of amendment No. 67 intended to be proposed to the Panama Canal Treaty, Ex. N, 95–1.

AMENDMENT NO. 12

At the request of Mr. DANFORTH, the Senator from Oklahoma (Mr. BELLMON) and the Senator from Tennessee (Mr. BAKER) were added as cosponsors of understanding No. 12 intended to be proposed to the resolution of ratification of the Panama Canal Treaty, Ex. N, 95–1.

SENATE CONCURRENT RESOLUTION 77—SUBMISSION OF A CONCURRENT RESOLUTION TO ESTABLISH A "NATIONAL HALIBUT WEEK"

Mr. MAGNUSON submitted the following concurrent resolution, which was referred to the Committee on the Judiciary:

S. CON. RES. 77

Resolved by the Senate (the House of Representatives concurring), That the President is authorized to issue a proclamation designating the seven-day period beginning June 11, 1975, and ending June 17, 1978, as "National Halibut Week", and calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED FOR PRINTING

NAVIGATION DEVELOPMENT ACT—H.R. 8309

AMENDMENT NO. 1766

(Ordered to be printed and to lie on the table.)

Mr. WALLOP submitted an amendment intended to be proposed by him to the bill (H.R. 8309) authorizing certain public works on rivers for navigation, and for other purposes.

LABOR LAW REFORM ACT OF 1978—S. 2467

AMENDMENTS NO. 1767 AND 1768

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself and Mr. HUDDLESTON) submitted two amendments intended to be proposed by them, jointly, to the bill (S. 2467) to amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such act.

NOTICE OF HEARINGS

AMENDMENTS NOS. 1767 AND 1768

● Mr. ABOUREZK. Mr. President, I wish to announce that the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, will continue hearings on the witness protection program. The hearings will be on April 14, 1978, in room S–126, the Capitol and will begin at 9:30 a.m.●

CHANGE IN HEARING ON JUSTICE DEPARTMENT AUTHORIZATION

● Mr. EASTLAND. Mr. President, on March 10, I gave notice that a hearing on the budget request of the Civil Rights Division of the Department of Justice would be held on April 11, 1978. The time of this hearing has now been changed to April 25, 1978, at 2 o'clock p.m. in room 2228 of the Dirksen Senate Office Building.●

FOREIGN AGRICULTURAL POLICY SUBCOMMITTEE

● Mr. STONE. Mr. President, I wish to alert my colleagues to the plan of the Foreign Agricultural Policy Subcommittee of the Senate Committee on Agriculture, Nutrition, and Forestry to hold hearings on April 27 and 28 to examine legislation designed to expand our agricultural export markets.

There has been widespread interest in expanding our agricultural exports which are important to our balance of payments. I would hate to imagine the state of the dollar today if it were not for our agricultural exports. Last year our agricultural exports reached $24 billion with a net favorable balance of over $10 billion. There are a number of key issues which the hearings will address and my subcommittee will be reviewing as we examine the opportunities for legislation in this area.

Bills introduced to date on which the hearing will focus on S. 2385 (HUMPHREY), S. 2405 (LUGAR), and S. 2504 (DOLE).

We will have a group of invited witnesses, but written statements will be accepted for the record. The hearing will begin at 9 on April 27 and 10 on April 28 in room 324 RSOB. Anyone requiring further information should contact the committee at 224–2035.●

ADDITIONAL STATEMENTS

HUMAN RIGHTS IN EASTERN EUROPE

● Mr. CASE. Mr. President, Senate Concurrent Resolution 75 reemphasizes the need to keep the Soviet Union and other countries on notice that they have made major human rights promises to their citizens by signing the 1975 Helsinki accord.

The Conference which ended recently in Belgrade reviewed the Helsinki accord as part of the process. The resolution, which the senior Senator from Rhode Island (Mr. PELL) introduced April 6, was a joint effort, as we are the two senior Senate members of the Helsinki Commission. It makes it clear that we are looking forward to continuing reviews of human rights situations in Eastern Europe.

The resolution urges the President and other executive branch officials to continue to express, at every suitable opportunity and in the strongest terms, the opposition of the American people to repressive actions and violations of basic human rights which are contrary to the Helsinki accord. Furthermore, the resolution, which also has been introduced in the House of Representatives, urges executive branch officials, including the President, to use every feasible bilateral contact with officials of East European countries to remind them of the past promises on human rights.

The Belgrade Conference brought out into the open some of the violations. The U.S. delegation headed by Arthur Goldberg, is commended in the resolution for its efforts. Because of the dedication and concern of Mr. Goldberg and some of the other officials, the presentation was much stronger than it would have been had the delegation style been set by the traditional approach of the bureaucracy.

Some observers were disappointed that the concluding document adopted at the end of the Belgrade Conference was not more specific on the human rights issue. But in view of the nature of the situation, there may have been unrealistic expectations. It is not generally realized that the concluding document had to be unanimously agreed to—in other words the Soviet Union and even Malta had to agree to the final language. The way the Soviets stonewalled on any mention of human rights on the concluding document is an indication of how strongly they were stung at the mention of human rights at Belgrade.

One of the accomplishments of the Belgrade Conference is that review sessions will be held at regular intervals—the next meeting will be in Madrid in 1980. The important thing is that the process of spotlighting human rights violations continue as part of the effort to encourage Soviet officials to abide by the promises of the Helsinki accord and the United Nations Declaration on Human Rights. The U.S. Commission on Security and Cooperation in Europe on which I served will continue its efforts in this process.

For example the Commission has been following the disturbing way in which Soviet officials have used psychiatric treatment and hospitals as a way of punishing dissidents. The Commission also has been gathering information on the subhuman living conditions in the Soviet Union. The Commission staff reports that as part of the Moscow Helsinki Watch Group, five Soviet citizens have formed the Working Commission To Investigate the Abuse of Psychiatry for Political Purposes.

The Commission issues reports on the situation of Soviets subjected to punitive psychiatry. In August 1977, a member of this Commission, Feliks Serebrov, was arrested and then sentenced to camp for using falsified documents. In November 1977, another member of this group, Aleksandr Podrabinek, was ordered to emigrate from the Soviet Union with his brother and father or face criminal charges. In December 1977, Kirill Podrabinek was arrested and recently was sentenced to 2½ years of prison camp for possession of weapons.

Sentencing of dissidents on phony criminal charges is a favorite "new" method of the Soviet Government in trying to silence dissent. In the last few weeks, for example, a member of the Georgian Helsinki Group, Grigory Goldshtein, has been sentenced to 1 year in camp for "parasitism"—he lost his job when he applied to emigrate to Israel in 1971. In the Ukraine, Pyotr Vins—son of the imprisoned Baptist pastor, Georgy Vins—is now facing a trial on

charges of parasitism after having applied to emigrate to relatives in Canada.

Despite the vote in Honolulu at a meeting of the World Psychiatric Association condemning the Soviet practice of punitive psychiatry against dissidents and religious believers, Amnesty International reported recently that since that time, there are 14 known cases of psychiatric incarceration of dissenters. One such reported victim is Vladimir Klebanov, organizer of an unofficial trade union in the U.S.S.R., who is said to be in a Donetsk psychiatric hospital. Two other victims of this cynical practice are Zviad Gamsakhurdia and Merab Kostava of the Georgian Helsinki Watch Group who underwent "tests" at the Serbsky Institute for Forensic Psychiatry in Moscow before being sent back to Georgia to await trial for their monitoring work.

Twelve prisoners of Mordovian Camp No. 19 undertook a hunger strike from April 19 until July 27, 1977—an action timed to coincide with the preparatory session of the Belgrade Conference. Their appeal is also addressed to my colleagues in the Congress, listing 12 categories of denial of their rights:

First. Political prisoners are in the same legal category as criminal offenders;

Second. There is secret legislation relating only to political prisoners;

Third. The labor of political prisoners is cruelly taxed and exploited in a 48-hour workweek;

Fourth. The almost total absence of rights to legal defense and redress of grievances;

Fifth. A deliberate policy of gradual starvation—including a ban on food parcels for the first half of a sentence;

Sixth. The denial of their human dignity—each camp is surrounded by six barbed wire fences and manned with guards carrying machineguns;

Seventh. Discrimination against religious prisoners—neither religious services nor Bibles are allowed;

Eighth. Ethnic discrimination—prisoners often serve their sentences outside their native republics, especially in the case of Armenians and Georgians;

Ninth. It is illegal for prisoners to get married and difficult to have contact with existing family—they request three to four family visits per year;

Tenth. The forcible political indoctrination of prisoners;

Eleventh. Depriving prisoners of their professional qualifications, by banning books in their fields of expertise and by confiscating their work; and

Twelfth. Deliberately isolating camps from the rest of the world—by detaining and confiscating personal correspondence.

One of the prisoners active in this hunger strike was Vladimir Osipeov. Editor of an independent Russian Orthodox journal, sentenced to an 8-year prison term in 1975 for his publishing activities. The Sakharovs have made known another hunger strike in this Mordovian camp by Eduard Kuznetsov, 1 of the 10 still imprisoned defendants of the first Leningrad trial in 1970. It seems that the Soviets have heeded the appeals on behalf of Mr. Kuznetsov's relatives who wish to visit him and have promised his wife, Sylva Zalmanson, that she will be allowed into the U.S.S.R. from Europe to visit her husband.

Few positive signs can be seen in this dismal picture of Soviet "respect" for human rights. One must have serious doubts about the sincerity of the Soviets when they undertake commitments in international agreements—such as those they undertook at Helsinki in 1975. I call on my colleagues to continue to make known their views on this subject, for the pressure of world opinion can have an effect on the Soviet authorities.●

DOE URGED TO REMOVE OBSTACLES TO GASOHOL SALES

● Mr. BAYH. Mr. President, the Economic Regulatory Administration of the Department of Energy is holding public hearings today on proposed regulations to facilitate the sale of gasohol. I submit a copy of my comments on these regulations for the RECORD.

The comments follow:

U.S. SENATE,
Washington, D.C., April 10, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration, Office of Public Hearings Management, Washington, D.C.

DEAR ADMINISTRATOR BARDIN: I welcome the opportunity to comment on the Economic Regulatory Administration's proposed regulations to facilitate the sale of gasohol and fully support the Department's moving quickly ahead to remove all barriers to the addition of gasohol to our energy mix.

The intent of ERA's proposed regulations is clear. Current ERA pricing regulations prohibit gasoline retailers from including the extra costs of gasohol in their customer charges. The proposed regulations would permit retailers to pass the cost of the alcohol in gasohol through to their customers and leave the decision about gasohol purchases to consumers.

All indications we have from those who have offered this new product to their customers is that it is a best seller. In fact, service station dealers and farm cooperatives in Illinois and Nebraska that have offered this product report that their customers can't get enough of it. These distributors should not have to suffer economic hardship to meet their customers' demand for gasohol. In addition, in my estimation, the government should be doing all it can to promote gasohol—90/10 gasoline/alcohol blends—because it is the only hope we have of significantly reducing our dependence on petroleum in the near-term. I would like to take a few moments to elaborate on the importance of introducing gasohol into our energy mix.

Last spring, the President addressed the nation to unveil his national energy plan. He emphasized the critical importance of an effective national energy policy and likened the effort needed to meet this challenge to the "moral equivalent of war."

I have been encouraged by the high priority placed by the President on resolving our energy problems, and supported most of his efforts strongly over the past year. However, a crucial ingredient missing from the President's national energy plan was an accelerated program for developing and introducing alternative energy sources—especially new liquid fuels—into our energy mix in a timely fashion.

The President himself, as well as other Administration officials, has recognized that a liquid fuels crunch is soon in the offing, despite our temporary oil glut. It is hard to predict with certainty when world demand for oil will overtake production. However, President Carter and Secretary Schlesinger have predicted that this is likely sometime in the 1980's.

Even with our best efforts to conserve energy and curtail all nonessential uses of crude oil products, our economy and society will continue to require a reliable source of liquid fuels for the rest of this century. Right now, highway vehicles alone consume 40 percent of our petroleum-based energy. American drivers use 103 billion gallons of gasoline per year, or almost 1½ million barrels of crude oil per day.

Despite increasingly fuel efficient cars and trucks, and more widespread mass transit facilities, transportation needs will continue to make a major claim on our liquid energy supplies. The same can be said for other functions in our society that require liquid fuels, and will continue to do so, despite our best efforts at increased conservation and conversion. Peak load electricity generation and certain industrial processes will require liquid fuels well into the next century. Our farmers will need liquid fuels to run their farm equipment and get their crops to market. Residential and commercial uses will also demand their share.

We must move ahead, as other nations such as Brazil, Sweden, and Germany are already doing, to develop viable alternatives to petroleum to meet these needs. If we do not, our future looks very bleak indeed. Failure to act soon will consign us to even greater petroleum imports, already approaching 50 percent of our crude oil needs at a cost close to $45 billion per year, horrendous balance-of-payment deficits, further erosion of the value of the dollar, higher unemployment, increased dependence on unstable foreign suppliers, and very real threats to our economic well-being and national security.

Faced with these undesirable consequences, it is clear to me that we must start a concerted effort to develop new liquid fuels that can become commercially viable in the short run, which are plentiful or derived from renewable domestic resources, and which can be used for a variety of purposes.

Alcohol fuels is one possibility that has been vastly underestimated, although it is within our reach in the relatively short term, without major disruptions to our economy and society. Testing by the U.S., Germany, and Brazil has confirmed that gasohol performs more than adequately as a motor fuel. It boosts octane, reduces some emissions, eliminates knock problems, improves mileage and requires no modification of current automotive engine design. While other governments, in cooperation with the private sector, are moving aggressively ahead to tap their nation's abundant resources and reduce their reliance on imported petroleum, the U.S. government has lagged far behind.

Those with a vested in maintaining the status quo, or those uneasy with change, raise all kinds of objections to alcohol fuels. They say they cost too much. They say they are energy inefficient. They say they are impractical. They say they require change.

The irony of this posture is that technical and economic problems equally, if not more, complex than those faced with respect to alcohol fuels existed when the petroleum industry was in its infancy. The idea of drilling holes thousands of feet in the ground and transporting oil around the globe struck some people as absurd. But Washington was more than generous in the supporters provided the oil companies before petroleum became a preferred fuel. The industry enjoyed import quotas, depletion allowances, intangible drilling deductions, and foreign tax credits; in fact, oil companies still derive some of their profits from these hidden subsidies.

I have no doubt that alcohol fuels can become efficient and economical energy supplements with a relatively small federal invest-

ment if we apply our best technology to this effort and remove the red tape that currently inhibits its sale.

The Department of Energy is now conducting an energy supply study and will soon be forwarding recommendations to the Congress as to what types of federal subsidies or incentives it feels warranted to develop new supplies, given the need for new energy sources in the 1980's, and the lead times involved in developing new production facilities. Indications are that it will suggest costly new programs justified by the nation's future needs.

The regulations under consideration today will not cost the government a penny. They will merely permit gasohol marketers to charge fair prices for their product. The consumer will decide whether the advantages associated with gasohol warrant paying a few extra pennies for it.

I urge the Department to move quickly to eliminate unintended regulatory obstacles to the sale of this promising petroleum extender and to make these regulations retroactive to January 17, 1978, the effective date of the temporary stay issued by DOE. In addition, I urge the Department to allow a reasonable period of time to elapse before setting a final ceiling price, so that accurate cost estimates can be developed.

I am confident that alcohol fuels will draw broad based support from the American people, the business, farm and scientific communities, and those of us who serve them. Use of this product will likely improve automobile performance and give every member of the driving public a role in increasing our energy independence.

We are on the verge of developing a range of new energy technologies that will not only reduce our reliance on foreign sources of energy, but will give a boost to local economies all around the nation. It is safe to say that alcohol fuels—ethanol and methanol—can be produced in virtually every state of the union. Ethanol can be produced from such diverse sources as corn, wheat, milo, sugarbeets, sugarcane, potatoes, algae, and distressed crops and crop residues, as well as numerous other "energy crops" that our plant geneticists could doubtless develop if given the go-ahead. Methanol can be produced from forestry products, crop residues, wood and municipal wastes and coal.

In sum, I believe that the development of alcohol fuels can make a major contribution to curbing oil imports while creating new uses for our most abundant domestic resources and helping depressed economies in different regions of the country. These fuels also have the potential to relieve urban areas of some of their waste disposal problems and budgetary drains by developing a new use for the byproducts of industrial and urban life. DOE should remove all obstacles to its voluntary sale in the marketplace.

Sincerely,

BIRCH BAYH,
U.S. Senator.●

THE AUTONOMY OF FANNIE MAE

● Mr. DOMENICI. Mr. President, over the last couple of months, I have become increasingly concerned about some activities relating to the Department of Housing and Urban Development.

Late last year our distinguished colleague and my good friend, the senior Senator from Missouri, Mr. EAGLETON, held a public hearing on the conversion of the Federal flood insurance programs from a private enterprise operation into another undertaking by the Federal Government.

Somewhat more recently, HUD has undergone still another reorganization and one that adversely affects the people in my State. HUD is in the process of completely dismantling the FHA-insuring office in Albuquerque. In its multifamily operations this office was second to none and yet somehow, someway, this kind of success could not be allowed to continue.

More recently, and within the last couple of weeks, I have been hearing from a number of my constituents who are involved not only in housing construction but in home finance. They are concerned about the efforts of the Department of Housing and Urban Development to take over the operations of the Federal National Mortgage Association. Fannie Mae, as it is more commonly known is a company Congress set up in 1968 as a privately owned, privately managed, and privately capitalized undertaking.

Having read the Senate committee report on the 1968 Housing Act, I and apparently many others thought the Congress was vesting in Fannie Mae's Board of Directors the full power and responsibility for the policies of the Corporation, subject only to the provisions of the laws passed by the Congress and the regulations of the HUD Secretary. This regulatory authority, however, was necessary only to protect the financial interest of the Federal Government and to assure that the purposes of the Fannie Mae Charter Act was carried out.

Mr. President, I have no problem with some aspects of the regulations which HUD proposed on February 24 to govern Fannie Mae's operations, particularly those that call for the submission of the reports and other data to the Secretary.

I am deeply concerned and my constituents are deeply concerned about the attempt of HUD to say where and when Fannie Mae is to buy mortgages. My staff brought to my attention a colloquy between the first Secretary of HUD, Dr. Robert C. Weaver, and our distinguished friend, the senior Senator from New Hampshire, Senator MCINTYRE. In that colloquy in the Senate committee, Secretary Weaver said in effect that under the HUD regulatory authority—and the authority of the incumbent Secretary is certainly no greater—the HUD Secretary would not be able to tell Fannie Mae to invest here or to buy that.

My constituents and I are both concerned among other things that HUD seeks to require of Fannie Mae that 30 percent of its mortgages must involve housing for low and moderate income families. Now, while I certainly want to see that our low and moderate income families are properly housed, there are other ways—such as using FHA and GNMA—which appear to be the better route.

In my own State of New Mexico, Fannie Mae has done a reasonably good job. For example, at the end of calendar 1977, Fannie Mae's mortgage portfolio was in excess of $367.5 million. A very substantial number of these mortgages were on single family properties. In calendar 1977, Fannie Mae bought in this one year alone over $63.5 million in single-family home loans.

Mr. President, Fannie Mae is not perfect, but it has done, I think, a very creditable job. In the Senate report on the 1968 legislation, there is the statement that the committee expects that the privately owned Fannie Mae will add a significant impetus to the flow of funds in the secondary market and in the availability of credit to the home mortgage market. I think this has happened.

Quite frankly, I think that Fannie Mae should be left alone.

In conclusion, I ask that an editorial from the New York Times of March 25, entitled "No Chaperone for Fannie Mae" be printed in the RECORD.

The editorial follows:

NO CHAPERONE FOR FANNIE MAE

Secretary Harris, of the Department of Housing and Urban Development, seems determined to take the privately owned Federal National Mortgage Association under her wing, asserting the right to tell Fannie Mae, as the association is called, how much money it can invest in what kinds of mortgages. Since buying mortgages is Fannie Mae's business and constitutes a strategically important segment of housing finance, Secretary Harris's proposal endangers housing credit in general.

Mrs. Harris accepts the risk because of the importance of her avowed goal: insuring a flow of mortgage money into sound investments in urban areas. After being defeated in the effort to place Presidential appointees on the Fannie Mae board, the Secretary invoked her department's rule-making power. She has proposed a new set of regulations restricting Fannie Mae's freedom to buy or promise to buy mortgages from lending institutions all over the country. The proposals are complicated, but in effect they would require Fannie Mae to use at least 30 percent of its investments in any year for mortgages that "conform" to the Secretary's standards. She favors one-family urban homes, non-F.H.A. mortgages on old houses and mortgages subsidized by the Government. And total lending by the corporation would be limited by the amount of "conforming" mortgages it buys.

No one quarrels with Secretary Harris's proclaimed intention. The question is whether Fannie Mae, especially given rigorous supervision by the Secretary and her successors, is the right instrument.

Since Fannie Mae gets no Government funds, it must sell its own securities to the investing public on the open market. The proposed regulations would surely make these securities less attractive. And they would drastically cut back Fannie Mae's operations and profitability if it could not find enough "conforming" mortgages to fill the quota demand. Fannie Mae makes no mortgages directly so it can do little to enhance the supply of "conforming" loans.

Before imposing the proposed regulations, Secretary Harris should explore more direct ways of increasing the liquidity of urban mortgage lenders. The Government National Mortgage Association, an agency that is intended to execute Federal policy in mortgage purchase and sale, stands at hand. Since it is financed by the Treasury, Ginnie Mae could be given the funds to buy mortgages which "conform" to Mrs. Harris's standards, at prices so attractive that lenders would be encouraged to continue making more of them. Ginnie Mae could also be encouraged to help Fannie Mae market the mortgages it has already bought, with the proviso that returns from such sales be earmarked exclusively for buying new "conforming" mortgages.

Reasonable people, in short, should be able to agree on a Government strategy for reaching the goals that Secretary Harris has identified—and without jeopardizing other important goals of American housing.●

TAXATION OF AMERICANS ABROAD

● Mr. TOWER. Mr. President, over the last few months increased attention has been given to the devastating effects of the Tax Reform Act of 1976 in the area of taxation of Americans residing abroad. Several articles have appeared in the RECORD which have spoken eloquently on vital considerations of international trade which are closely intertwined with the tax treatment accorded American workers overseas.

Regrettably, our country is quickly losing its competitive advantage as a leader among word trading nations, as attested by our enormous trade deficits sustained each month over the last 2 years. The administration has given its commitment to correct this embarrassing situation, yet how can this pledge be taken seriously when its tax reform proposals have the counterproductive effect of providing only nominal tax relief for these Americans?

Mr. President, the international trade aspects to this problem are of critical importance. But there is also a human side to this matter which is often overlooked. I have received a letter from Mrs. Frances R. Hemenway, a resident of Lagos, Nigeria, who graphically relates to me the oppressive living conditions found in that country. I daresay that few American families would have the fortitude to withstand such an intolerable environment with which Mrs. Hemenway and her family must contend with each day. So that my colleagues may better understand the imperative need to provide income relief necessary to insure that these brave Americans have the incentive to carry on their important jobs abroad, I offer Mrs. Hemenway's letter to be printed in today's RECORD.

The letter follows:

MARCH 23, 1978.

Senator JOHN TOWER,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR TOWER: From far off Lagos, Nigeria, I am exercising one of my privileges as a U.S. citizen, by writing letters to Congressmen concerning an issue that affects me very closely—tax treatment of citizens abroad. Having read one senator's views of U.S. citizens who are swathed in mink at Monte Carlo, (as reported in the newspapers), I would like to present to you another picture of a U.S. family working abroad.

Lagos is described by natives and visitors alike as one of the filthiest, most crowded cities in the world. 2.75 million people live in the Lagos metropolitan area, which can be traversed by car from one end to the other in twenty-five minutes—in the darkest hours of the night when all the traffic is gone and no one ventures out but thieves, highway robbers and pirates. Otherwise, to travel from one part of Lagos to another could take up to four hours.

Its very hot here—sitting in a Volkswagen crew cab in traffic, shopping in the un-air conditioned stores, or sitting in my own living room. We have an air conditioner, but only a few hours of electricity a day. So, we have a generator, to keep the food in the refrigerator from spoiling, to pump water from the ground tank to the roof tank so we can have running water in the house, to light up the outside of the house at night for security.

I have a steward, he could be considered a luxury, but I consider him a necessity. Otherwise, I would have to do all the washing by hand in the bathtub (our septic system can't handle a washing machine), iron every bit of washing including towels and socks (to prevent the timbu flies from hatching in our clothing, crawling under our skin and raising boils), spray the entire house daily to keep the spiders, cockroaches, beetles, and ants from becoming too numerous; boil and filter all water for drinking, cooking, and ice cubes because our water is delivered by tank truck and looks as though it were straight from the Rouge River; sweep and dust every inch of the house daily because we have dust storms called Harmattans that lay sand on every surface; and scrub the entire house with Lysol because even the air here carries germs that cause fungus and other infections of the ear, throat, and skin.

I do the shopping for my family—every day. Depending on the season and availability. I pay: $3.24 for one dozen eggs; $1.05 for one cucumber; $4.50 for one pound green beans; $5.00 for medium head of cauliflower; $3.50 for small head of cabbage; $2.25 for one pound onions; $3.00 for one pineapple; $6.00 for 2½ pound frying chicken.

All these items are grown or processed here in Nigeria. I also buy imported food, when available. I pay: $5.18 for lg. jar mayonaise; $4.50 for one pound hot dogs; $12.00 for one bottle gin; $2.25 for 8-oz. box Rice Chex; $3.00 for a liter vegetable oil; $33.00 for 10-lb. turkey (for Christmas).

I don't buy canned fruit, vegetables or juices; crackers, cookies, candy; bread or cake mixes; linens, plastic wares, or champagne because the government has banned the import of these items.

My daughter attends an American International School which costs $4000 per year. Her classes are from 7:30 a.m. to 12:30 p.m. with no break, no music, no P.E., no sports, no school clubs, or extracurricular activities. She has some American friends but few opportunities after school hours for socializing, and no opportunities for corner drugstore, movies, American holiday activities, walking, bicycling.

My husband works from 7:00 a.m. to 6 p.m. Monday–Friday, half-days on Saturday. He eats a sandwich at his desk for lunch, communicates with the parent company by telex, and is responsible for housing, transportation, communication, health and legal services for the expatriates and their families who are here in Nigeria, in addition to his job: supervising construction projects. He has been here through two government crises, responsible for the safety, sanity and work production of expatriates who are here because there are no jobs for them in the States, and most of whom left their families back there.

We're not in Lagos because we want to be. Our company had very little work in the U.S., but lots of opportunities overseas. However, they're in the business of making a profit, and we can save money only by living on a scale light years removed from that we enjoyed in the U.S., not only materially, but culturally and qualitatively. We miss contact with family and friends. Our opportunities to travel are bounded by the cost of air fare to Europe, the dangers of travel in many parts of Africa, the demands of my husband's job, our daughter's school schedule, and the inevitable health problems that confine all of us at one time or other: despite all precautions and American drugs we fall victim to malaria, dysentery, food poisoning, infectious hepatitis, ulcers, boils, and industrial accidents.

We're here because there's a job to be done. There isn't enough money in the world to make up for the cultural lag; premature tropical agin, ; missed weddings, funerals, and holidays; election campaigns; Oscar-winning movies; the change of seasons; fresh milk; respect for law and order; books, plays, and the World Series. We endure slurs on our country, attacks on our very presence here, and discomforts that Americans at home can't imagine.

Very truly yours,

FRANCES R. HEMENWAY.●

ASSISTANCE TO WAR VICTIMS IN LEBANON

● Mr. KENNEDY. Mr. President, recent violence in the Middle East has caused much tragedy to many people on all sides. But of immediate concern today are the staggering humanitarian problems resulting from the Israeli military action in southern Lebanon and the sporadic conflict which has gripped that area in recent months.

As I suggested in a public statement a few days ago, the United States must give its full support to international efforts to help bring peace to the area. But we must also support the efforts of the Lebanese Government to help bring relief to the people who live there.

The record is clear that for the residents of southern Lebanon—many with relatives and friends in the United States—recent times have been a nightmare of fear and death and brief. Hundreds of people have been injured or killed, and unexploded ordnance apparently continues to threaten the lives of many people. An estimated 200,000 Lebanese nationals and 65,000 Palestine refugees—two-thirds of the population in the affected areas—have fled their homes as refugees. Houses, schools, and public buildings have been damaged or destroyed. Refugee camps and villages have been devastated. And this new tragedy in Lebanon is adding heavily to the lingering human problems brought on by the general civil conflict in that country just a short time ago.

Emergency relief needs continue. Medical supplies are still needed to treat the wounded and sick. And longer term rehabilitation and reconstruction assistance will surely be needed to help the war victims rebuild their homes and normalize their lives.

Although a full assessment of humanitarian needs in southern Lebanon is still underway, the Lebanese Government, various international humanitarian organizations and a number of private voluntary agencies have issued appeals in behalf of the war victims in southern Lebanon. And a general United Nations appeal for both emergency relief and rehabilitation assistance is expected sometime soon.

I want to commend the administration for contributing, on an urgent basis, over $1.2 million in relief supplies to help meet immediate shelter, food, and medical needs. But I am also hopeful that our country will respond more generously to the serious humanitarian needs in Lebanon, and will join with other countries in fully responding to the international appeals now underway. Some funds for this purpose are immediately available, and, if additional funds are needed, I am hopeful the President will urgently request them of Congress.

Mr. President, peace and relief are urgently needed in Lebanon—to save lives, to renew the spirit of a battered

people, to assist in the rebuilding of a country torn by conflict and violence, and to promote the stability and peaceful development of the entire region. Hopefully, all concerned with events in the Middle East will work to accomplish these ends.●

HOW TO REINVIGORATE SMALL BUSINESS

● Mr. HEINZ. Mr. President, ever since the birth of our great Nation, the dream of every American included the opportunity to be one's own boss. Our history of individual entrepreneurship is long and filled with many success stories. We in the Congress have, as well, long supported the idea that every American should be afforded every opportunity to partake of that dream.

But in the last few years, in our zeal to provide badly needed social services and to protect individual Americans from numerous hazards and practices, we have unwittingly created a hostile environment within which small businesses have trouble thriving. The stories about individuals rising from rags to riches through individual initiative are becoming fewer and fewer.

I believe an article in the April 1978 issue of the Ripon Forum entitled "How to Reinvigorate Small Business" articulates these problems quite well. The author of that article, Mr. John C. Topping, Jr., does not stop there, however. He goes on to prescribe what I think is a well reasoned prescription to reinvigorate small business. I believe that the plan Mr. Topping outlines is sound and further that we should take a leading role in insuring that this road to the American dream is not lost.

I commend this article to my colleagues and ask it be printed in the RECORD.

The article follows:

HOW TO REINVIGORATE SMALL BUSINESS

(By John C. Topping, Jr.)

Small business is the politician's equivalent of the weather; everyone talks about it, but no one does much about it. The state of both the weather and small business has worsened appreciably since January 20, 1977. The rotten turn of weather in the Carter era seems to be pure coincidence; the development of an increasingly foreboding climate for small business is, however, somewhat more the product of Administration action and inaction.

Shortly after the election, Carter enthusiasts were advancing the fanciful claim that the Georgia politician was the first small businessman ever to become President.[1] Such hyperbole has developed an increasingly hollow ring amidst the mounting evidence that Administration action has worsened the already perilous position of small business.

The more hostile climate for small business is not the product of a conscious design; instead it is the result of a series of seemingly unrelated policies. By far the most inimical of these to small business has been the Administration's effort to bail out the financially threatened Social Security system in large part by huge hikes in Social Security taxes paid by employers.[2]

A secondary cause of this worsened climate for small business has been the recent rise in the Federal minimum wage of more than 15 percent. In addition to freezing many relatively unskilled youth from the job market, this jump in the minimum wage has placed a considerable cost squeeze on many small and medium-sized businesses.[3]

Despite these recently escalating pressures, American small business, including much of the legal and medical profession, still constitutes a significant sector of our economy. The statistics which tend to be dated and to have limited reliability indicate that firms with less than a million dollars in annual income have produced between a third to a fourth of our national business receipts since the early 1960's.[4] Perhaps, as Neil Jacoby suggests,[5] it is hyperbole to characterize our economy as a manifestation of the corporate state.

Nevertheless, in the last few years a number of factors have weighed increasingly heavily on small or new businesses, and particularly on aggressive risk-taking firms in new technology areas. These factors impeding entrepreneurial entry and growth include:

Federal, state and local regulatory requirements which raise the cost and difficulty of entry into areas of business;

Manipulation of government regulatory mechanisms by established firms in order to restrict entry by competitors;

Drastically lessened availability of venture capital for new or small businesses;

A dramatic skewing of economic incentives against self employment and entrepreneurial activity and in favor of those who derive their principal income from someone else's payroll.

Although these problems have yet to transform our economy, their adverse impact is generally more severe on incipient innovative firms than on mature industrial giants.

REGULATION AS A SPUR TO MARKET CONCENTRATION

The rapid growth of governmental regulation has often raised the cost and lengthened the time required for business entry into certain industries or product areas. In many instances, manufacturers must obtain prior approval of one or more agencies such as the Food and Drug Administration, the Environmental Protection Agency or the Department of Agriculture before they can market a new product.

The effect of pre-entry clearances is particularly severe on incipient, modestly capitalized businesses. Unlike huge manufacturing concerns, small businesses rarely have on tap a legion of lobbyist/lawyers to smooth over their difficulties with the Washington regulatory establishment. The political clout and access to highly placed Federal decision makers of a fledgling manufacturer rarely compares with that of a Fortune 500 firm.

The long lead time and associated legal and administrative costs occasioned by pre-entry clearance requirements result in front-end costs which may effectively preclude a modestly capitalized firm from developing a new product or process. A giant corporation, on the other hand, is much better able to take the risks of securing pre-entry clearances. Its normally greater sophistication in clearing regulatory hurdles gives it a greater chance of success in obtaining the necessary clearances. Furthermore, once its product has received the necessary regulatory approvals, the super corporation, heavily capitalized and equipped with a sophisticated marketing and distribution capacity, is well positioned to recapture quickly its front-end investment.

CENTRALIZING INNOVATION

The disproportionate impact of regulatory barriers on market entry by modestly capitalized firms tends to enhance market concentration. But this may not be the most troubling aspect. The most detrimental result of such regulation may be a serious slowdown in the rate of technological innovation. Small businesses and individual inventors, despite their limited capital base, have been the prime source of technological innovation in America. A leading business analyst, Arthur Burck, recently observed, "Small companies and individual inventors were responsible for a remarkable percentage of the important inventions and innovations of this century; these include the air conditioner, power steering, xerography, cyclotron, cotton picker, helicopter, FM circuits, automatic transmissions, zipper, Polaroid camera, cellophane, continuous hot-strip rolling of steel, and the oxygen steelmaking process. The Jewkes study of invention showed that of 61 basic inventions examined only 16 resulted from research by large companies."[6]

It is possible that this historical pattern may not be fully applicable to our present economy, in which many technological breakthroughs require huge sums of front-end capital. Nevertheless, there is undeniable loss to the economy if, as seems increasingly the case, incipient firms are impeded by heavy handed regulation from both product development and capitalization.

CORNERING THE MARKET

In addition, the regulatory structure may be actively manipulated by established corporations to fence out competition. A particularly glaring example of this has occurred in the field of computer data transmission.

American Telephone and Telegraph Company (AT&T) dominates this field. In the late 1960's Sam Wyly, a young Dallas computer executive and business innovator, mapped out plans for a national microwave data transmission network to compete with AT&T. Wyly poured millions of his own money into Datran, the corporation he had set up to develop the data transmission network, and raised millions more.

But AT&T resisted tooth and nail, fighting Datran and other microwave transmission applicants in a protracted battle before the FCC and the courts. After losing these rounds, which bled the microwave applicants, AT&T applied its economic muscle to cut away their markets. Recently, Datran, despite the technological superiority of its data transmission process, was forced to fold before AT&T's superior might. Datran

[1] Among the several Presidents who could claim prior small business experience were Warren Harding (successful newspaper publisher in Marion, Ohio) Herbert Hoover (very successful engineer) and Harry Truman (unsuccessful haberdasher).

[2] The finally enacted Social Security bill provided for hikes in Social Security taxes that will amount to $227 billion in yearly collections within ten years. About half of this tax bite would be visited on employers. The Administration sought legislation placing a far higher burden on employers.

[3] Some of the smallest businesses are exempt from such coverage but numerous restaurants, cafeterias, fast food franchise outlets, gas stations and small manufacturers are affected.

[4] "The USA Business Community: Its Composition and Changing Nature, With Special Reference to Small Business (Including Selected Statistics on Minority Owned Firms)." Report of the Select Committee on Small Business, United States Senate, September 24, 1974. pp. 23–24.

[5] Neil H. Jacoby, "The Corporate State: Myth or Reality", *Human Events*, February 4, 1978 reprinted from the Summer 1977 issue of the *Wharton Magazine*, University of Pennsylvania.

[6] Arthur Burck, June 30, 1977 speech before Minnesota Executives Organization, Inc. Lafayette Club, Minnetonka, Minnesota. Inserted in the Congressional Record July 29, 1977 by Representative Claude Pepper at H 8158.

was left with a lawsuit against AT&T, but for the time being that communications monopoly remained preeminent in the burgeoning field of computer data transmission.

Not content with its current advantage over new entrants, AT&T is now involved together with other telephone companies in a massive lobbying effort to secure Congressional legislation overturning Federal Communications Commission moves to permit greater competition in the communications industry.

Anti-competitive actions by established firms are even more prevalent in the transportation industry. Small truckers or trunk airlines find that government regulatory agencies serve as the lynchpin of cartels designed to keep out new entrants. Established firms readily avail themselves of governmentally-sanctioned tactics, such as filing petitions of protest to deny new applicants any grants of operating authority.

In addition to manipulating the regulatory process to fence out competition, some giant corporations may by their very size have a de facto immunity to particularly adverse consequences of government regulation. A vivid example of this phenomenon could be seen recently in the auto industry.

The major U.S. automobile manufacturers announced that they would be unable to meet air pollution standards mandated for 1978 model cars. Hence, they would have to close down their assembly lines unless Congress modified the law. Congress changed the law; it wasn't about to risk the closing down of a major industry.

Somehow it is hard to imagine Congress reacting in the same way if the president of a company employing 50 persons announced that he would close down his business unless Congress changed legislation he found offensive. Small business may be important in the abstract, but the demise of any single firm is not likely to be viewed as a national or regional calamity.

THE DRYING UP OF VENTURE CAPITAL

An additional factor hindering the growth of new businesses has been an enormous shrinkage in the availability of venture capital. As Arthur Burck states, "In the credit crunch in the early 70's, small companies were the first to feel the impact of curtailed bank lending; the situation worsened when the economy slid into recession and available funds flowed to more credit-worthy risks—the larger companies. In the meantime public equity capital disappeared amid the slipping stock market of 1973. In 1972 small companies raised $918 million in 418 underwritings, by 1975 the figures had shrunk to $16 million in four underwritings. At the same time, private venture capital also withdrew." [7]

Numerous factors contributed to the virtual disappearance of a market for new issues of stock. Many investors, having been burned in the speculative new issues markets as late as 1973, were hesitant to take similar risks. The increasing domination of the market by institutional investors, normally inclined to invest in established firms, has also reduced the availability of public venture capital to new firms. Furthermore, many pension fund trustees have interpreted the fiduciary requirements of the new pension law (ERISA) as virtually mandating that they restrict their funds' stock investments to blue chips.

SHRINKING LONG TERM CAPITAL

Together with the virtual disappearance of publicly raised equity capital for new issues, there has been a shrinking of private venture capital for new firms. This is a more disturbing development from the standpoint of new business starts.

Public stock offerings are rarely used to launch a corporation. Instead they are normally employed to finance the expansion of a company that has been started with private venture capital. The vastly more complex securities law requirements applicable to public stock offerings would often rule out such a route for a small firm, even if investor financing were readily available.

The huge hikes in recent years in capital gains taxes have significantly contributed to the drying up of the private venture capital market. Raises in Federal long term capital gains rates, together with state and city capital gains taxes, have combined to produce a long term capital gains rate, sometimes in excess of 50 percent. The doubling of the holding period for long term capital gains effectuated by the Tax Reform Act of 1976 further restricts the attractiveness of investments in high growth potential stock.

Self avowed tax reformers at high levels in the current Administration seem intent, whenever the time is ripe, to move for the elimination of any remaining tax preferences for capital gains. But today, the effective rate of taxation on long term capital gains may already exceed the effective tax rate on earned income; e.g. wages and salaries.

Some states, such as Massachusetts, tax capital gains at a much higher rate than wage or salary income. For some residents of such states, capital gains income may already be less attractive than other forms of income. Moreover, the failure of the tax law to allow for inflation in the value of the adjusted base used for computing capital gains may create a situation where an investor may be exposed to capital gains tax even though the value of his assets as measured in constant dollars has declined.

The attraction of private venture capital investments historically has been based on the higher "upside" potential of such investments as compared to investments in public stock offerings. The comparative advantage of such investments, even when the investment is highly successful, has been lessened enormously in light of the high capital gains tax rates. At the same time, the risk of such investments is normally much higher than that for investments in publicly traded stock or in bonds.

DISINCENTIVES TO ENTREPRENEURSHIP

Even more detrimental than the public policies virtually evaporating outside investor capital for new and small enterprises have been the growing disincentives to entrepreneurship resulting from a combination of governmental action and social and economic trends. Capital is of little utility without the commitment of an entrepreneur or group of entrepreneurs willing to take the economic, emotional, and even physical risks of starting or developing a business.

Congressional action in the last decade has enormously magnified the gap between Federal civilian employees and the private sector. The October, 1977 Federal employee pay hike of 7.05 percent jumped the average annual salary of Federal civilian employees to about $17 thousand. This is about $5 thousand higher than the average annual salary in private nonfarm jobs.

The pay differential is in fact much higher, since Federal employee fringe benefits, e.g retirement pay, health benefits, sick leave and vacation pay, are far more generous than those prevailing in the private sector. Moreover, job security in the Federal civil service normally far exceeds that of private sector employment.

Even within the private sector, financial considerations often make self employment relatively unattractive as compared to work in a large corporation or other institution. Such employment rarely carries with it the nearly absolute job security of the career Federal service. Nevertheless, it often includes generous pay, extensive fringe benefits, and fairly limited working hours.

While the entrepreneur may not have to worry about being fired, his job will disappear if his business fails. So may his family's life savings. In contrast to the average civil servant or mid-level employee of many private firms, he is likely to work much longer hours, often for less net compensation. For many self employed individuals, fringe benefits, particularly vacation time and retirement pay, are unattainable luxuries.

Despite the liberalization of tax provisions concerning Keogh Plans and Individual Retirement Accounts, many self employed individuals lack the resources to invest in any sort of pension plan. Often, a potential entrepreneur may find that he can make a better income in a salaried job, have greater financial security and count on spending much more time with his family.

NEED FOR ECONOMIC INCENTIVES

A significant financial inducement to entrepreneurship, particularly in the startup of new technology firms, has been the lesser tax rate on income classified as a long term capital gain. A risk taker could count on keeping a significant portion of his gain if his idea paid off. Yet, recent hikes in the capital gains tax discussed earlier in this paper have all but obliterated this inducement.

These changes in the capital gains law have apparently already slowed the movement of highly skilled corporate executives into individual entrepreneurship. Many of our leading high technology firms were started by executives who developed considerable knowledge of an industry while employed in a major corporation, then branched out on their own. Now, there is little economic incentive to trade away the high salaries and relative security of such jobs for the uncertainties of self employment.

The drying up of economic incentives to entrepreneurship increasingly magnifies the importance of noneconomic factors motivating people to set up their own businesses. Probably the biggest single noneconomic factor underlying entrepreneurship is the desire "to be my own boss." This aspect of self employment is becoming less significant as various layers of government expand their paper filing requirements on the small businessperson. The entrepreneur may spend many evenings at home poring over forms required by IRS, the state unemployment tax board, and a host of other government entities, none of which are paying customers.

SOLVING THE PROBLEM

There is no panacea to the problem of an eroding entrepreneurial base. The American economy is not subject to an organized conspiracy to snuff out the entrepreneurial spirit. Instead, our enterprise economy faces a "death of a thousand cuts." in which a series of often uncoordinated public policies will further shift the balance of risks and rewards against entrepreneurship.

Despite the problems alluded to in this paper, there is no shortage of Americans willing to take considerable risks in business innovation. Even the casual reader of Fortune or the Wall Street Journal is provided with numerous instances of entrepreneurs who have "made it" despite the most adverse circumstances.

Yet, unless steps are taken soon to slow the deterioration of the climate for American entrepreneurship, our children may face a society in which economic power is concentrated in a few hands and individual opportunity is as severely restricted, as in the European Social Democracies.

It is impractical to formulate the precise details of a national effort to preserve entrepreneurial opportunity. Before restoring the health of our entrepreneurial system it may first be necessary to apply a tourniquet to the patient; i.e. arrest those moves which are further undermining American entrepreneurialism. Then, a number of initiatives can

[7] Burck, *op. cit.*

be launched to restore the vitality of the American business system.

There are several distinct objectives to be served by any program to reinvigorate small business. One objective is to maximize competition and technology innovation by fostering the growth of small and medium-sized new technology firms. A quite distinct objective is to maintain a relatively decentralized economy by encouraging the growth of small business of all sorts, even those firms with little potential for technological innovation.

A TRANSFORMATION OF THE SBA

The Small Business Administration (SBA) epitomizes the shortsightedness of public policy makers when looking at a subject such as small business. True to its Congressional mandate, this agancy has functioned as a banker of last resort for small businesses. While only a tiny fraction of American small businesses has received financial assistance from the SBA, nearly 100 percent of those businesses are affected, mostly adversely, by the actions of government taxing and regulatory authorities.

The SBA has seen its role largely as a financing backstop for small businesses. In return Congress has until very recently treated the agency as a sacred cow. The Small Business committees of both the Senate and the House have championed generous funding of the SBA's various financing programs. Meanwhile SBA has earned a strong reputation for particularly accommodating service to favored constituents of key legislators. In addition, SBA has almost always remained silent about effects which social welfare legislation may have on small businss.

This tacit understanding between the Congress and the SBA results in both the absence of any governmental advocate for small business and an excessive politicization of the process for dispensing SBA financing. At a minimum, any national policy to promote entrepreneurship must start with a drastic transformation of the SBA.

A strong case can be made for abolishing the SBA and replacing it with an entrepreneurial advocacy agency staffed largely by persons hired from the private sector. However desirable, such approaches are seldom politically attainable. Instead, it may be realistic to convert the existing CBA from a financing to an advocacy agency.

The Small Business Administration would be given as its prime responsibility the reviewing beforehand of all major legislation being considered by the executive branch for submission to Congress to analyze its potential impact on small businss. In addition, the SBA could also be required to review all other significant proposed actions of executive agencies to assess their impact on small business.

To perform this analytic function, the SBA would need to recruit an economic analysis staff of at least the caliber of that possessed by the Federal Trade Commission. If such a staff had been in existence at the time of the consideration of the Occupational Safety and Health Administration legislation or the ERISA pension bill, it is likely that the resulting legislation would have been far more palatable to small businesses.

Obviously, the impact on small businesses is not the principal consideration in the evaluation of the merits of most legislation and other governmental action. It is a consideration, however, which has been almost totally ignored. In many cases social welfare legislation could have been tailored in a way that would have minimized its often disproportionately adverse impact on small businesses.

As long as the SBA is involved in a very significant way in making loans or providing loan guarantees to individual businesses, the agency is likely to focus more on overseeing its loan portfolio than on addressing the systematic causes of small business distress. The enormous administrative burden in dispensing such financing and the need to cope with resulting political pressures are both likely to distract even the most imaginative SBA Administrator from functioning as an advocate for general small business interests.

Many SBA financing and guarantee functions could readily be spun off to private lenders. Direct loan and loan guarantee programs might be converted to a variety of interest rate subsidy programs to lenders and/or borrowers and automatic partial guarantees. The program could be structured to ensure that the bank making the loan would have to expose itself to some risk of loss. Thus, it would be in the bank's interest to reject patently unsound loan applications. Interest subsidies could vary to promote certain objectives; e.g. loans to depressed inner city areas, to socially or economically disadvantaged business owners, or to assist businesses in adjusting to requirements of Federal environmental law.

EVALUATING THE SUBSIDIES

There are a number of factors to consider in evaluating the utility of any subsidy or guarantee mechanism. Whatever the shape of the optimum incentive system for small business decided on by Congress, there is no inherent necessity for it to be administered by Federal employees. Banks and other private lenders could perform many of the functions now carried out by SBA field employees.

The resultant administrative savings could be applied to fund the greater financing volume which a more open-ended system would be likely to generate. In addition, business applicants could more readily secure a "yes" or "no" answer, thus eliminating a major cause of complaint with existing SBA loan guarantee programs.

While phasing out its direct loan and loan guarantee activity, the SBA could increase the financing available for such vehicles as Small Business Investment Companies, (SBICs), Local Development Companies, (LDCs), and State Development Companies (SDCs). Each of these entities leverages a significant amount of private capital. Furthermore, specific financing decisions are made by private second individuals.

Such organizations as the SBIC, LDC, and the SDC provide flexible instruments for injecting needed equity or debt capital into a variety of small businesses. The SBA's administrative burden is far less in those situations in which the development vehicles described above maintain responsibility for accepting or rejecting a financing application and for servicing the portfolio of existing investments.

VENTURE CAPITAL THROUGH TAX POLICY

In addition to a depoliticization and privatization of the loan programs administered by the SBA, a concerted effort to generate equity capital for small and new business is also vitally important. While greater incentives might be provided to existing entities such as Small Business Investment Companies, an important focus of any incentive system should be on reshaping the Internal Revenue Code to reward the fruits of entrepreneurship. This might be accomplished by immunizing from tax all or a very substantial portion of any capital gain realized by an investor/entrepreneur in a qualified small business.

Outside investors might be strongly encouraged to invest funds in small businesses, if they were permitted to defer tax on any capital gains they realized, provided that they reinvested the proceeds of the sale into a qualifying small business investment. Individuals who are locked into an existing investment by the desire to avoid a steep tax bite would likely find this option attractive.

These or related changes in the Internal Revenue Code would almost certainly produce a significant infusion of equity capital for many modestly capitalized firms with substantial growth potential.[8] The most likely beneficiaries of such changes in the tax law would be new technology companies with a potential to develop or market new or significantly refined products. In many instances, these companies would be providing serious competition in particular product or service markets to currently dominant super corporations. The consumer might reap the harvest of such activity through either an increased diversity or quality of products or services or reduced prices.

TECHNOLOGY COMMERCIALIZATION

Both government and industry have done a relatively poor job over the years exploiting the commercial potential of inventions developed through most Federally funded an even some privately funded research. Numerous factors have accounted for this failure, including:

The reluctance of many large, well capitalized corporations to "spread themselves too thin" by assuming additional product responsibilities;

The difficulties that aggressive, small technology-oriented firms have had in securing capital for expansion;

The poor communications within some large corporations between their research departments and those responsible for bringing a product to market;

The tendency of many inventions developed in Federal laboratories to remain on the shelf because the focus of Federal research scientists centers on the proof of concept rather than product commercialization;

The fairly minimal dissemination of information concerning Federally sponsored inventions with commercial potential.

Several years ago, the U.S. Department of Commerce's Office of Minority Business Enterprise, the National Aeornautics and Space Administration and National Science Foundation launched an imaginative program to enable minority firms to participate in technology commercialization. Major corporations, such as Rockwell International, provided capital for Minority Enterprise Small Business Investment Companies (MESBICs), now officially described as Section 301(d) SBICs, and targeted these funds to finance technology commercialization by minority firms. This development of a pool of investment capital was accompanied by a systematic attempt to search out inventions developed in major corporations and in the Federal laboratory consortium. This technology commercialization effort has developed wide support throughout the Federal government and the corporate sector. The results to date have been encouraging.

A technology commercialization program targeted at small business can be patterned to a substantial extent after the pioneer program for minority enterprise. The SBIC legislation might be amended to provide for a technology SBIC that could draw matching capitalization from the SBA on favorable terms. This specifically targeted capitalization could be combined with a much more effective system for searching out and, where appropriate, securing licensing of commercially exploitable technology to small business.

A PRO-COMPETITIVE THREAT

The Ripon Society believes that the proposals outlined in this paper can pump new vitality into our entrepreneurial system. These proposals are pro-competitive in thrust. They seek to encourage the maintenance of a moderately decentralized economy by reducing barriers to entrepreneurial entry

[8] The precise form of tax incentives to encourage small business development is itself a sufficient subject for a separate policy paper. The Ripon Society is conducting a review of the relative merits of such incentive proposals and anticipates issuance of such a paper later this year.

and growth rather than by breaking up huge corporations merely because of their size. In addition to the dubious economic justification for such a "break up the big boys" strategy, there is ample indication that the antitrust laws provide a laborious means of curbing the power of corporate oligopolies.

The development of a large, highly educated group of Americans reluctant to work in impersonal, hierarchical structures should provide the human capital for an entrepreneurial resurgence. The initiatives proposed in this paper should help to shift the balance of risks and rewards toward those who have the imagination and stamina to be economic innovators. Perhaps we can look forward to a future in which the builder of a better mousetrap will be rewarded more generously than the bureaucrat who writes regulations on rodent extermination devices.●

HENRY L. ZUCKER

● Mr. METZENBAUM. Mr. President, good deeds often go unrewarded and unnoticed, and so it is a particular delight when outstanding service and dedication are enthusiastically and publicly honored. An example of such recognition was the recent designation of Henry L. Zucker by the United Way of America as winner of its "Outstanding Agency Professional Award," given for the first time in that organization's history. It culminates a whole series of honors bestowed on Mr. Zucker, executive vice president emeritus of the Jewish Community Federation of Cleveland, for a lifetime of service to his fellow men: Catholic Charities Community Services Award, Case Western Reserve University Distinguished Alumni Award, National United Jewish Appeal Award of Honor, and the Federation for Community Planning Outstanding Service Award.

Almost every aspect of Cleveland's community life has benefited from Mr. Zucker's imagination, drive, and professional skill. He has been an outstanding leader in the affairs of universities, civic organizations, public administration, philanthropic undertaking, and, of course, his own Jewish community. But his influence has been felt nationally and internationally as well, since for most of his career he has been directly concerned not only with local problems but with the situation of Jewish refugees everywhere and the needs of men and women of all faiths who have been bruised by the turmoil of our times.

The award from the United Way describes Mr. Zucker accurately:

Humanitarian, scholar, internationalist, innovator—Henry Zucker has devoted his life to serving his fellow men. Combining spiritual commitment and concern for others with the practical skills of an administrator and practitioner, he has forged a permanent legacy of quality service for his people, his community, his nation, and the world.●

IMPORT RELIEF FOR THE ZINC INDUSTRY

● Mr. HEINZ. Mr. President, the Lead-Zinc Producers committee has petitioned the International Trade Commission under section 201 of the Trade Act of 1974 for relief from the flood of zinc imports entering the United States. On March 21, the ITC held hearings on the case. Representatives from two of the major zinc producers—the St. Joe Zinc Co. and the Gulf and Western Natural Resources Group of Pennsylvania (New Jersey Zinc)—presented statements at the hearing which outline in definitive terms the drastic impact excessive zinc imports have had on the domestic industry. I ask that these two important statements be printed in the RECORD.

The statements follow:

TESTIMONY OF WILLIAM E. FLAHERTY

My name is William E. Flaherty, and I am Executive Vice President of Gulf and Western Natural Resources Group. I joined The New Jersey Zinc Company as Vice President of Marketing in 1974, became Senior Vice President in 1975 and was named to my present position in 1976 when The New Jersey Zinc Company and other resource companies within Gulf and Western Industries were consolidated into the Natural Resources Group. Prior to joining The New Jersey Zinc Company, I was associated with General Motors Corporation and Reynolds Metals.

Substantial parts of The Natural Resources Group include The New Jersey Zinc Company—the nation's original zinc producer—and Jersey Miniere Zinc Company, which will become the nation's newest zinc producer later this year. New Jersey Zinc operates a zinc smelter in Palmerton, Pa. Jersey Miniere is building a $150-million zinc refinery in Clarksville, Tenn., scheduled to begin production in the fall of this year.

Prior to 1972, New Jersey Zinc also operated a zinc smelter in Depue, Ill. However, a surge of price discounted imports at that time depressed the domestic market and made the plant uneconomic. We were forced to terminate production there and lay off hundreds of workers.

I'm here today because we're faced with the same problem at our Palmerton smelter. Because of a series of seemingly endless price drops brought about by floods of discounted imported zinc, the slab zinc plant is operating at a loss and has been for some time. If do not obtain relief from these price discounted imports, we will be faced with the hard decision of whether to remain in the zinc business at Palmerton.

Although we are part of a large, diversified corporation, we operate under the profit center concept. In other words, each company in our corporation must demonstrate its own ability to pay its costs, maintain its employment, and operate at a reasonable profit. With Gulf-Western, we must also demonstrate an ability to grow and create new jobs.

In our efforts to remain competitive with price-discounted imports, we have lowered our prices four times since the beginning of 1977. In each case, foreign traders were selling imported zinc from one to five cents below our prices. And each time we lowered our prices, they lowered their prices to maintain a difference. Today, you can still buy imported zinc below our prices.

WHY IMPORTERS DISCOUNT PRICES

The main reason importers maintain that spread is that they lack the sales and service organizations we have and they lack the research and technical backup that goes with it. Since they do not offer these services their only advantage becomes price. Many of the import firms here are subsidiaries of foreign producers which have large stocks of metal at home. These agents of foreign producers are under considerable pressure to sell in the U.S., since it is the only market in the world where substantial quantities of imported zinc are sold.

I can appreciate the need for foreign producers to sell this way in the world's only open zinc market since I am a director of Asturienne New Jersey S.A. and chairman of Blancs de Zinc de la Mediterranee, two companies in France. It is not uncommon in Europe to be unable to lay off workers during recessions; or if you do, your social responsibilities require extensive severances and/or other job guarantees.

Under those conditions, it is more economic to maintain high production and try to export the surplus to other countires. Of course, when you do that, you, in effect, export your own unemployment.

That's exactly what is happening in the case of slab zinc coming into this country. Foreign production remains closer to full capacity, foreign workers continue their jobs, but American workers eventually lose theirs.

SLAB ZINC IN CRISIS

In the case of slab zinc in America, the situation has reached crisis proportions. To the best of my knowledge, not a single American producer is making a profit on slab zinc. All are operating at a loss.

In my judgment, if we do not get relief from imports, it will not be a case of one or two more domestic producers going out of business. It will be a case of shutting down the entire United States zinc industry. The United States would then be totally at the mercy of interruptable foreign supply.

And the impact of that dependence goes far beyond the number of workers we employ because zinc is a vital material in so many other industries. For example, you simply cannot make rubber without it. And it makes steel last 20 to 80 times longer.

According to a recent article in The Wall Street Journal, the Commerce Department will report that corrosion now costs the United States $70 billion a year. As large as that figure is, it would be significantly higher without zinc protection. Conversely, the use of more zinc would lower that staggering cost and help conserve America's other resources.

In my testimony today, I'm going to outline the substantial efforts my company has been making to develop new zinc production, to research and develop new products, to modernize and become more competitive, to supply American consumers with research and technical assistance, and to explore for new zinc deposits in this country.

All of these efforts, by the way, require an investment in America—an investment not totally shared by many foreign producers. Our investments will cease if the United States is forced to stop zinc production because of low priced imports.

Our frequently stated policy for the past several years has been to help restore a greater measure of self-sufficiency in zinc, which is the fourth most important primary metal consumed in this country. To that end, we have invested hundreds of millions of dollars in exploring for new deposits, in developing and bringing into production new mines, in building a new refinery—and in significantly modernizing our Palmerton, Pa., smelter.

ZINC PRODUCTION BEGAN IN 1848

Our commitment to zinc and our contributions to technology began in 1848—130 years ago. The New Jersey Zinc Company pioneered the original processes for producing zinc continuously and later for making high purity zinc. These processes were subsequently licensed around the world and they made zinc available as a modern material for many new industrial products.

Our research laboratories, set up shortly after the turn of the century, were some of the first by industrial corporations in America. The list of product and process innovations they created is long. Highlights include the invention of all original commercial die casting alloys. The invention of these alloys set in motion the entire die casting industry world-wide, and meant that complex-shaped products like auto carburetors and appliance parts could be economically made and mass produced for the first time.

We hold hundreds of patents for zinc products for the manufacture of rubber, paper, plastics, paints and other materials. And we continue to develop exciting new materials such as our superplastic zinc—a material which has the formability of plastics yet the strength and durability of metal. Last year, we even developed specialized machinery and opened a demonstration plant to show manufacturers how to use this exciting new material.

Our commitment to research has not let up. Just two months ago, we opened a new, modern, $3.5-million research facility in Bethlehem, Pa. There we continue to develop zinc metal products, such as spring liners for automobiles and trucks. We also have laboratory-size facilities to manufacture rubber, paper, plastic and paints—all of which use zinc as an ingredient.

All of these materials—including steel—would not last nearly as long if they did not contain zinc or were not coated with it. Without zinc, America's other resources would be consumed at much higher rates.

Through Energy Development Associates, a joint venture of Gulf-Western Industries and Hooker Chemical Corporation, we believe we have already developed the most advanced zinc-chloride battery system to date. By 1980, we will have a 10-million watt-hour battery module—enough to service the peak load requirements of a city of 60,000 people—on steam. By the mid-1980's we believe we can produce a battery for an electric car which would be competitive in price with conventional vehicles.

Much of our research is designed specifically to help our zinc consuming customers. Our work with superplastic zinc, for example, is designed to show American manufacturers how to use it—not for us to get into the manufacturing business ourselves. Similarly, our work with die castings is designed to assist the American die caster become more competitive—not for us to get into the die casting business.

To supplement our research, we therefore maintain a full staff of technical specialists who transmit our technology to our customers. It's their job to assist zinc users in solving technical and/or production problems. It's their job to help introduce newer processes, or suggest newer, more competitive products.

COMMITMENTS TO AMERICAN CONSUMERS

A modern materials business in America demands this sort of commitment to the consumer—a commitment to develop new supplies, to develop new and improved products, to assist the consumer in remaining competitive and to help him with his problems.

And in back of these commitments must be the commitment to develop the capital necessary to accomplish all these jobs. You must lay out the capital many years in advance. Much of the money for the first pound of zinc we will produce in Tennessee was spent twenty years ago when we borrowed the oil industry's technique of wildcatting and discovered the large zinc deposits in central Tennessee.

But even with the deposits, we lacked enough capital to build the refinery on our own. Without a partner, we could not have made this very important move. As you may know, the Jersey Miniere Zinc Company is 40% owned by Union Miniere of Belgium. In this case at least, some of the dollars will have come from Europe instead of the other way around.

MARKET SUPPORT COSTS MONEY

I've outlined our activities briefly to try to give you an understanding of our efforts to serve American industry, and very importantly, that this service requires an investment that goes far beyond simply converting zinc concentrates to zinc metal.

When the United States market is disrupted by a continuing flood of excess imports, which drives our prices below the cost of production, our whole chain of exploration, research, market development and customer service grinds towards a halt.

In our efforts to remain competitive, we have cut severely our expenditures for all these support activities, which normally should rise each year just to keep up with inflation. Effective import relief would permit us to resume these expenditures at normal levels.

My own experience working in automotive development with most of the U.S. auto producers has convinced me that materials instability is one of the single most important reasons why one material is substituted for another in the car. When you are designing automobiles three to five years in advance, you must select materials which have demonstrated records of supply stability. In my judgment, the instability of zinc, caused primarily by increasing imports, is one of the contributory factors in zinc's declining use in the automobile.

WHY DEPUE CLOSED

Let me illustrate the problem by returning to 1970. At that time, The New Jersey Zinc Company, in addition to its Palmerton smelter, operated a 70,000 ton a year slab zinc smelter in Depue, Illinois. In 1970, imports of 260,000 tons were 22% of U.S. consumption. In 1971 imports swelled to 324,000 tons, or 26% of domestic consumption.

New Jersey Zinc recognized the impending problem in a marketing study prepared in 1970, from which I quote: "Imports at cut prices have taken a larger share of this (slab zinc) market each year since quotas were removed in 1965. Foreign competition . . . will play a bigger role and and we will probably see some intrusions into the steel galvanizing markets before long. If the traditional foreign discounts on SHG are offered aggressively to the steel companies, it could have an adverse affect on our market."

At those discounts and under that import pressure, Depue became uneconomic to operate and we were forced to terminate production. For the record, at no time did The New Jersey Zinc Company attribute the shutdown, which was completed in early 1972, to impending environmental control regulations. Our people believe they could have addressed that problem as they have successfully done in Palmerton.

The closing of Depue resulted in the loss of about 500 jobs in addition to the loss of 70,000 tons of slab zinc capacity. It resulted in the loss of over 100 customers primarily in the Midwest, who were serviced from the Depue plant. At that time, The New Jersey Zinc Company had already invested some $28 million in the modernization of that plant.

HUMAN SUFFERING

The closing of the Depue plant was felt by its citizens in a variety of ways. Our plant was Depue's single major industry. About 60 percent of the plant's employees had never worked at another job, and the prospect of looking for a new one—even with our company's help—was difficult. Equally unpleasant was the thought of signing up for what the workers called "welfare" at the Employment Security office.

Further, the plant's closing seriously undermined the town's tax base, because of a lack of funds to run the local schools, the town officials were forced to go to the state capital in Springfield to obtain a special grant so they could weather the fiscal crisis.

AFTER DEPUE CLOSED

Now look what happened. In 1972, world demand for zinc began building at an unprecedented rate, reaching 6.0 million short tons for the year, and peaking at 6.6 million short tons in 1973. In the U.S., shortages developed, and prices of imported metal skyrocketed to as high as 88 cents per pound. And, this could happen again without a strong U.S. Zinc industry.

Very importantly, during this shortage period many nations virtually withdrew from the U.S. market, preferring to service other makets at higher prices.

On the consuming level, hard decisions were made to design away from zinc. Materials planners simply could not forecast with sufficient accuracy the price and availability of zinc three to five years ahead.

PALMERTON NOW THREATENED WITH CLOSING

Once again, escalating imports into the U.S. at heavily discounted prices are pressuring our plant operations. Once again we are operating a slab zinc facility at a loss. Once again, we are faced with the hard decision of whether or not to keep our remaining plant operating.

And once again we are losing sales to price discounted foreign metal. Looking at the sales record of thirteen important customers, our sales to them were 57% less in 1977 than in 1976. Salesmen's call reports show that in each instance, the customer bought less from us and more from importers. In two of these cases, our sales were reduced to zero.

Sales to independent alloyers suffered even more. Our records show a loss of 79% of our 1976 sales tonnage to independent alloyers in 1977. And in two cases, we were not even able to sell one ton to them in 1977.

The situation has reached crisis proportions. We cannot long endure putting more money each month into a plant that we recover—even with the financial strength of a large industrial corporation behind us. We cannot long endure taking money from our other companies to keep the zinc plant operating.

NEW INVESTMENTS IN ZINC

And we have not stood idly by. Since the closing of our Depue plant, we have invested heavily in modernizing the Palmerton smelter—some $30 million in the last five years alone—to make it more competitive and more efficient.

And as I pointed out earlier, in addition to the modernization of Palmerton, we have almost completed the first new capacity zinc refinery in the U.S. in 36 years. Last year, National Zinc opened a new refinery, but it was to replace an older one adjacent to it and did not result in new capacity.

Clarksville is representative of most of the newer refineries that have been built throughout the world in that it is an electrolytic plant. In this process, zinc concentrates are dissolved in sulfuric acid, the impurities are removed and the zinc is recovered by electrolysis. It is essentially a chemical process.

Even though Clarksville is the newest and most modern refinery in the world—and therefore should logically operate at the lowest possible operating cost—it cannot possibly operate at a profit at today's prices. Even by assembling the most advanced technology available anywhere in the world, we cannot make the plant economic unless we get relief from excessive imports.

Comparing our Palmerton plant with the Clarksville Plant, our total production costs are very similar. Operating costs at Clarksville are slightly lower, but when the capital construction costs are added in, the two plants nearly balance.

At Palmerton, we're operating one of the most fully integrated and complex plants in the world. We not only produce slab zinc in all its various forms and grades, as well as zinc alloys for die casting, we also produce many varieties of American Process zinc oxide—another of our inventions—and French Process zinc oxide. We also make zinc and other nonferrous metal powders, zinc dust, and operate a rolling mill to produce zinc sheet and strip for such products as flashlight batteries.

By-products produced at Palmerton include sulfuric acid, cadmium and indium. We also maintain an unrelated primary plant at Palmerton for the production of ammonia and liquid carbon dioxide.

SLAB ZINC CAPACITY AT PALMERTON

The Palmerton plant, which has a rated top capacity of 118,000 tons of primary zinc metal 1, is both a producer and a consumer of primary zinc. Of the total, approximately 48,000 tons is consumed internally to manufacture other products such as zinc oxide, zinc dust and rolled zinc, leaving a potential balance of 70,0000 tons of slab zinc for sale to others. During 1977, 50,718 tons of slab zinc were produced for sale, which was 72½% of that potential.

One of the outstanding advantages of Palmerton is that it can produce zinc from many varieties of natural ores or from scrap. Thus it is a plant which helps conserve America's natural resources by recycling.

At Palmerton, 43 vertical retort furnaces convert sintered zinc concentrates and other zinc materials into zinc metal. The furnaces rise five stories high and reach internal temperatures of nearly 2,000 degrees F. Zinc concentrates mixed with coal in pre-heated briquettes are charged at the top. The zinc vaporizes and is condensed into liquid zinc. Metal produced by the vertical retorts is Prime Western grade, but if fed into distillation columns can be further refined to produce the other grades of slab zinc.

EMPLOYMENT DECLINES IN ZINC

At one time, employment at Palmerton reached 5,700 people, but the work force has declined to 1,530 currently. The annual payroll is approximately $25 million, making it the largest employer in Carbon County, Pa. If the plant were to close, it would have disastrous economic effects on the county, which is already economically depressed.

Further, if Palmerton were to close, we might have to shut down numerous support activities. These include the Bethlehem, Pa., administration offices, employing approximately 240 people; the Bethlehem, Pa., research center, employing another 77 people, and the Friedensville, Pa., mine, with 196 on the payroll.

In addition, our other mines throughout the country which supply Palmerton might also close. They include Austinville, Va., with 286 miners; Sterling, N.J., with 182, and two mines in Tennessee with another 242 people.

LOW CAPACITY RAISES UNIT COSTS

At this time, I'd also like to emphasize the effects of operating below capacity. When we shut down one of our furnaces, we must keep it hot or else the heat resistant linings will crack and fall apart. Rebuilding these special, highly expensive linings requires many months of work and hundreds of thousands of dollars per unit. The fuel for keeping a furnace hot, even though it is not producing metal, is approximately 48% of the fuel required to operate it at full capacity. It should be readily apparent that the per pound cost of zinc rises drastically at lower capacity levels.

Thus, when we operate at around 70% of capacity or less and must compete with plants in other nations operating at much higher levels, it puts us at a severe disadvantage.

WHY WE'RE BUILDING A NEW REFINERY

Let me turn now to our new refinery in Clarksville, Tenn. After the loss of Depue, my company made extreme efforts to rebuild, and hopefully enlarge, our capacity. We had discovered sufficient ore in the United States to supply a major refinery and believed, especially during the shortage years of 1973–74, that something had to be done to rebuild United States capacity so that American industry would not be caught again with shortages.

Like many in American industry, particularly those in the metals business, we had the dream—but not the cash. And we found it extremely difficult to borrow money, given the traditionally low rates of return that characterize the metals industry. Bankers found higher return industries, such as consumer products, much more appealing.

In any event, we quickly found that we could not proceed with a major project of this type on our own. And as I pointed out earlier, even though we're part of a larger industrial company, each part is required to stand on its own feet financially. That set off a long search to find a partner with enough cash and enough courage to invest in the zinc business in the United States.

Let me tell you, it wasn't easy. However, we finally got together with Union Miniere of Belgium. Union Miniere had developed sufficient capital for new investment and was looking for new projects. The United States seemed an attractive area for investment.

In our negotiations with them, we also grew to appreciate more the intrinsic higher value that Europeans place on basic resources—particularly for the long run. We found a general European attitude that resources were more important than service industries.

Thus, in July, 1975, we entered into an agreement with Union Miniere for the joint ownership and operation of a mine we were developing at Elmwood, Tenn.; the development initially of two other mines adjacent to Elmwood; and the construction near Clarksville, Tenn., of a new electrolytic zinc refinery complex designed to initially produce 90,000 tons annually of slab zinc. Under the agreement, we sold to Union Miniere a 40% interest in a joint venture which holds the Elmwood mine, certain additional properties in various stages of development and the refinery technology.

LARGE PRIVATE INVESTMENT IN TENNESSEE

The total cost of the mine development and refinery will exceed $210 million, making it one of the largest private projects ever undertaken in Tennessee. Mining and refinery capital costs are being financed from cash flow from the Elmwood Mine, equipment leasing, payments received by NJZ from Union and cash contributions by the partners. Originally scheduled for completion in mid-1979, it is now scheduled for fall 1978 opening.

When Clarksville comes on-stream, it will add 14% to U.S. primary refining capacity and give the U.S. a total of 730,000 tons.

However, if the industry does not get effective relief from imports, it will be impossible to operate that plant at a profit. As you recall, its total production costs are very similar to those of Palmerton. Thus, without effective relief, the plant will be threatened.

We anticipate the plant will employ from 500 to 600 people, plus an additional several hundred for its supporting mines and offices. In the construction phase we have also provided employment for as much as 1200 to 1600 workers. While we are happy to provide those jobs, we can only pray that those jobs can remain, and even be increased. But the future depends on the outcome of this case.

MARKETING PREPARATIONS FOR CLARKSVILLE

Earlier I outlined many of our total efforts in exploration, mine development, research and product development, and in marketing—all of which are interdependent on each other.

In bringing a project on-stream of the magnitude of Clarksville, we have not ignored the necessary market preparation. You cannot throw the switch on a plant that size and wait for the telephone to ring for your first order. If you do that, you might as well not build the plant at all.

Thus it was necessary for us to begin the slow process of building sales almost two years ago. We began by enlarging our sales and marketing departments, opening new offices, increasing our customer service, expanding our advertising and promotion, and particularly rebuilding supplier relations with the customers we lost when we were forced to close Depue.

We are also using small amounts of imported metal to service some of the customers. For the past two years, these have amounted to only some 1 percent to 2 percent of imports, and are nowhere near the capacity of our new refinery. This means we still have an enormous job in making an orderly transition of U.S. produced metal for foreign. This is a temporary situation, designed solely to pre-build a market for Clarksville.

ALLOY AND DIE CASTING MARKETS

I would also like to review our position in the alloy and die casting markets. As I pointed out earlier, the New Jersey Zinc Company invented the current commercial alloys which most people designate Zamak. Zamak was our trade name, which we allowed to become generic, and the bulk of all alloy used in the U.S. today is Zamak 3, Zamak 5 and Zamak 7. These alloys are made by adding small amounts of aluminum, magnesium and copper to special high grade zinc. We sell special high grade zinc to independent alloyers so they can make the products we invented. Most of them, in fact, call their product Zamak. We also sell alloy to zince die casters.

Our company has no restrictions on the amount of special high grade zinc an independent alloyer may purchase from us. All of the primary production from Clarksville will be special high grade zinc, some of which will be converted to other grades. And we can easily increase our production of special high grade zinc at Palmerton.

HOW WE WILL USE THE PROPOSED RELIEF

How will favorable action by this Commission and the President affect us, and how can we use this temporary relief to help rebuild the U.S. zinc industry?

I can only say that without relief—substantial and soon—there may not be a zinc industry in the United States. I reiterate, we cannot long survive operating at a loss.

If you rule favorably and the President grants effective import relief, we plan to continue our substantial research and marketing efforts. At stake are new automotive products which we are designing, the whole breakthrough in superplastic metals, the new anti-corrosion systems for such products as your automobile, the new zinc-based batteries and countless other products based on zinc. For the coming year, we are not projecting growth over 1977. However, these new products will demand more zinc in the coming years if Americans are to benefit from them.

And I hope you agree that our investments in zinc have been very substantial. I can't promise you that we'll build another new refinery next year, but I can promise you that we will increase our efforts to find more zinc, to increase our already substantial research and development efforts, to attempt to provide customers with reasonable assurances of a stable domestic zinc market for their planning purposes, so that it once again becomes healthy enough to consider more new plants, and to provide more jobs.

Gentlemen, the United States became a great nation because we developed our basic resources more fully and completely than anywhere else in the world. If we are to continue to provide the basic material which is vital for so many of our industry products, we should not be reduced to ever-increasing dependence on foreign sources.

I believe the type of relief we are asking for is the fairest and most equitable under the law. My plea to you is not only for a report which favors our petition, but that it be done as rapidly as possible.

TESTIMONY OF JAMES L. BROADHEAD

I. INTRODUCTION AND SUMMARY

My name is James L. Broadhead. I am President of St. Joe Zinc Company and Vice President of its parent, St. Joe Minerals Corporation. I hold a Bachelor of Mechanical Engineering degree from Cornell University and LL.B. from Columbia Law School. Before joining St. Joe in 1968, I worked as an engineer for Ingersoll-Rand Company and was associated with the New York City law firm of Debevoise, Plimpton, Lyons & Gates.

Prior to assuming my present position as President of St. Joe Zinc in May 1977, I held a variety of positions with the St. Joe organization, including Secretary, General Counsel and Vice President-Development of St. Joe Minerals, Vice President of its subsidiary, St. Joe Petroleum, and Chairman of its subsidiary, Energy Research Corporation.

As the name implies, St. Joe Zinc Company operates St. Joe's zinc business, which consists essentially of a mine complex in St. Lawrence County, New York, a zinc smelter in Monaca, Pennsylvania, and a headquarters group, including sales and marketing, in Pittsburgh.

Mr. Nehmer's statement summarizes the devastating impact that increasing imports of slab zinc have had on the domestic slab zinc industry generally. Since 1975 the escalating level of slab zinc imports has caused reduced shipments, production cutbacks and layoffs, severely depressed prices and substantial operating losses for the firms in the industry. It is quite clear that if nothing is done to reduce the flood of imports, some American producers will be forced to go out of the zinc business.

1. The specific adverse impact of increased

Rather than reiterate the very telling statistics you have already heard, my testimony today will focus on three major areas: imports on St. Joe—this country's largest producer of slab zinc;

1. The extensive efforts and expenditures made by our company to compete effectively; and

3. The bleak outlook for St. Joe Zinc if effective relief from increasing slab zinc imports is not provided.

II. ST. JOE ZINC OPERATIONS

First, let me briefly describe St. Joe Minerals Corporation and the operations of St. Joe Zinc Company. St. Joe Minerals is a growing natural resource company with significant interests in coal, oil and gas, lead, and zinc. The Company's net sales in 1977 totaled over $790 million. St. Joe Zinc Company was formed in 1977 to facilitate the operation of St. Joe's zinc business on a profit center basis. Under that concept the Zinc Company is required to demonstrate its ability to earn a reasonable profit and to pay for further capitol additions.

The smelter

St. Joe entered the zinc business in 1926 with the purchase of mines in upper New York state. That acquisition spurred St. Joe research in basic zinc metallurgy, which led to the development of the electrothermic zinc smelting process. A St. Joe smelter incorporating this process was developed at Monaca, Pennsylvania. This plant is now one of the world's largest zinc smelters, having a capacity of 250,000 tons per year of zinc equivalent, including 220,000 tons of zinc metal.

The heart of the electrothermic process at the Monaca facility is 17 resistance-type electric shaft furnaces. The usual furnace is 50 feet high with an inside diameter of 8 feet and has electrodes near the top and bottom. Coke and zinc-bearing materials are fed into the top of the furnace, and the flow of current through the charge develops the temperature required to vaporize the zinc. To produce zinc metal, the furnace offgases bubble through a large "U"-tube filled with molten zinc, which condenses the gas to liquid zinc that is then cast into slabs or alloyed further to meet specific customer needs. Some of the metal is further processed to produce various grades of French process zinc oxide or zinc dust. To produce American process zinc oxide, the furnace vapors are burned in a combustion chamber with air, and the resultant powders are collected. A 110,000 kilowatt coal-burning power plant, constructed by St. Joe in 1957, supplies the bulk of the smelter's power requirements.

Advantages of smelter

Our smelter has several distinct advantages. While it is more labor-intensive than modern electrolytic units, its flexible circuitry permits St. Joe to use zinc concentrates from up to a dozen different sources, to recycle our own plant process residues and, perhaps most importantly, to recycle our customers' zinc-bearing galvanizing residues. We are by far the country's largest consumer of such secondary materials. As you know, recycling conserves energy and preserves natural resources. For example, the energy requirement for recycled zinc production is less than 40% of the energy required to produce zinc from ore.

This smelting process flexibility also permits St. Joe to produce a variety of zinc grades, tailor-made alloys, both American and French process zinc oxide, and zinc dust. We sell to our customers more than 25 grades of zinc metal, 22 grades of zinc oxide, and 6 grades of zinc dust.

The electrothermic process also produces a higher quality American process zinc oxide than any other method. Our customers can use St. Joe American process oxide in applications where higher priced French process oxide would ordinarily be specified.

Our smelter is located in America's industrial heartland, 30 miles northwest of Pittsburgh on the Ohio River. Rail, highway and barge facilities handle our raw materials as well as our products and by-products. This location enables us to ship zinc on very short notice to many of our customers located in Pennsylvania, Ohio, and West Virginia. Our regional warehouses in Chattanooga, Houston and St. Louis afford similar capability in those regions. This allows our customers to minimize their inventories of slab zinc.

III. IMPACT OF INCREASING SLAB ZINC IMPORTS ON ST. JOE

The extraordinarily high level of imports of slab zinc during the past several years has had a devastating impact on St. Joe.

Shipments

During the years 1970 through 1974, we were able to ship all of our own production plus substantial amounts of GSA stockpile slab zinc, and our shipments of slab zinc averaged more than 214,000 tons per year. For the years 1975 through 1977, our slab zinc shipments averaged only 125,000 tons—less than 60 percent of the 1970 to 1974 average. This steep decline took place despite a larger St. Joe sales force and increased expenditures for advertising and customer-related services. Furthermore, St. Joe shipments have suffered this serious erosion notwithstanding that United States annual slab zinc consumption is nearly twice the production capability of the entire domestic slab zinc industry.

There is no doubt that the primary reason for our decreased sales has been the pressure from the escalating level of slab zinc imports. For example, although the average slab zinc consumption declined approximately 20 percent from 1970–74 to 1975–77, St. Joe's shipment level declined more than 40 percent during this period. The fact is that in recent years, slab zinc imports have taken a larger and larger share of the generally reduced U.S. slab zinc market, causing domestic producers such as St. Joe to suffer substantial sales losses. In fact, our sales call records reflect numerous specific instances of St. Joe sales lost to foreign imported slab zinc. Let me give you some examples:

1. One of the largest galvanizers in the country, which until recently was an almost 100 percent St. Joe account, reduced its 1977 slab zinc purchases from St. Joe by more than 40 percent from past levels. The reason for this 1977 reduction, according to the company's President, was the decision to purchase low-priced slab zinc from a foreign source.

2. One of our large customers, a steel company, has for the past two years purchased 50 percent less from St. Joe than usual levels. We have firsthand reports that during this period they have purchased thousands of tons of foreign slab zinc.

3. A large brass customer has cut back its purchases from St. Joe by almost 60% in the past two years. Our truckers have frequently reported seeing large quantities of foreign zinc in their plants.

4. A major after-fabrication galvanizer we have served for many years reduced its 1977 slab zinc purchases by 80% from usual levels. Our salesman handling that account was informed by the customer's purchasing agent that these reductions were caused by their increased purchases of foreign slab zinc.

Reduced capacity

Because we have been unable to ship our historical share of slab zinc, we have been forced to operate our smelter at significantly less than capacity. For the last three years, our operating rate has averaged less than 70% of capacity, compared to an average rate of almost 92% in the period from 1970 to 1974. For the past nine months, we have been operating at 65% or less.

Inventories

Despite these very low operating levels, our inventory of finished slab zinc climbed to more than three month's production by the end of 1977. This is three times the one month's inventory that we consider reasonable and normal.

Prices

Perhaps the most damaging financial impact of excessive imports has been the precipitous decline in prices over the past two years. Our price for a pound of Prime Western zinc has dropped from 39c in January 1976 to its present level of 29c. This is our lowest price since December 1973.

Effect on profits

At the same time that our shipments and prices have been declining, costs of electric power, coke, coal, salaries, and wages have all steadily increased. Since December 1973 costs of coke, coal and electric power have increased more than 250%, and salary and wage rates have increased by more than 50%. The result has been a sharp decline in our profits. In 1976 the operations of what is now called St. Joe Zinc Company resulted in a small profit. In 1977 the Zinc Company incurred a *loss*, and for the first two months of 1978, the rate of loss has been even more substantial. In all cases, the results of slab zinc operations have been less favorable than the results of the Zinc Company as a whole.

Loss of jobs

Perhaps the most distressing—and potentially damaging—consequence of excessive imports is the cost in human terms. Since August 1977, our hourly and salaried operating work force of approximately 2,400 has been reduced by almost 300 persons. Earlier this month we were forced to cut 200 of the 1,700 people at our Monaca smelter. Included in this group were technicians, laborers and engineers in their first jobs, and many employees having more than 30 years of service. Their opportunity to be productive workers in their industry was taken away by foreign slab zinc imports. The objective

of this reduction was to maintain the St. Joe Zinc Company on as economical a basis as possible in order to help ensure the continued employment of the remaining employees. Should St. Joe Zinc Company terminate operations, more than 2,100 men and women will become unemployed in areas of the country where unemployment is already high. More than 600 of those people have been employed by St. Joe for longer than 20 years.

IV. EFFORTS TO COMPETE

The present difficulties are particularly frustrating to us, because throughout this recent five-year period, St. Joe has spent substantial sums of money and devoted much time and effort to maintaining and improving the smelter, developing new processes and products, serving our customers and, in general, strengthening our competitive position.

Smelter improvements

Efforts to improve and maintain the smelter have gone forward in three areas: installation of new, improved production equipment; maintenance of existing equipment; and addition of pollution control equipment to meet EPA and Pennsylvania regulations. To carry out these activities, the smelter has maintained a design engineering staff of more than 40 people and, at various times, has retained the services of at least half dozen major engineering firms. Our total expenditures in these areas over the past five years have exceeded $106 million, of which less than 25% is attributable to pollution control.

Some examples of the types of St. Joe projects undertaken to improve the competitive position of the smelter include: a $3½ million program to expand and improve furnace capabilities; the construction of a $2½ million facility to make pigment grades of zinc dust; and the construction of a $3½ million recycling facility for zinc-bearing materials. Projects currently underway include: construction of a so-called "Super Furnace" incorporating many anticipated improvements in design and materials; modification of dust and gas handling facilities to provide greater flexibility in the Roaster and Acid Plants; and steps to improve in-plant material handling capabilities.

Process research

Many of our smelter improvements grew out of the activities of the St. Joe process research department. During the past several years the world zinc industry has been faced with lower quality ores and higher manpower and energy costs. In an attempt to counter these negative factors, our process research group has expended $8½ million to improve our production facilities through metallurgical and process control modifications and to identify and develop attractive alternatives to existing smelting processes. Specific programs include: extensive tests to quantify the variables affecting furnace efficiency; the design of tools and other equipment to minimize maintenance time and increase furnace operating time; the development of instrumented sensor systems to monitor performance; and extensive programs to produce high purity sulfuric acid, to recover more cadmium, and to recover by-product ferrosilicon in furnace residues.

We have also carried out considerable work in recent years to develop improved zinc recycling processes. This is particularly important since, as I stated previously, an advantage of the St. Joe electrothermic process is its capability for recycling zinc-bearing secondary materials. In recent years, we have gone to great efforts to make our costs competitive with secondary smelters, which traditionally have not provided comparable workplace environments or wage-fringe benefits to their workers.

Process research is difficult, time consuming, and expensive. It is our philosophy at St. Joe, however, that steady progress over several years is the only way to improve efficiency and remain competitive.

Since 1975 the process research group has also been actively investigating possibilities for developing a low-energy zinc extraction process. The first step in that investigation was a thorough review of all known zinc producing processes and concepts. We reached the conclusion that the flash reduction of zinc calcines showed the greatest potential for savings in energy and labor. We have entered into an agreement with another company to jointly develop such a process, and preliminary tests have been encouraging. Further development, however, will require construction of a large pilot-plant, which is estimated to cost $10–$12 million, including associated development expenses. Construction of a commercial plant would, of course, cost considerably more.

Product research and market development

St. Joe has also been active in the field of product research and market development. During the past five years we have spent almost $5½ million in an intensive program to improve existing zinc products, to find new markets for these products, to create new products for zinc metal, and to develop markets for those new products.

Our wrought alloy program, for example, has emphasized research, development, and commercialization or super-plastic zinc—a material with unique properties that allow zinc to complete in specific applications with aluminum, steel and plastics. The program included alloy development (which resulted in a patent issued to St. Joe), development of sheet fabrication processes (which culminated in pilot and semi-commercial sheet manufacturing programs), and the development of metal thermoforming equipment and techniques. In 1976 St. Joe formed a wholly-owned subsidiary, Formet Technology Corporation, to manufacture and sell superplastic zinc components. We view superplastic zinc as a potential major new product line for the industry in the years ahead, and we have made a large commitment to underwriting this development.

Our zinc oxide programs, which are aimed at finding major new uses in batteries, complement the activities of Energy Research Corporation, a subsidiary engaged in electrochemical research and development. Energy Research has developed and sold in commercial quantities a silver-zinc battery for high energy density military applications, and has developed prototype nickel-zinc batteries for a variety of applications, including automotive vehicles. We believe Energy Research to be a leader in this prospectively large field, and St. Joe has spent or guaranteed $3½ million since 1973 for its acquisition and support. Energy Research is currently cost-sharing a contract with the U.S. Department of Energy for the development of a nickel-zinc battery for automobile propulsion.

St. Joe sales and marketing activity

St. Joe has been a reliable supplier of zinc for more than 40 years, through periods of shortage and excess supply, and we enjoy a high reputation for integrity and dependability. Nevertheless, we have intensified our sales and marketing efforts in recent years in response to increasing imports.

Because we ship more than 85% of our zinc metal to the galvanizing industry, we custom alloy zinc for specific galvanizing customers, and we continually update our specifications as requests for alloy changes are received.

St. Joe Zinc offers to purchase galvanizing residues from all of its zinc metal customers. Since all galvanizing operations produce residue, the ability to sell the residue to St. Joe on a regular basis is of great value to the customer, who is unable to get this service from most other zinc producers. Furthermore, in order to maintain good customer relationships, we have, over the past two years, purchased residue materials greater than our ability to recycle them.

Recently, to compete with imported zinc, we have also initiated consignment shipping of zinc to major customers to minimize their inventory costs while assuring them adequate zinc on-hand to meet unforeseen short-term increases in consumption.

St. Joe is the industry leader in technical service and technical development for galvanizing. Since its creation in 1964, our Technical Service organization has performed nearly 500 major technical investigations on hot dip galvanizing and more than 1,000 less involved production investigations for specific St. Joe customers. These investigations have saved our customers many thousands of dollars in processing costs. In 1971 we initiated an annual educational program for our galvanizing customers, which detailed the galvanizing process from surface preparation through finished product. Since then, almost 400 people have attended our Annual Galvanizing Seminars, and we have incorporated the presentations into a Galvanizing Manual, which is the educational standard in the industry. In addition, St. Joe has an extensive product advertising program to promote galvanizing and diecasting and to publish technical brochures to assist consumers in utilizing these materials.

Our most recent effort is the creation of a marketing department within St. Joe Zinc. Because the use of zinc in galvanizing has grown by less than 1% per year for the past ten years, St. Joe commissioned a consulting firm to conduct a survey of designers, architects, and governmental officials to determine their knowledge and attitudes regarding zinc coatings and, in particular, galvanized steel. The results indicated that more detailed product and performance cost information would be needed to encourage specifiers to choose zinc coating systems. We, therefore, instituted a program to document successful case histories for galvanized steel and to prepare economic analyses comparing zinc and other coatings on a cost effectiveness basis. We believe that this marketing effort will increase the demand for zinc coated products, thereby increasing the demand for zinc. To the best of our knowledge, St. Joe is the only zinc company performing this type of service.

V. NEED FOR EFFECTIVE IMPORT RELIEF

What is the outlook for St. Joe in the absence of effective import relief? At least once a year St. Joe prepares a formal forecast of zinc consumption and of St. Joe sales. This is prepared on the basis of information supplied by confidential nonferrous forecasting services and specific market information developed by our sales and marketing departments. Until recently we were able to forecast St. Joe zinc sales with a reasonable degree of accuracy by multiplying estimated U.S. consumption in each market segment by the historical percentage of St. Joe shipments to that segment. For the past two years, this method failed because of the grossly excessive amount of slab zinc imports. For 1978, therefore, we have reduced our sales forecast by more than 30,000 tons from what it would have been under our historical forecast because we anticipate continuing losses to foreign imports. Even at current depressed prices, this amounts to a revenue loss of approximately $20 million. For the first two months of 1978, our reduced forecast of St. Joe zinc shipments has been ominously accurate.

On top of that, St. Joe expects continuing low prices and higher unit costs because of lower operating rates. When our budget was prepared last fall, we conservatively estimated an average Prime Western slab zinc price for the year of 31c. As a consequence of that low price, we projected

a substantial operating loss. Actually, we will have suffered that projected annual loss by the end of the first quarter of 1978!

Under these conditions, was it reasonable for St. Joe to have spent, over the past five years, on zinc smelter improvements and maintenance, product research, process research, market development, and technical customer service a total of nearly $125 million? We must also ask, is it reasonable for St. Joe to continue such expenditures when its zinc operations are currently unprofitable and when excessively low prices and reduced market share offer little prospect for future profitability? Frankly, this last question has already been answered. We cannot continue our traditional level of expenditures under these conditions. After the most recent price decline, St. Joe Zinc took steps to drop to an absolute minimum its capital expenditures and to reduce its expenditures in product research, process research, and market development, and to make substantial reductions in its salaried and hourly operating staff.

If we do not obtain effective relief against the flood of low-priced slab zinc imports, St. Joe will soon be faced with the question of whether we can continue in the zinc business at all. St. Joe has been the largest zinc producer in the United States for many years, and if we terminate operations, the impact will be substantial. United States slab zinc production capacity will decline by approximately one-third, and an organization that paid local, state, and federal taxes in excess of $42 million over the past five years will cease to exist. What is worse, more than 2,100 employees, with a total annual payroll-fringe package exceeding $50 million, will be out of work in areas where unemployment is already high.

Favorable action by the Commission and the President will create the environment for improved profitability that is essential to justify substantial additional expenditures. St. Joe Zinc wants to return to its traditional policy of funding meaningful research, marketing and exploration efforts, and of spending substantial sums for capital improvements. Among other things, effective import relief could encourage St. Joe to intensify its efforts to develop a new low-energy zinc smelting process.

VI. SUMMARY

In closing, let me summarize my testimony.

First, the impact of increasing low-priced imports of slab zinc has been devastating on St. Joe. We have lost substantial sales and have been compelled to reduce drastically our prices and to operate at 65% or less of our capacity As a consequence, we are incurring substantial losses and have been forced to lay off employees and to reduce both capital expenditures and current expenditures for zinc research and market development.

Second, St. Joe has not been resting on its laurels, but has made substantial efforts to compete effectively. In the last five years we have spent nearly $125 million to maintain and improve our zinc smelter, develop new zinc processes and products, create new zinc markets, and service our customers.

Third, increasing slab zinc imports have caused us to reduce our expenditures in these areas and to re-examine our future in the zinc buisness. If we do not obtain effective relief against excessive imports, we may be forced to go out of the zinc business altogether. Favorable action by the Commission is needed if St. Joe is to spend the substantial sums needed to find more zinc, create new products and new markets, and develop the low-energy extraction process our society sorely needs.

This country knows from our experience with petroleum the perils of relying on foreign sources for raw materials essential to industry, consumers and national security. We are now in danger of becoming almost entirely dependent on foreign sources for our supplies of zinc. It is in the interest of our nation not to let that happen.●

RESOLUTIONS OF GEORGIA STATE SENATE

● Mr. TALMADGE. Mr. President, the Georgia State Senate, in session last month in Atlanta, adopted three resolutions which, for myself and my colleague, Senator Nunn, I bring to the attention of the Senate, and ask that they be printed in the RECORD.

The resolutions are as follows:

A RESOLUTION

Urging the Congress to appropriate certain funds in support of the Southeastern Cooperative Wildlife Disease Study; and for other purposes.

Whereas, an increasing need for vital information related to numerous native and foreign diseases transmissible between domestic livestock, poultry, and wildlife has been recognized and documented by way of resolutions adopted by the National Association of State Departments of Agriculture (1973), the U.S. Animal Health Association (1974), the Southern Animal Health Association (1974), the Southeastern Association of Game and Fish Commissioners (1973, 1974), and the International Association of Game, Fish and Conservation Commissioners (1973, 1975); and

Whereas, the Southeastern Cooperative Wildlife Disease Study at the University of Georgia's College of Veterinary Medicine, as conceived and established by the Southeastern Association of Game and Fish Commissioners in 1957, has exhibited extraordinary abilities in solving wildlife disease-related problems of national scope through a regional approach to overall enhancement of public health, national livestock and poultry interests, and this continent's wildlife resources; and

Whereas, a critical need exists for a multi-agency approach to minimize the potentials of disease-related national disasters through merging the resources of the United States Department of Agriculture with State Wildlife Agencies throughout the country to gain insight into disease relationships between domestic and wild animals; and

Whereas, on three occasions the Southeastern Cooperative Wildlife Disease Study has been commended by way of resolutions adopted by the Georgia House of Representatives for its wisdom, ingenuity, and effectiveness in establishing a new concept for betterment of public health interests, this nation's domestic livestock economy, and our irreplaceable wildlife resources.

Now, therefore, be it resolved by the Senate that this body hereby urges the Congress of the United States to support a minimum line item appropriation of $500,000 annually to the budget of the U.S. Department of Agriculture to augment the vital functions of the Southeastern Cooperative Wildlife Disease Study at the University of Georgia.

Be it further resolved that the Secretary of the Senate is hereby authorized and directed to transmit appropriate copies of this Resolution to the Honorable Herman E. Talmadge, United States Senate, Washington, D.C. and Dean of the College of Veterinary Medicine of the University of Georgia.

A RESOLUTION

Relative to the fuel economy standards for 1980–81 light trucks, vans and utility vehicles as proposed by the National Highway Traffic Safety Association (N.H.T.S.A.); and for other purposes.

Whereas, the National Highway Traffic Safety Association (N.H.T.S.A.) has proposed fuel economy standards for model year 1980–81 light trucks below 8,500 pounds (Gross Vehicle Weight Rating); and

Whereas, testimony given at public hearings on these proposed standards indicates that the standards are not now technologically feasible or economically practical; and

Whereas, manufacturers forecast, and the Department of Transportation acknowledges, the possibility that the proposed standards may result in vehicles having (1) less utility, (2) lower performance, (3) higher purchase costs, and (4) restricted availability of some vehicles; and

Whereas, commercial users such as farmers, the construction industry and many other businesses requiring light duty delivery trucks would be adversely affected if these fuel economy standards were adopted; and

Whereas, these proposed standards will apply to all light duty vehicles including public utility trucks, rescue vehicles, delivery vans, many types of farm vehicles, pickup trucks, four-wheel drive vehicles and most types of vans; and such standards could cause severe problems for a large segment of the business community; and

Whereas, these proposed standards could work a hardship on the consuming public as well as have a serious economic impact on the national economy, including the possibility of an increase in the rate of unemployment.

Now, therefore, be it resolved by the Senate that this body does hereby oppose the National Highway Traffic Safety Association's (N.H.T.S.A.) proposed fuel economy standards for model year 1980–81 light trucks, vans and utility vehicles and recommends that further study be undertaken prior to establishing fuel economy standards for such vehicles.

Be it further resolved that the Secretary of the Senate is hereby authorized and directed to transmit appropriate copies of this Resolution to the Honorable Brock Adams, Secretary United States Department of Transportation, and to each member of the Georgia Congressional Delegation.

A RESOLUTION

Urging the Board of Trustees of the Employees' Retirement System of Georgia to file a notice with the Secretary of Health, Education and Welfare to withdraw State employees from the Social Security Act; and for other purposes.

Whereas, the social security system was created in 1935 to those persons who could not or would not provide for their own old-age security; and

Whereas, the social security system was created only to supplement other forms of security or pensions; and

Whereas, all Federal employees, plus many State, local and municipal employees across the nation, are not participants in the social security system; and

Whereas, many more State, local and municipal employees have filed notice of their intent to withdraw from participation in the social security program; and

Whereas, Georgia State employees are covered by a financially sound retirement system with very good disability coverage and excellent benefits.

Now, therefore, be it resolved by the Senate that the Board of Trustees of the Employees' Retirement System of Georgia is urged to file a notice in writing with the Secretary of Health, Education and Welfare to terminate in its entirety the agreement with the Secretary whereby the employees of the State of Georgia are covered by the Social Security Act and the Federal Insurance Contributions Act. This notice shall be filed on or before March 31, 1978, so that the termination may become effective on March 31, 1980, which is the last day of the first calendar quarter of that year. It is understood that

this notice may be withdrawn at any time within this two-year period, but only with the approval of the General Assembly of Georgia.

Be it further resolved that the Board of Trustees of the Employees' Retirement System of Georgia is also encouraged to conduct the necessary studies and report to the 1979 Session of the General Assembly of Georgia on the supplemental retirement and survivor benefits as well as medical and disability benefits that could be provided to all State employees if the payments now being made to the Social Security Administration by the State and the individual employees were made instead to the Employees' Retirement System.

Be it further resolved that the Secretary of the Senate is hereby instructed to transmit an appropriate copy of this Resolution to the Director of the Employees' Retirement System and to each member of the Georgia Congressional Delegation.●

FCC SIGNAL CARRIAGE RULES

● Mr. BIDEN. Mr President, I feel compelled to bring to the attention of my colleagues a situation prevalent throughout the United States, but which has a particularly severe, adverse effect on many of my constituents in Delaware. That is the illogical hold that the Federal Communications Commission has over signal carriage and its disregard of public need.

My own State is small and predominantly rural, but the people there understand that in order to be an informed, educated public they need adequate coverage of news and local events. It is due to this knowledge that they are frustrated with the FCC's disregard for their need to exchange ideas and perspectives as demonstrated by the Commission's signal carriage rules. Those rules explicitly protect local broadcast stations from competitive cable signals. In protecting broadcasters, the Commission states they do so for the public good. The key here is that the Commission assumes without any evidence that cable has an adverse impact on broadcasters. I challenge the Commission to show where cable has ever had an adverse impact on broadcasters anywhere in this country.

In my own State, a group of over 4,000 citizens have filed a petition, the State General Assembly has passed a resolution, and I have made inquiries to the FCC for a common goal—to end the discrimination against rural Americans and deregulate cable carriage except where harm can be indicated.

The Delaware situation is a perfect example of regulatory irrelevance to what the public actually wants.

I ask that the following be printed in the RECORD:

The joint resolution passed unanimously by the 129th General Assembly of the State of Delaware, my correspondence to the FCC in regard to the Delaware situation, their response, and the March 22 Washington Post article by Larry Kramer addressing Delaware's situation in regard to cable television rules.

The material follows:

SENATE JOINT RESOLUTION No. 30

Whereas, the State of Delaware has no commercial television channel allocated to it by the Federal Communications Commission and large portions of lower Delaware are unable to receive the signal of the State's education television station (Channel 12), and

Whereas, lower Delaware CATV Inc., operates cable television in eight communities and unincorporated areas in Sussex County to offer increased viewing opportunities for subscribers; and

Whereas, lower Delaware CATV Inc., operating under restrictions imposed by the Federal Communications Commission, is only able to offer its subscribers access to channels in Salisbury, Md., Baltimore, Md., and Washington, D.C.; and

Whereas, these restrictions severely limit the opportunity of some 2,000 subscribers to view news and public service programs concerning the State of Delaware; and

Whereas, the commercial stations in Philadelphia are under FCC order to provide Delaware coverage of news and public affairs; and

Whereas, the FCC restrictions are allegedly designed to protect local commercial television stations from unfair competition by CATV companies; and

Whereas, these restrictions operate to grant WBOC–TV (Salisbury, Md.) a virtual monopoly over what residents of lower Delaware are able to see on cable television; and

Whereas, Delaware is presently prohibited from having a commercial television station by FCC regulations.

Now, therefore:

Be it resolved by the members of the 129th General Assembly of the State of Delaware, the Governor concurring therein, that FCC is urged to grant a waiver of its 1972 Order to allow Lower Delaware CATV Inc. to pick up signals from Philadelphia commercial television stations.

Be it further resolved that members of the Delaware Congressional delegation are urged to continue their efforts to resolve this serious problem.

Be it further resolved that copies of this Senate Joint Resolution be sent to Charles D. Ferris, Chairman, Federal Communications Commission, and to members of the Delaware Congressional Delegation.

U.S. SENATE,
Washington, D.C., January 12, 1978.

Mr. WALLACE JOHNSON,
Chief, Broadcast Bureau, Federal Communications Commission, Washington, D.C.

DEAR MR. JOHNSON: I am writing in reference to a problem which constantly is raised when I speak with constituents in the southern portion of my state—limited television viewer access of Delaware news.

As you know, there is no commercial television station in Delaware. If there were, the problem of coverage of Delaware news would be resolved. As it stands today, Delaware news must be conveyed either by Philadelphia or Baltimore television stations or by WBOC–TV in Salisbury, Maryland, the closest station to southern Delaware.

Baltimore offers absolutely no coverage of Delaware. Philadelphia offers limited coverage of upstate news. The Salisbury station is effectively the only source of television news to residents of southern Delaware. Since WBOC tries to cover Maryland news as a first priority, my constituents suffer the lack of fresh factual news of their state and local area. WBOC has recently opened a news office in my state capital. Conditions have improved, but remain unacceptable.

Viewers of portions of southern Delaware do not have the opportunity to see what news is being carried by Philadelphia stations because of FCC signal carriage rules which exclude Philadelphia coverage unless it was carried prior to 1972. FCC rules and decisions have effectively discriminated against Delaware viewers in many respects. When several Baltimore stations are carried on cable television while no Philadelphia stations are carried, only Baltimore sports, Baltimore oriented news, Baltimore interests are viewed. The same would hold true if only Philadelphia stations were aired along with WBOC in Salisbury though perhaps not to the same degree since WBOC–TV is a Baltimore owned and affiliated station.

The most I would hope for is a commercial television station located in Delaware. The least I could conscientiously accept is a break-up of the hold on the many Delaware viewers who receive only the Baltimore perspective; that is, allowing a Philadelphia station to be carried by cable for the areas that do not now have the benefit even if it means trading off one of the three Baltimore major network carriers for a Philadelphia carrier of the same network.

Population centers have shifted since the FCC set standards in 1953. The population of southeastern Delafare is greatly expanding; the needs are changing. One great need is adequate coverage of news and local events to keep the public informed.

I am therefore asking you to re-evaluate the rules which restrict the number and type of stations carried on cable as they apply to southern Delaware. I also am requesting information which would show what steps could be taken to allow a commercial television station in Delaware.

The above requested information will be greatly appreciated. Please reply to my staff assistant, Jim Tull, at 6021 Federal Building, 844 King Street, Wilmington, Delaware 19801.

Sincerely,

JOSEPH R. BIDEN, Jr.,
United States Senator.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 24, 1978.

HON. JOSEPH R. BIDEN, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIDEN: This is written in response to your recent letter concerning broadcast television coverage of Delaware news and the current signal carriage rules affecting the operation of Delaware cable television systems. James R. Hobson, Chief of the Commission's Cable Television Bureau, to whom you sent a copy of your letter, has contributed to this response, insofar as it addresses cable television matters. Please excuse our delay in providing this response. A copy is being sent to your assistant, Jim Tull.

Turning first to the broadcast news coverage issue, you should be aware that licensees of television stations are obliged to provide programming, which may include news stories, addressing the needs and interests of those residing within their service areas. Several stations, licensed to Maryland and Pennsylvania cities, are providing broadcast service to parts of Delaware and are required to program for the Delaware residents therein. Any allegation of these stations' failure to offer such programming will be given consideration during the license renewal process.

You are correct in your statement that no operating commercial television station currently is licensed to a Delaware city. However, the Commission's table of television assignments shows an "unreserved" channel allocation (which can be used for commercial broadcast purposes) for Wilmington, Delaware. Thus, that channel (Channel 61) is available for any applicant wishing to operate a Delaware commercial station. It may be that additional channel assignments could be made to Delaware, including the southern part of the state, if technical interference criteria do not otherwise preclude such assignment revisions. Basic information on how to apply for a broadcast license is enclosed.

In another portion of your letter you ask that the Commission consider a revision of the cable television signal carriage rules which prohibit cable systems in southern

Delaware from carrying Philadelphia television stations. Like many of its rules of nationwide applicability, the Commission's cable television rules are based on certain assumptions. Two key assumptions are relevant to your inquiry. First, the rules assume that, in smaller television markets such as southern Delaware, once cable subscribers are offered a minimum complement of three full network stations and one independent station, the benefits of any importation of distant signals are outweighed by the presumed threat to the local stations' ability to provide local programming. Second, the rules assume that a station is "local" and entitled to cable carriage if it is either located nearby or its signal is "significantly viewed" in the area. ("Significantly viewed" is a term applied to a station's off-the-air viewing which, according to audience measurement surveys, has met certain minimum percentage standards of audience share and weekly viewing.) In Sussex County, Delaware, the Philadelphia television stations apparently are not available off-the-air, or at least are not listed as significantly viewed. On the other hand, the Baltimore network affiliates, the Salisbury commercial station (WBOC–TV) and a Washington, D.C. independent station appear to receive significant viewership in the county. Thus the Commission Rules treat them as "local" stations.

Your request would mean permitting carriage of one or more Philadelphia signals in addition to or in lieu of certain "local" signals. Addition of a Philadelphia signal raises concerns over economic impact, primarily on the Salisbury station, the market of which includes most of Sussex County. Bringing in a Philadelphia signal to replace a Baltimore station presents two additional concerns. First, it means that the Baltimore station is cut off from viewers within its coverage area. Second, it means that subscribers will not have access to a signal on cable that they can view off-the-air without cable. This creates dissatisfaction for both the subscribers and the cable system operator.

The Commission has a special relief procedure through which its rules can be waived if it can be shown that the assumptions on which they are based are unsupported in a particular case. There is a heavy burden of proof placed upon such waiver petitioners. However, if it can be shown, for example, that the Salisbury station and its program service would not be harmed or that the Philadelphia stations should be considered "local" stations, a waiver might be possible. Cable carriage, in Sussex County, of Philadelphia stations' programs of specific Delaware interest might also be considered in a special relief proceeding.

I hope the foregoing has been responsive to your letter. Please feel free to contact me or the Chief of the Cable Television Bureau if any further questions arise.

Sincerely,

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[From the Washington Post, Mar. 22, 1978]

DELAWARE ASKS END TO CABLE TV RULES

(By Larry Kramer)

Some people in Delaware cannot understand who is benefiting from federal regulation of cable television operations there.

So, they have asked the Federal Communications Commission to forget about Delaware, and stop regulating cable TV.

Since Delaware is the only state in the union without its own commercial television, it is sorely lacking in television news and public affairs programing for residents of the state.

But present federal regulation prevents many of the cable operations in the southern part of the state from carrying some Philadephia stations that cover Delaware news public affairs programs.

Currently Sussex residents can receive cable transmission from Baltimore (network affiliates), Washington (one independent) and Salisbury, Md., television stations..

FCC signal carriage rules exclude Philadelphia stations from the area because they were not carried there before 1972, when the law prohibiting cable transmissions from that distance were created.

But, as Sen. Joseph Biden, Jr. (D–Del.) said in a letter to the FCC, "Baltimore offers absolutely no coverage of Delaware."

Since Delaware's state capital, Wilmington, is north, within the Philadelphia broadcast area, Philadelphia stations do carry news of statewide interest to Delaware.

So, Biden asked, "The least I could conscientiously accept is a break-up of the hold on the many Delaware viewers who receive only the Baltimore perspective; that is, allowing a Philadelphia station to be carried by cable for the areas that do not now have the benefit—even if it means trading off one of the three Baltimore major network carriers."

But the Sussex committee went further. This week it asked for suspension of all regulations "respecting distant signal carriage for all present and future cable television systems in Sussex County, Delaware and the state of Delaaware."

The case bears some similarity to a request from the state of New Jersey's cable office. New Jersey, overwhelmed by New York and Philadelphia network affiliates, has also petitioned the FCC for suspension of regulations concerning cable operations.

In that still undecided case, a Justice Department comment supported New Jersey. One Justice source said yesterday that the department is likely to support the people of Sussex as well.

"The question is, just what people are being protected by the FCC?" the Justice Department official asked. The state legislature, the Sussex County Council, 4,049 residents who signed the petition submitted to the FCC, "and just about everyone else in the state is asking for this relief," says the official. "So why not? I can't find anybody in the state who won't benefit."

In a letter responding to Biden, FCC Broadcast Bureau Chief Wallace Johnson said that one reason not to let the Philadelphia stations be carried on cable in southern Delaware is that the move could hurt one or more Baltimore stations, which are received on the air by some Sussex residents.

Johnson defines "local" stations as those whose signals are seen by a significant number of area viewers. He doesn't address the fact that Baltimore stations don't carry Delaware news, except to say that "any allegation of these stations' failure to offer such programing will be given consideration during the license renewal process." ●

THE NEUTRON BOMB

Mr. HATCH. Mr. President, last week when President Carter announced that he would cancel the production of the neutron bomb, I was as surprised as everyone else. I immediately sent a telegram to the President urging him to reconsider his decision. With some relief I heard that he had compromised and just delayed the production. Unfortunately this tactic seems to be used all too much in the Carter administration. In the past he has "delayed" the production of the MX missile, using a target date of 3 years, but that is shrouded in ambiguous rhetoric, and no one is sure when, if ever, the MX will go into production.

I compare this decision to the reported protocol of the SALT II Treaty being negotiated in Geneva. While the administration has defended the terms of the protocol, which call for a ban on the testing and deployment of certain weapons, including the MX, on the grounds that the protocol will expire in 3 years, sources of my own have informed me that it is the intention of the influential people within the arms control community of the administration to make the terms of the protocol permanent in the future. Now that the United States has shown a desire to prevent the neutron bomb from becoming part of the United States and NATO arsenal, the leaders in the Kremlin know that the massive propaganda campaign that they initiated has had some effect upon President Carter.

In this mornings Washington Post this subject was discussed by Evans and Novak. They have indicated that it was this propaganda that played a major factor in his decision to cancel and that the criticism of that decision by the major newspaper of the Nation were the dominating influence in forcing him to reconsider and announce that he would only delay the production. The most disturbing aspect of this whole affair is that the President neglected the advice of those who are best in a position to advise him on security and defense matters. Secretary of Defense, Harold Brown, appeared on the CBS show "Face the Nation" yesterday, and in a statement very well couched in cautiousness, left the distinct impression that he favored the production of the neutron bomb at this time.

Mr. President, I am concerned that it is this type of indecision and lack of firmness that has placed the United States in the position that we now find ourselves in world politics and influence. The nations of Western Europe were not kept advised of the President's intentions, probably because the President himself did not know his true intentions. The nations of NATO know that the neutron bomb is essential to the defense of Western Europe. They are in support of the production of the weapon at this time. The Warsaw Pact nations have a tremendous advantage in the number of tanks deployed along the borders of Central Europe. It is a known fact that if and when these tanks are used in an attack, it will be in a blitzkrieg fashion. This is the basic manner in the use of large armor forces. With the NATO ability to stop such an advance almost nonexistent, the neutron bomb would have provided the West with an alternative to defend against this type of invasion by the Warsaw Pact. What they, the leaders of NATO, must think now is anybody's guess. If the speculation that this was a decision based primarily on political consideration, influenced by political advisers, hold to be true, then the President needs to reevaluate the decisionmaking process within the White House.

Mr. President, I ask that the article from today's Washington Post by Evans and Novak be printed in the RECORD.

The article follows:

BEHIND THE NEUTRON DECISION

(By Rowland Evans and Robert Novak)

President Carter's decision to put the neutron "bomb" in cold storage has created a dangerous leadership crisis not only in the Western alliance he is supposed to lead but at the bewildered highest levels of his own administration as well.

"As of March 23, every top official in this administration, and many just under the top, favored full speed ahead on the neutron," one middle-level official appointed by the president told us. Yet, on that day, Carter decided to cancel the enhanced radiation warhead designed to spare both civilians and structures while immobilizing enemy tanks. There was no significant new consultation with senior advisers.

Why did he take that step, by which, whatever his intention, he seems to have succumbed to Soviet pressure and abandoned his March 17 Wake Forest pledge to demand tit-for-tat concessions from Moscow? Nobody is sure. Explanations range from failure of the neutron warhead to meet the president's technical-engineering standards to his emotional quest for a nuclear-free world.

Some administration officials feel political pressure will force Carter to order production. But even so, an attempt to trace what happened finds disconcerting answers: Although the decision-making process is chaotic, blame attaches directly to the president, not to his aides.

The only high official who had publicly expressed concern over the neutron warhead was U.N. Ambassador Andrew Young, whose jurisdictional connection is dim. Everybody else of importance argued forcefully for the warhead, even if only as a bargaining chip. That included Defense Secretary Harold Brown, Secretary of State Cyrus Vance and National Security Adviser Zbigniew Brzezinski.

Young's public opposition was mild. But privately, just before he and Carter sojourned to Latin America and Africa, Young told the president: This is a terrible, terrible weapon. How can we go to the special U.N. session on disarmament with this on our hands?

But Young is not perceived by close Carter-watchers as the only influence. Hamilton Jordan, Carter's political aide who is now privy to every presidential decision in foreign-military policy, is privately regarded as "the missing link" in the chain of advice that routed the Vance-Brown-Brzezinski regulars. "It's heart-breaking," one official who blames Jordan told us. "The whole government was going the other way."

In the background was the Soviet propaganda campaign. European heads of state—and particularly left and center-left parliamentarians—were warned that a go-ahead would have ominous results on Soviet conduct in Western Europe.

Soviet President Leonid Brezhnev sent personal letters to President Valery Giscard d'Estaing of France and other NATO heads of state that were quickly forwarded to Carter. The presumption is that those dire warnings had an effect on the president.

Moscow's propaganda campaign peaked when the Kremlin-controlled World Peace Council held an anti-neutron "conference" in Washington Jan. 25. Several congressmen who fought appropriations for the neutron last September were invited to the first Washington rally of that Helsinki-based council (though we find no record of any having attended). The Soviet propaganda campaign is under direct control of Politbur member Boris Ponomarev, who visited Washington this year.

The effect of that campaign was described last week by Sen. Sam Nunn (D-Ga.) as Moscow's "most successful" propagandizing in postwar history. At least it probably escalated Young's concern over how a neutron go-ahead would affect President Carter's scheduling appearance at the United Nations next month.

Some Carter insiders feel that the president, as in the coal strike, failed to focus on the neutron issue until far too late, giving the impression he was for production but not entirely committing himself. An almost exact parallel can be found in the astonished reaction within the administration last summer when, contrary to expectations, he canceled the B1 bomber.

According to one highly credible theory, Carter did not truly come to grips with the neutron until just before his Latin American trip. He made the decision in the near isolation of his inner White House staff, flabbergasting his foreign- and military-policy markers and undermining his European allies.

The last effort to switch Carter's position came on the long Air Force One ride back to Washington from Liberia. Vance and Brzezinski huddled with the president, pressing him to change his mind.

But what finally persuaded him to announce his decision last Friday to "defer" production—instead of cancel it outright—was not those advisers but the firestorm of criticism in The New York Times, The Washington Post and other influential papers.

That leaves the president facing disorder, disillusionment and incredulity among the men he named to guide his national security apparatus. That witches' brew of discontent could prove even more disabling to him than the wreckage of the neutron policy now strewn across Western Europe.●

PRESIDENT CEAUSESCU OF ROMANIA

● Mr. KENNEDY. Mr. President, later this week President Nicolae Ceausescu of Romania will pay a State visit to the United States. I want to join many other Americans in offering words of welcome. We all look forward to his visit. He comes to Washington at an important stage for both of our countries—as we continue to expand the economic and humanitarian and political ties between us, as we seek to improve East-West relations in all aspects, and as we move to reduce international tensions in key areas of the world.

President Ceausescu has consistently demonstrated great leadership and statesmanship, qualities which immediately impressed me when I first met with him in 1974. I am sure that these qualities will be evident in Washington this week, as well as in the months ahead when we can look forward to the further development of our important relationship.●

JOSEPH F. DEEB

● Mr. GRIFFIN. Mr. President, I call the attention of the Senate to the death of a distinguished lawyer, Joseph F. Deeb of the Michigan and District of Columbia Bars.

Joe Deeb graduated from the University of Notre Dame. At age 31 he was one of the youngest men appointed as U.S. attorney. He was named in 1940 to serve in the western district of Michigan.

Mrs. Griffin and I extend our deep sympathy to his family.●

THE 80th ANNIVERSARY OF THE FRATERNAL ORDER OF EAGLES

Mr. JACKSON. Mr. President, in one of his last major public appearances, the late Senator HUBERT H. HUMPHREY addressed a Fraternal Order of Eagles convention in his home State of Minnesota. As a member of the Eagles throughout his adult life, Mr. HUMPHREY knew well the work, principles and dedication of this fine organization he fondly referred to as the "fraternity of the common man."

As this year marks the 80th anniversary of the Fraternal Order of Eagles, I would like to take this opportunity to draw the attention of my colleagues to that most eloquent speech by Mr. HUMPHREY.

I ask that the text be printed in full in the RECORD.

The material follows:

THE HONORABLE HUBERT H. HUMPHREY

(United States Senator, State of Minnesota): Ladies and Gentlemen, it seems to me that I was once Mayor of this great City, but I am very honored to know that you are the Grand Worthy President-Elect. I tried for that a long time and never made it. (Laughter.)

I am very proud of our own President from Minnesota, Clyde Schmieg, of Aerie 33 over at St. Paul. We're very proud of him. (Applause.)

I was told that this is a night for entertainment, and I don't intend to burden your time with too much serious talk.

I understand that Foster Brooks is here, and I want to be around to see that fellow I'm telling you. He really is, well I'd say that he's the best answer to alcoholism that I've ever seen. He really is. (Laughter.) He's a marvelous character actor and a fine gentleman that I have had a chance to meet on other occasions.

This is our seventy-ninth—and I say "ours" because I am very proud—meeting, as early in my life, when I was a very young man in this City I was presented with the Gold Card of Lifetime Membership in the Fraternal Order of Eagles, and I'm very proud of that membership. (Applause and Cheers.)

And I'm very proud that my colleague of those early days and good personal friend, now Vice President of the United States, is a member of our fraternal Order as well. (Applause and Cheers.)

And we had six Presidents I know that have been—at least six—members of the Fraternal Order of Eagles, and two of them I loved above all—Franklin Roosevelt, Harry Truman, and my Lord, John Kennedy—three of them. (Laughter, Applause and Cheers.)

And you had a Chief Justice of the Supreme Court. The former and late Justice Earl Warren joined this Fraternal Order of Eagles. And you have had many great people of this country.

I recognized that from an article about my friend, John Dent—a marvelous article and portrait about the Fraternal Order of Eagles, written by Maury Splain; and that article I think tells more about this Fraternity than anything I have ever heard or read.

And somewhere in that, Maury, is this line, and I just picked it out—"It is the Fraternity of the common man".

This is the Fraternity of Americans.

It's the Fraternity of people of high places, and people who are struggling to make a go of it. As somebody put it, it is the Fraternity of the famous and the obscure.

It's the Fraternity of the high ranking and the humble.

It's the Fraternity of the great and also of the small.

But above all, it is the Fraternity of our country.

No fraternal organization has been more dedicated to the principles of this country. No fraternal organization has demonstrated any more patriotism.

No fraternal organization is known more for its charity; for its concern of the living conditions of our citizens than the Fraternity to which you and I belong, the Fraternal Order of Eagles. And I'm proud to be a member and to be here. (Applause and Cheers)

When I go back—and it's been publicized at some time—I think it was the Fraternal Order of Eagles long ago that fought for old age pensions, first out there in the State of Montana.

When I think of the time when the Social Security Act was signed by Mr. Roosevelt, a member of this great Fraternity, he turned around and presented the pen with which he signed that law to the Grand Worthy President of our organization.

Social Security—pensions; health research; care of the elderly, all sorts of things—youth programs for our youngsters that need so much help these days—this organization has been in the forefront of all of them.

When I came in the door out there, just as I walked in I saw the Max Baer Heart Fund. Well, I used to be one of Max Baer's fans when he was heavyweight champion of the world.

And then I know of your Jimmy Durante Youth Fund, and Jimmy Durante is one of my very close friends. He's not well these days, but I know over the years he's been our house guest right in Minnesota.

So when you think of these fine and distinguished people that you did honor to, and who were able to make generous contributions, one can't help but be proud.

In 1950, as you know better than I, this organization—before any other even dreamed of it—raised a million dollars for the Damon Runyon Cancer Fund.

And this organization on and to this very day is still raising money for the Cancer Fund, for the Art Ehrmann Cancer Fund.

Ladies and gentlemen, as one who has gone through the ravages and suffering of this disease and has to put up the fight every day, wondering when something will come and will break through that will give relief from pain, suffering, and fear, all I can say to each of you out there is thank you and God bless you. You've done so much for so many, and you show it.

When I walked into this hotel tonight, out there as I came into the street out in front of the Radisson Hotel and have for every conceivable occasion, I sensed a spirit of happiness, and a spirit of vitality; and that's what it is all about.

This is a cross-section of America, and let me say to those who try to run us down, and for those who would have us believe—and have so many of our young people take their beliefs—that we don't know what we're doing; that we walk our own way; that we're nothing but materialists, and we really don't care any more, let me say they are dead wrong.

This country doesn't need bicentennials to remind us of what we stand for.

I'll tell you what we stand for—a chance for every man, woman, and child.

We stand for a better life. We know that it can't be perfect in our time, but we seek to ease the pain and the suffering; to help the widow and the orphan; to see that those who are in the twilight of their lives can have some comfort and some security.

We seek to break through in our society so that we can cure disease; can wrest and rescue our young people from the troubles that seem to beset so many of them. That's what it's all about.

I had a speech prepared, and I know it was a wingdinger, I'm here to tell you. (Laughter) My good friend Crist Seraphim, from Milwaukee, is waiting for me to pull that speech out. But, Crist, I'm not going to do it.

I'll tell you why I'm not going to do it.

You know what you need to know already. You know what this organization is all about. You know that you had led the way long before government ever showed concern about the elderly; long before government got into cancer research you were there. You have pointed the way.

You've helped the veterans.
You've helped the sick.
You've helped the needy.
You've helped the old.
You've helped the young.
You've helped the children.
Why?

Because we are just all people, all of us. We come from all walks of life. This is not a "blue blood" organization. We are red-blooded Americans—that's what we are! (Applause).

I welcome this. I love this country. I've been in public life a long time, and in public life I've made my fair share of mistakes, just as we do in our private life.

But let me assure you of one thing—in all the years I've been in public life I have watched this country go through wars and depression—the recessions—the incredibly bad times, but each time we come out of it a little better—a little better.

The headlines would have you believe that today was the only day that there was trouble in Washington; today was the only day that there was trouble in the countryside.

It's not true. America was born in trouble. George Washington, who led us in our fight for independence, struggled to get an army. As I used to say when I was teaching, out of all the people in the Colonies less than a third were for independence; one-third was for the King; and the other third waited to see how it came out. (Laughter)

My friends, great decisions are seldom made by majorities. Great decisions are made by people of conscience, who may band together, like we have in this organization, to do things that need to be done.

So thank you for coming to Minneapolis. I love this City.

Thank you for coming to Minnesota. We tried to put on some fairly good weather for you. We hope that it will continue. We hope and I think that you will enjoy this beautiful community, the Twin Cities and the metropolitan area.

I know you have very busy days, but get around; see our parks, our lakes; see where our people live. See them at work. See them at play. Drive around our countryside. See that corn that we raise out there.

Boy, if we could just get a little better price—that's all! (Laughter and Applause)

Just see this wonderful, wonderful country.

And ladies and gentlemen, wherever you go in this land there are places of beauty, and there are wonderful people. I've traveled in every state in America many times, and I have traveled in sixty-some countries. I've been in every country, without exception, in Europe. I have been in the countries of eastern Africa, and Latin-America. And I'll tell you—every time I go, no matter when I go—how great it is, when I get home I am ready to sing, "God Bless America". I don't have a good enough voice but I sure want to sing it every time I come home.

Now tonight, dear friends, I'm going to travel some 38 miles west of here. I'm going out and see my favorite girl friend. Boy, is she nice! I am going to see her. I have stayed with her for 45 years, for 45 years! That is by this September. About three and a half of those I was trying to trap her. Trying to convince her at that time that I was going to make it, even though I was stone broke. And she was pretty with little baby blue eyes.

And I was trying to tell her, "Honey, don't look at me now. Just think what you can make out of me."

And I'm happy to tell you she had quite a job. Once in a while she felt she came through with some improvement. (Laughter)

But tonight I shall be out with my wife, with my grandchildren, and with some of my constituents. We happily have 10 grandchildren. We have three sons and a daughter. We have a lovely family.

And no matter what pain or suffering—and no matter what disappointments we have, when you are blessed with family and grandchildren, and blessed with the chance to live in America, all I can say is you're a lucky person.

Thank you very, very much. [Applause.]

Grand Worthy President-Elect Tony Angelo. We know you are here because you know what the Eagles are all about and what makes up this great Order of ours.

But I just want to take one moment, Senator Humphrey, to tell you that the people that are seated here this evening, and the people that they represent, during the course of the years spend many hours, much of their time and their energy to raise money, during the course of the year, so that they can bring it to the Convention.

And there is approximately one million dollars during the course of the year that these people raise, and from this we are able to present to you, on behalf of the Eagles, the Auxiliary and the Aerie alike, to the Minnesota Medical Foundation Cancer Research Fund, University Hospital, University of Minnesota, Minneapolis, Minnesota, a check for $25,000.00

PRESENTATION—APPLAUSE

Senator HUMPHREY: We are making great strides in cancer research, truly. I was at the National Cancer Institute just the other night getting some chemotherapy, which doesn't make you feel very good.

And one of the topnotchers said to me, "Well Senator, we hope that by September and not later than October, we're going to have an entirely new drug that you can take that will be literally like a miracle." He said the reports are fantastic.

And ladies and gentlemen, today in Hodgkin's Disease, and breast cancer, and so many, many different types of cancer, we have made amazing progress—amazing progress.

And yet you and I know that this disease is like an epidemic in our society today. So what are you doing here is to help one of the great research centers. There are 19 or 20 great research centers in the United States. One is at the University of Minnesota.

And when I was asked what I would like to have this contribution go to, I know what they are doing out here in children's leukemia. I know the work they are doing, and I know that this $25,000.00 is going to help a doctor and a research specialist out there do the things that you would want done.

And only God knows who next will be the victim.

Thank you much. [Applause.]●

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, appoints the Senator from Massachusetts (Mr. KENNEDY) as a Congressional Adviser to the SALT delegation in Geneva during 1978.

SALT AND THE SOVIET-CUBAN PRESENCE IN AFRICA

Mr. HELMS. Mr. President, this morning the Subcommittee on Intelligence of the Committee on Armed Services heard disturbing testimony from the Deputy Director of the Central Intelligence Agency concerning Soviet and Cuban aggression in Africa.

"The degree of Soviet and Cuban military activity in Subsaharan Africa is unprecedented," the Deputy Director of CIA, Mr. Frank Carlucci, told the subcommittee in a prepared statement that was made available to the news media.

"We are witnessing the most determined campaign to expand foreign influence in this troubled region since it was carved up by the European powers in the late 19th century," Mr. Carlucci continues.

The degree of Soviet activity is massive, Mr. President. "Soviet military equipment has been flowing into Ethiopia and Angola faster than the local forces can absorb it," Mr. Carlucci points out.

Mr. President, there are now more than 400 Soviet tanks in Ethiopia alone. In addition, the Soviet Union has supplied more than 50 MIG fighters to the Ethiopians, along with large quantities of armored cars, personnel carriers, and artillery.

Who is supplied with this materiel? Only the Ethiopians? No. Not only the Ethiopians, but more than 16,000 Cuban troops, and a large number of Soviet and Cuban general officers, who plan and coordinate combat operations for the Cuban and Ethiopian troops.

News reports have painted a grim picture of what all of this costs in human suffering. In dollars, CIA estimates that the Soviet Union has poured close to $1 billion into Ethiopia alone.

Soviet presence in Angola is equally large. "Tons of Soviet military hardware litter the docks at Luanda" Mr. Carlucci says, "and Soviet or Cuban advisers are found at every level of government."

The Cuban presence in Angola is greater than the Cuban presence in Ethiopia, Mr. President. Additionally, Cuban and Soviet "advisers" can be found at every level of the Government of Angola.

In the remainder of Subsaharan Africa, Soviet advisers and Soviet equipment can be found as part of a number of so-called liberation movements and revolutionary regimes.

What does all of this mean for peace in Africa? I am afraid that it means that peace is remote in Africa as long as the Soviets and their surrogate soldiers, the Cubans, are allowed to roam the African continent with impunity.

What can the United States do to help bring an end to this Soviet and Cuban plunder of Africa? Do we need to send in arms ourselves? Must we, too, commit troops to the African continent? Must Africa become another Vietnam for the United States?

There are options available for the United States which do not involve the commitment of U.S. money, arms, or troops. One option centers around the ongoing Strategic Arms Limitation Talks (SALT) in which the United States and the Soviet Union are engaged.

If the Soviets want a SALT II agreement as much as the administration would have us believe they do, then why not tell the Soviets, "Cease aggression in Africa, or no SALT."

For Americans already dubious about the SALT II proposal as they now perceive it, the administration could enhance its position with the public and the Senate by tying success in a SALT agreement to Soviet and Cuban withdrawal from Africa.

In doing so, the administration would be putting out two potential fires with one act: (1) limiting the spread of strategic nuclear arms; and (2) ending Soviet and Cuban aggression in Africa, thereby helping to stabilize the area and bring peace to its people.

What more noble deed could the administration do, given President Carter's longstanding desire to limit and end the arms race and bring peace and stability to Africa?

Mr. President, Mr. Carlucci has provided the Senate with important information about the scope and degree of Cuban and Soviet involvement in Africa. This information cannot be ignored. By bringing to light the huge scale of Soviet involvement in Africa, he has provided the public with a warning and the President with an opportunity.

The American people will not be encouraged by what Mr. Carlucci has said today. Nor will this information enhance the President's chances of getting a SALT II agreement through the Senate. Only by tying success in obtaining a SALT II agreement to Soviet and Cuban cessation of hostilities in Africa can the President begin to hope to secure passage of the type of SALT agreement that he now seems to be working toward, in this Senator's opinion. Perhaps even this linkage will not be enough, given what we known about the nature of the proposed SALT II agreement at this point.

Mr. President, so that my colleagues may benefit from Mr. Carlucci's testimony, I ask unanimous consent that it be printed in the RECORD.

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

STATEMENT BY DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE

MR. CHAIRMAN: I welcome the opportunity to appear before your Subcommittee this morning. Admiral Turner asked that I convey to you his regrets that he is unable to be present but he had a previously scheduled hearing.

CIA has had a long and, I think, mutually profitable relationship with your parent Committee. Both the Director and I look forward to the same relationship with the Subcommittee on Intelligence. We will be happy to appear before you to provide intelligence assessments of world developments and we shall certainly do everything we can to assist you in exercising your oversight role.

This morning, we are going to discuss with you the foreign military presence in Africa. I am sure you understand that much of this briefing is, and must remain, classified. But, I think I might make a few general observations before the session is closed.

As you know, Mr. Chairman, I have had some experience in African affairs. Speaking from this background, let me state that the degree of Soviet and Cuban military activity in Subsaharan Africa is unprecedented. We are witnessing the most determined campaign to expand foreign influence in this troubled region since it was carved up by the European powers in the late 19th century.

Soviet military equipment has been flowing into Ethiopia and Angola faster than the local forces can absorb it. Tank deliveries to Ethiopia exceed 400; more than 50 MIG fighters have gone to Addis Ababa as have huge quantities of armored cars, personnel carriers, and artillery. Soviet and Cuban general officers plan and coordinate combat operations involving more than 16,000 Cuban troops. The Soviet military aid commitment to Ethiopia now ranges close to one billion US dollars.

In Angola, tons of Soviet military hardware litter the docks at Luanda and Soviet or Cuban advisors are found at every level of the government. There are more Cuban soldiers in Angola than in Ethiopia; thousands of them engaged in active combat against UNITA in the southern part of the country.

Elsewhere in Subsaharan Africa we also see Soviet equipment delivered to liberation movements and self-styled revolutionary regimes where Cubans, together with Soviets, train the recipients in its use.

It is my view that Moscow and Havana intend to take advantage of every such opportunity to demonstrate that those who accept their political philosophy can also count on receiving their assistance when it is needed.

CONGRESSMAN QUESTIONS ENERGY INDEPENDENCE

Mr. HANSEN. Mr. President, I should like to call attention to a valuable article on our energy situation that appeared in the Washington Post of April 9, 1978.

The article is by Representative DAVE STOCKMAN, a freshman Republican, who is a member of the Energy and Power Subcommittee that deals with many energy issues. Congressman STOCKMAN makes the very important point that we should be trying to supply American energy needs at the lowest possible cost. That is the true consumerist position. Yet the Carter energy plan, as his article brilliantly shows, is totally dedicated to creating higher costs for energy by suppressing domestic production at economical prices while mandating uneconomical conservation and foreign imports.

Mr. President, I ask unanimous consent that the full text of the article be printed in the RECORD.

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

THE ILLOGIC OF ENERGY INDEPENDENCE

(By Dave Stockman)

One of the most pernicious forces loose in Washington is the widely shared belief in the need for national energy independence. Beguiled by its deceptive allure, we are fashioning policies that would undermine our economy, further weaken our balance-of-payments position, and foist on the American people an unnecessary expansion of government control and cost.

The Carter administration's National Energy Plan raises the quest for energy self-sufficiency to a new plateau of illogic. It

amounts to little more than a hastily compiled list of costly expedients for reducing the volume of oil imports. As such, it is not an energy policy at all but a throwback to antiquated notions of general autarky.

It is time to state the terrifying truth to Messrs. Schlesinger and Carter: The level of oil imports *per se* doesn't matter. What is important is that the energy needs of the U.S. economy be supplied at the lowest possible cost. In practical terms, this can be achieved by increased production of domestic oil and gas, coal substitution and energy conservation—but only to the extent possible at a cost equal to or less than the prevailing price of energy in the world economy—$13 per barrel equivalent.

To reach this goal of supplying our energy needs at the least cost, we do not need a Project Independence, a National Energy Plan, Department of Energy regulatory programs, mandatory efficiency standards, or subsidized development of "energy alternatives." The market is fully capable of accomplishing this at the world price without the guidance of Congress and the executive branch.

Even at the present artificially low domestic energy prices imposed by oil and gas regulatory controls, the boom in such products as insulation, engineered fireplaces and industrial heat recovery systems demonstrates that both the household and business sectors of the economy will respond to pricing signals.

Indeed, the only major unfinished business in energy policy is the creation of a domestic energy pricing structure tied to the world price of oil. Rapid decontrol of oil and gas prices and the adjustment of utility rate schedules to reflect true costs of providing service to all customers would accomplish this with a minimum of regulatory cost. With a realistic price structure in place, the relentless cost-minimizing pressures of the marketplace would drive domestic energy production to its maximum and reduce consumption to its minimum at cost levels equivalent to the world price.

The result would be a significant reduction in U.S. oil imports. But, unlike the arbitrary displacement imposed by the Carter plan, it would be an efficient and beneficial reduction. The market will forgo $13 imported oil only when coal substitution energy, or conservation energy, or new domestic oil and gas reserves are available at a lower cost. The market will not choose $18 conservation energy, $20 coal conversion or $24 synthetic crude over $13 imported oil. And it shouldn't. The strength of our economy and our international competitive position can be maintained only if we purchase all our energy supplies at the lowest price available—even if that means turning to the world oil market for a significant portion of our needs.

The mandatory coal conversion program is the heart of the administration's oil import reduction program. It is also the best demonstration of the bad economics of the Carter plan.

Coal is cheaper than $13 oil for operating large new utility and industrial boilers, primarily because of the economies of scale involved in coal transport, handling, storage, combustion and pollution control. Not surprisingly, the market already has recognized that coal is the lowest-cost alternative for large new facilities. Virtually all large boilers ordered in the past two years have been coal-fired.

These large new facilities will use coal without bureaucratic prodding. The real brunt of the Carter coal conversion program would fall on existing facilities and small industrial boilers, neither of which could ever be operated on coal for under $13 per barrel equivalent in fully allocated costs. These facilities would be compelled to use up to $20 per barrel coal "conversion energy" in place of $13 oil. The administration's plan would thus impose energy cost structures far in excess of the prevailing world price on large segments of U.S. industrial production.

The administration isn't the only perpetrator of such bad bargains. Sen. Russell Long's plan to make $16 shale oil competitive via a $3-a-barrel tax credit involves the dubious bargain of spending $16 of national income to save $13.

The truth is that spending $16 or more to save $13 is the essence of the National Energy Plan, Project Independence and all their progeny. Every panacea being pushed in the policy arena today—subsidized acceleration of the fast breeder, federally financed synthetic fuels development, subsidized solar power installation, more draconian conservation measures such as thermal efficiency standards for existing housing, mandatory industrial efficiency standards, gas guzzler taxes—involves the forced feeding of energy into the economy at costs far above world oil prices.

Washington does not have a great reputation for economic acumen, but the present wholesale stampede to adopt bad economic bargains requires more of an explanation than simple ignorance. The explanation lies in two unsupportable notions that have been incorporated into the conventional wisdom.

The first is that world markets are running out of energy supplies and can't be relied upon much longer—so we must go it alone. The nonsense of this proposition is revealed best by the fact that in the 100-year history of the petroleum age, the world economy has thus far succeeded in consuming only 8 percent of the conservatively estimated resource base of natural gas and 15 percent of oil resources.

Even with today's still imperfect geologic knowledge, using cautious pre-1973 estimates, there are nearly 3,000 trillion barrels of oil and gas left—enough to last the world another half century even at double current rates of consumption. And that is to say nothing of the far more prodigious endowment of lower grade resources—25,000 trillion barrels of coal and geopressurized gas alone—that could be upgraded to refinery and pipeline quality fuels when price and cost levels warrant it.

The second bit of nonsense is that although the raw supplies may be there, the market mechanism itself has disappeared; OPEC is alleged to have suspended or superseded the economic rules of supply and demand, and what may have once been an international energy marketplace has now become a wholly political arena of intrigue, power plays and peril. Were we to abandon the quest for energy independence, the argument goes, U.S.-stimulated growth of world oil demand would encourage OPEC to substantially increase the price again during the 1980s. Given the oil and gas exploration boom underway all over the globe, this scenario seems wholly unconvincing unless bolstered with fudge-factory numbers like those contained in the now discredited CIA study of last April.

But even if there is some slight probability that OPEC will increase the world oil price significantly during the mid-1980s, the argument is irrelevant. One is tempted to ask Secretary Schlesinger why it is so bad to permit OPEC to inflict an $18 energy price regime on the U.S. economy in 1985, but patriotic and virtuous to empower his department to do the same thing in 1978.

In reality, the only result of the administration's high-cost strategy of oil import abstinence would be to keep the world oil price at $13 for a few years or even a decade longer than otherwise, with most of the benefit accruing to Western Europe and Japan.

There are reasonable prospects, however, that the world price of oil will not rise appreciably in real terms over the next decade or so. It is becoming increasingly clear that there may be an effective ceiling on world energy prices in the range of $18 to $24 a barrel for decades to come. At those price levels, the supply of non-OPEC conventional oil and gas and unconventional fuels of every sort is so enormous, and the opportunities for major gains in consumption efficiencies so great, that this ceiling is unlikely to be breached for generations, if ever.

Whether OPEC pushes the price of oil to this economic ceiling in the 1980s by withholding production or allows its output to expand to meet world demand at roughly present real price levels depends almost entirely on whether it wants to make a little or a lot of money from its vast remaining geologic endowment. If it wants to make a lot of money, it will keep the price below the economic ceiling, maximize production and earn an indefinite annual 3 to 4 percent real rate of return on the proceeds by purchasing international assets or investing in domestic economic expansion.

Of course, if Mr. Yamani and his colleagues didn't learn anything at Harvard Business School after all, they may push the oil price up to the ceiling during the next decade, only to find their world markets progressively shrinking in response to a flood of competitive alternatives.

In short, the oil withholding game only works when the world market permits oil prices to rise so rapidly that oil in the ground appreciates at a faster real rate than the rate of return available from the proceeds of currently produced oil. That was the unique situation during the first half of this decade.

OPEC leaders are not unmindful that even they have not transcended the rules of the economic game. This was demonstrated at the recent Caracas meeting when they decided to let the real price decline slightly this year rather than incur worsening surpluses.

If OPEC can recognize these things, why can't we? It's time to declare the energy crisis over, finish building the strategic oil reserve to cushion against any short-run contingencies, and abandon our masochistic fling with energy autarky.

NEW YORK CITY MUST STOP WIDESPREAD LOAFING BY CITY EMPLOYEES

Mr. PROXMIRE. Mr. President, New York City is, indeed, unique in this country. Among many other achievements where it is in a class by itself is art. It is the art center of this country. It may well be the art center of the world.

An article in yesterday's New York Times stipulated three conditions that the leading art center in a nation should have. These are:

First. Vigorous institutions, that is, museums, galleries, opera houses, theaters, orchestras, concert halls, ballet and dance companies, schools for the arts, publishing houses, and a wide variety of groups representing a broad spectrum of viewpoints and attitudes, conservative as well as innovative.

Second. A large number of aspiring artists beating on the door of these institutions and challenging them to change, improve, experiment, refine, excel.

Third. An exacting public criticism.

New York alone in this country has all these elements and has them in rich abundance. The truly ambitious artist who wants to meet and compete and vie

with the best knows that New York City is where it is at. He makes it in New York, he has made it, indeed.

But, Mr. President, that last element—an exacting public criticism—can be a cross for a city to bear, and to be fair about it New York City newspapers often do a superlative job not only in criticizing the arts, but in reporting criticism of the city and how the city operates.

For example yesterday's New York Times reported that State Comptroller Arthur Levitt's auditors have reported what they call a pervasive attitude among workers and supervisors that "they need not provide a productive day's work."

Mr. President, at a time when the Congress is being called upon by the administration to provide for the first time in this Nation's history a guarantee of an American city's securities that is New York City's securities, when that guarantee would be for up to $2 billion, and when that guarantee would be for as long as 15 years, this body has a responsibility to consider the charges from the office of the New York State comptroller very seriously indeed.

This is a time when the city is trying to find ways of balancing its budget—so it can get off the back of the Federal Government and back in the securities market. This report exposes waste so specifically, so well documented that it suggests a major reason why New York City might be best served by withholding Federal aid.

This report finds that typically city park work crews arrived at work sites 95 minutes late—more than an hour and a half—and took lunch periods of an hour and a quarter which was 45 minutes longer than scheduled. They find this typical of city park work crews.

Observations during 5 months of last year indicated that regular parks department crews were averaging less than 50 percent of their workdays in productive effort.

In other words, less than half their workdays producing anything of value to the city.

One estimate was that the projected cost to the city was $16 million for the year. In addition, the auditors found that 6 percent of the department's seasonal employees could not be located at work sites, and that those who did show up for work spent only 75 percent of their time productively. This means that the department suffered $2.2 million more in lost personnel expenditures.

As for the department's supervisor and its inspector general the Levitt report had this to say:

Half of the supervisors were assigned to desk jobs. Shifting them to the field could reduce the average 1-to-33 ratio of foremen to workers to 1-to-17. As for the inspector general he did not spend any of his time on this type of investigation.

Some inspector general.

Mr. President, the city's park commissioner, Gordon Davis, did respond to this report on Saturday by saying that he was moving to strengthen the inspector general's office and that he was also revising methods for field supervision of employees and increasing the unannounced field inspections at all supervisory levels.

Mr. President, I call the attention of the Senate to this report because it gives a vivid and clear example of why any action by the Federal Government that eases the tough, hard discipline of a prospective bankruptcy can be a mistake. Why? Because unless the city insists on cutting every possible bit of unproductive expenditure, it will never balance its budget. And while it may make a temporary improvement here and there, it will not make those painful expense cuts often enough or deeply enough unless the alternative is the more painful consequence of bankruptcy.

Mr. President, I ask unanimous consent that an article in the Sunday New York Times by Glenn Fowler entitled "Levitt's Aides Find Pattern of Loafing by Park Workers," be printed in the RECORD at this point.

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

LEVITT'S AIDES FIND PATTERN OF LOAFING BY PARK WORKERS

(By Glenn Fowler)

A systematic pattern of loafing on the job by employees of the New York City Department of Parks and Recreation cost the city more than $18 million last year, State Comptroller Arthur Levitt charged yesterday.

After covertly observing the movements of forestry and maintenance crews in the city's five boroughs, Mr. Levitt's auditors reported finding a "pervasive attitude" among workers and supervisors alike that" "they need not provide a productive day's work."

The report from Mr. Levitt's office, which is charged by the Legislature with auditing every branch of city and state government, comes as the city is negotiating new contracts with several municipal unions and as it is emphasizing the need for greater productivity.

In one example of the findings of the Comptroller's office, there was the following dossier entry on the activities of a five-man crew that left the department's garage in Clove Lakes Park on Staten Island at 9:27 a.m. on Feb. 4, 1977:

NEW DIRECTOR IS NAMED

In response to the Comptroller's findings, and after an investigation of his own, Gordon J. Davis, the city's Parks Commissioner, said yesterday that he had finance and operations division under a new director, Carlo Ingicco, and was moving to strengthen the inspector general's office.

Mr. Davis, a former member of the City Planning Commission, said he was also revising methods for field supervision of employees and increasing the "unannounced field inspections at all supervisory levels."

"The crew proceeded to a work site to a department store and to a doughnut shop, then back to the garage area to unload the cut tree, then to a bank and a bar, where the men stayed for 37 minutes."

Of the 2 hours 13 minutes the crew was observed, Mr. Levitt, said it was nonproductive for 1 hour 19 minutes

* * * * *

lar accounts, replete with late starting times, long breakfast and coffee breaks, personnel errands, leisurely lunch hours and early quitting times. Moreover, the pattern of unproductive work was concealed by "false entries" and other subterfuges in the department's records, according to the audit.

LESS THAN HALF A DAY'S WORK

For example, a four-member Bronx Park crew, observed for more than an hour on Feb. 2, 1977, was found to have taken its truck to an apartment house, a store and a restaurant. But the trip ticket filed at the garage showed that the truck had gone to the Split Rock Golf Course, a city facility, and to a dump. However, there was no record of the truck having appeared at a dump site on that date, the auditors noted.

Typically, Mr. Levitt said, work crews arrived at work sites 95 minutes late and took lunch periods of an hour and a quarter, which was 45 minutes longer than scheduled. In one instance, the auditors said, "we observed a four-man crew take 75 minutes for a breakfast break at a Bronx diner.

Observations during five months of last year indicated, Mr. Levitt said, that regular Parks Department crews were averaging less than 50 percent of their workdays in productive effort. He said the projected cost to the city was $16 million for the year.

In addition, Mr. Levitt's auditors found that 6 percent of the department's seasonal employees could not be located at work sites, and that those who did show up for work spent only 75 percent of their time productively. This meant that the department suffered $2.2 million more in lost personnel expenditures, Mr. Levitt said.

The Comptroller noted tartly that a 50 percent increase in productivity by the Parks Department's staff would more than make up for personnel cuts imposed during the city's budget crisis.

Mr. Levitt was particularly critical of the department's supervisors and its inspector general. Half of the supervisors were assigned to desk jobs, he said, and shifting them to the field could reduce the average 1-to-33 ratio of foremen to workers to 1 to 17. As for the inspector general, he "did not spend any of his time on this type of investigation," the Comptroller added.

THE EFFECTS OF OUR FAILURE TO RATIFY THE GENOCIDE TREATY

Mr. PROXMIRE. Mr. President, I would like to take this time to discuss the international implications of our continued failure to ratify the Genocide Treaty.

Since the Second World War, it has become increasingly obvious that bilateral disputes are of multilateral concern. Because countries have become more interdependent, disruption in one area of the world has significant consequences for the rest of the world. A good example of this is the present conflict in the Middle East.

It is equally obvious that the world's problems cannot be resolved by a fragmented effort. This is why 83 nations have ratified the International Convention on the Prevention and Punishment of Genocide. This treaty declares acts of genocide against national, ethnical, racial, or religious groups crimes under international law. Shockingly, the United States has failed to ratify this treaty. The consequences of this failure are significant.

First, this failure contradicts our efforts to work with other nations to create a more peaceful and humane world. The SALT negotiations and our human rights efforts demonstrate a strong concern for human life; our refusal to ratify the Genocide Treaty undermines these efforts.

Furthermore, our failure to ratify this convention reduces the influence we can bring against the actual commission of such acts, as was shown during the Nigerian Civil War. It discourages other nations from ratifying the treaty and pledging their support for human rights. And it impedes the development of international law in this most important area of human conduct.

A great deal of damage has been done by our failure to ratify the Genocide Treaty. A great deal more will be done if we do not act now. I urge the ratification of this important treaty without further delay.

ORDER FOR RECOGNITION OF SENATOR DOMENICI ON WEDNESDAY, APRIL 12, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday after the prayer the distinguished Senator from New Mexico (Mr. DOMENICI) be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR SCOTT ON WEDNESDAY, APRIL 12, 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday upon the disposition of the amendment by Mr. STEVENS, Mr. SCOTT be recognized.

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

THE CALENDAR

Mr. ROBERT C. BYRD. There are two bills that have been cleared on the calendar, I believe. I ask unanimous consent that the Senate proceed to the consideration of Calendar Orders Nos. 656 and 666.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, I rise only to advise that the majority leader is correct, of course. These two items are cleared on our calendar and we have no objection to proceeding to their immediate consideration.

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

END STAGE RENAL DISEASE PROGRAM

The Senate proceeded to consider the bill (H.R. 8423) to amend titles II and XVIII of the Social Security Act to make improvements in the end stage renal disease program presently authorized under section 226 of that act, and for other purposes which had been reported from the Committee on Finance with an amendment to strike all after the enacting clause and insert the following:

That (a) title II of the Social Security Act is amended by inserting immediately after section 226 the following new section:

"SPECIAL PROVISIONS RELATING TO COVERAGE UNDER MEDICARE PROGRAM FOR END STAGE RENAL DISEASE

"SEC. 226A. (a) Notwithstanding any provision to the contrary in section 226 of title XVIII, every individual who—

"(1)(A) is fully or currently insured (as such terms are defined in section 214 of this Act) or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term 'employment' as defined in this Act, or (B) is entitled to monthly insurance benefits under title II of this Act or an annuity under the Railroad Retirement Act of 1974, or (C) is the spouse or dependent child (as defined in regulations) of an individual who is fully or currently insured or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term 'employment' as defined in this Act, or (D) is the spouse or dependent child (as defined in regulations) of an individual entitled to monthly insurance benefits under title II of this Act or an annuity under the Railroad Retirement Act of 1974; and

"(2) is medically determined to have end stage renal disease; and

"(3) has filed an application for benefits under this section,

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of title XVIII, subject to the deductible, premium, and coinsurance provisions of that title.

"(b) Subject to subsection (c), entitlement of an individual to benefits under part A and eligibility to enroll under part B of title XVIII by reasons of this section on the basis of end stage renal disease—

"(1) shall begin with—

"(A) the third month after the month in which a regular course of renal dialysis is initiated, or

"(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1861(e) (and such additional requirements as the Secretary may prescribe under section 1881(b) for such institutions) in preparation for or anticipation of kidney transplanation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

"(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant, and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

"(c) Notwithstanding the provisions of subsection (b)—

"(1) in the case of any individual who participates in a self-dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1881(b), entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such regular course of renal dialysis is initiated;

"(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2)) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such course is initiated or resumed; and

"(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such regular course of renal dialysis is resumed.".

(b) Section 226 of such Act is amended—

(1) by striking out subsections (e), (f), and (g), and

(2) by redesignating subsections (h) and (i) as subsections (e) and (f), respectively.

SEC. 2 Part C of title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS

"SEC. 1881. (a) The benefits provided by parts A and B of this title shall include benefits for individuals who have been determined to have end-stage renal disease as provided in section 226A, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this title, the type, duration, and scope of the benefit provided by parts A and B with respect to individuals who have been determined to have end-stage renal disease and who are entitled to such benefits without regard to section 226A shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

"(b)(1) Payments under this title with respect to services, in addition to services for which payment would otherwise be made under this title, furnished to individuals who have been determined to have end-stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

"(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end-stage renal disease for which payments may be made under part B of this title, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this title, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with sec-

tion 1861 (v). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1833(b).

"(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end-stage renal diseases, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1861(v)), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals. Such regulations shall provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services (consistent with quality care), and shall include, to the extent determined feasible by the Secretary, a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

"(C) Such regulations, in the case of services furnished by proprietary providers and facilities may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1861(v)(1)(B).

"(D) For purposes of section 1878, a renal dialysis facility shall be treated as a provider of services.

"(3) With respect to payments for physicians' services furnished to individuals determined to have end-stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

"(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

"(B) on a comprehensive monthly fee or other basis for an aggregate of services provided over a period of time (as defined in regulations).

"(4) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payment to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)).

"(5) An agreement under paragraph (4) shall require that the provider or facility will—

"(A) assume full responsibility for directly obtaining or arranging for the provision of—

"(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

"(ii) dialysis equipment maintenance and repair services;

"(iii) the purchase and delivery of all necessary medical supplies; and

"(iv) where necessary (as determined by the Secretary under regulations), the services of trained home dialysis aides;

"(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

"(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

"(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

"(6) The Secretary shall establish, for calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

"(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

"(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

"(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event shall such target rate exceed 70 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive bid procedure, a pre-negotiated rate procedure, or any other procedure which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

"(7) For purposes of this title, the term 'home dialysis supplies and equipment' means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end-stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

"(8) For purposes of this title, the term 'self-care home dialysis support services', to the extent permitted in regulation, means—

"(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

"(B) installation and maintenance of dialysis equipment;

"(C) testing and appropriate treatment of the water; and

"(D) such additional supportive services as the Secretary finds appropriate and desirable.

"(9) For purposes of this title, the term 'self-care dialysis unit' means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment, and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

"(c)(1)(A) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organization under this section.

"(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.

"(C) No person—

"(i) with an ownership or control interest (as defined in section 1124(a)(3)) in a facility or provider which provides services referred to in section 1861(s)(2)(F) or provides kidney transplants, or

"(ii) who has received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services or goods supplied to such facility or provider, or

"(iii) who is the spouse, parent, son, daughter, brother, or sister of a person described in clause (i) or (ii) (or who bears such relationship to the spouse of such a person),

shall serve as a member of any network organization.

"(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

"(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient;

"(B) developing criteria and standards relating to the quality and appropriateness of patient care; and

"(C) evaluating the procedures by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities.

"(d) Notwithstanding any provision to the contrary in section 226, any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this title with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this title), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this title without regard to this subsection. Payments for post-operation recovery expenses shall be limited to the actual period of recovery.

"(e)(1) Notwithstanding any other provision of this title, the Secretary may, pur-

suant to agreements with approved providers of services and renal dialysis facilities, reimburse such providers and facilities (without regard to the deductible and coinsurance provisions of this title) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

"(2) An agreement under this subsection shall require that the provider or facility will—

"(A) make the equipment available for use only by entitled individuals dialyzing at home;

"(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

"(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

"(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

"(3) For purposes of this section, the term 'supportive equipment' includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

"(f)(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

"(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

"(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

"(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

"(5) The Secretary shall conduct a full and complete study of the remibursement of physicians for services furnished to patients with end stage renal disease under this title, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

"(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this title (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

"(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.

"(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7) and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

"(g) The Secretary shall submit to the Congress on October 1, 1978, and on October 1 of each year thereafter, a report on the end stage renal disease program, including but not limited to—

"(1) the number of patients nationally and by renal disease network, on dialysis (self-dialysis or otherwise) at home and in facilities;

"(2) the number of new patients entering dialysis at home and in facilities during the year;

"(3) the number of facilities providing dialysis and the utilization rates of those facilities;

"(4) the number of kidney transplants, by source of donor organ;

"(5) the number of patients awaiting organs for transplant;

"(6) the number of transplant failures;

"(7) the range of costs of kidney acquisitions, by type of facility and by region;

"(8) the number of facilities providing transplants and the number of transplants performed per facility;

"(9) patient mortality and morbidity rates;

"(10) the average annual cost of hospitalization for ancillary problems in dialysis and transplant patients, and drug costs for transplant patients;

"(11) medicare payment rates for dialysis, transplant procedures, and physician services, along with any changes in such rates during the year and the reasons for those changes;

"(12) the results of cost-saving experiments;

"(13) the results of basic kidney disease research conducted by the Federal Government, private institutions, and foreign governments;

"(14) information on the activities of medical review boards and other network organizations; and

"(15) estimated program costs over the next five years.".

SEC. 3. (a) Section 226(a) of the Social Security Act is amended—

(1) by striking out "specified in subparagraph (B)" and inserting in lieu thereof "specified in paragraph (1)"; and

(2) by striking out "specified in subparagraphs (A) and (B)" and inserting in lieu thereof "specified in paragraphs (1) and (2)".

(b) Paragraphs (1) and (3) of section 226(e) of such Act (as redesignated by subsection (b)(2) of the first section of this Act) are each amended by striking out "subsection b" and inserting in lieu thereof "subsection (b)".

SEC. 4. (a) Section 1811 of such Act is amended—

(1) by striking out "section 226" and inserting in lieu thereof "sections 226 and 226A";

(2) by striking out "and" at the end of clause (1), and inserting in lieu thereof a comma; and

(3) by inserting immediately before the period the following: ", and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease".

(b) Section 1833(a)(1) of the Social Security Act is amended—

(1) by striking out "and" at the end of clause (C), and

(2) by adding the following after "and" in clauso (D):

"(E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1881, and".

(c) Section 1833(a)(2) of such Act is amended by inserting "(unless otherwise specified in section 1881)" after "other services".

(d) Section 1861(s)(2) of such Act is amended—

(1) by striking out "and" at the end of clause (D),

(2) by inserting "and" at the end of clause (E), and

(3) by adding the following new clause after subclause (E):

"(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;".

(e) The first sentence of section 1866(a)(2)(A) of such Act is amended by inserting the following before the period: "(but in the case of items and services furnished to individuals with end stage renal disease, an amount equal to 20 percent of the estimated amounts of such items and services calculated on the basis established by the Secretary)".

(f) Section 1814(b)(1) of such Act is amended by inserting "and as further limited by section 1881(b)(2)(B)" after "1861(v)".

SEC. 5. The third sentence of section 1817(b) of the Social Security Act, the third sentence of section 1841(b) of such Act, and section 1876(b)(2)(B) of such Act, are each amended by striking out "Commissioner of Social Security" and inserting in lieu thereof "Administrator of the Health Care Financing Administration".

SEC. 6. The amendments made by the preceding sections of this Act shall become effective with respect to services, supplies, and equipment furnished after the third calendar month which begins after the date of the enactment of this Act, except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after the last day of the twelfth month following the month of the enactment of this Act, and those amendments providing for reimbursement rates for home dialysis shall become effective on July 1, 1979.

REIMBURSEMENT FOR SERVICES OF PHYSICIANS PROVIDED IN TEACHING HOSPITALS

SEC. 7. Section 15(d) of Public Law 93-233 (as amended by section 7(c) of Public Law 93-368 and the first section of Public Law 94-368) is amended by striking out "October 1, 1977" and inserting in lieu thereof "October 1, 1978".

TECHNICAL AMENDMENTS TO MEDICARE-MEDICAID ANTI-FRAUD AND ABUSE AMENDMENTS

SEC. 8. (a) The first sentenence of section 1905(c) of the Social Security Act is amended—

(1) by striking "and (3)" and inserting in lieu thereof "(3)"; and

(2) by striking out the period at the end thereof and inserting in lieu thereof the following ", and (4) meets the requirements

of section 1861(j)(14) with respect to protection of patients' personal funds.".

(b) The fourth sentence of section 1905(c) of such Act is amended by striking out "clauses (2) and (3)" and inserting in lieu thereof "clauses (2), (3), and (4)".

(c) The Secretary of Health, Education, and Welfare shall, by regulation, define those costs which may be charged to the personal funds of patients in intermediate care facilities who are individuals receiving medical assistance under a State plan approved under the provisions of title XIX of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for intermediate care facility services as determined under the provisions of such title.

(d)(1) The amendments made by subsections (a) and (b) shall become effective on July 1, 1978.

(2) The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (c) within 90 days after the date of enactment of this Act but not later than July 1, 1978.

(e) Section 20(c)(2) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Public Law 95-142) is amended by striking out "section 1905(g)" and inserting in lieu thereof "section 1903(g)".

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-714), explaining the purposes of the measure.

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

I. PURPOSE AND BACKGROUND OF THE BILL

During the past several years a number of studies and public hearings have been conducted in order to assess the operation and effectiveness of the medicare end stage renal disease program. The results of these efforts indicate that the program has been generally successful in meeting the needs of renal disease patients for protection against the catastrophic costs of dialysis and transportation. However, at the same time, it has become clear that the program is plagued by a number of serious problems which threaten to undermine its continuing stability and effectiveness.

The committee is concerned about the high and steadily rising cost of the program and the burden it can place on the medicare trust funds unless steps are taken to put it on a more cost-effective basis. The committee believes that there are several areas of potential cost savings, including the increased use of self-dialysis settings and tranplantation, where medically appropriate, and the use of incentive reimbursement methods to encourage economies in the delivery of services.

The introduction of appropriate incentives to encourage the medically appropriate use of lower cost treatment modalities is compatible with the best interests of renal disease patients. The patient who successfully undergoes transplantation can return to a relatively normal and stable life. The patient who can successfully manage self-dialysis either in his own home or in a self-care dialysis unit of a facility regains a significant measure of control over his own care and escapes from what might otherwise be a permanently dependent relationship. And in both types of cases, program savings over the long run can be substantial.

The committee wishes to stress its intent that patients who are medically, psychologically, and socially inappropriate for home dialysis are not to be forced, through administrative procedure, into home dialysis. Objective professional judgment, along with the needs and wishes of the patient, should be the principal determinants of the locus of treatment.

II. SUMMARY OF THE BILL

The medicare renal disease program amendments are designed to accomplish four objectives: Provide incentives for the use of lower cost, medically appropriate self-dialysis (particularly home dialysis), as an alternative to high-cost institutional dialysis; eliminate current program disincentives to the use of transplantation; provide for the implementation of incentive reimbursement methods to assure more cost-effective delivery of services to patients dialyzing in institutions and at home; and provide for studies of alternative ways to improve the program and for regular reporting to the Congress on the renal disease program. The summary presented below briefly outlines these principal features of the bill and, in addition, an unrelated medicare amendment which deals with payment for physicians' services in teaching hospitals.

INCENTIVES FOR USE OF SELF-DIALYSIS

Several provisions are designed to provide incentives for more extensive use of lower cost, medically appropriate self-care dialysis settings. Although the cost of treatment in self-dialysis settings is usually considerably less for the program than facility dialysis, there has been a steady decline in the percentage of patients on home dialysis. Experience indicates that one of the reasons for this decline is the existence of financial disincentives, resulting from the benefit structure of the medicare program, for patients to undertake self-dialysis. The bill modifies present law to eliminate these disincentives by:

1. Waving the present 3-month waiting period for a beneficiary who enters a self-care training program prior to the end of the third month after the month his regular course of dialysis begins;

2. Providing coverage for disposable supplies (such as syringes, needles, and sterile drapes) required for home dialysis;

3. Proving coverage for periodic supportive services, including emergency visits and servicing of dialysis equipment, furnished by facilities to individuals dialyzing at home; and

4. Authorizing full reimbursement to facilities for dialysis equipment purchased by facilities for the exclusive use of patients dialyzing at home.

The bill also provides coverage for services of a self-care dialysis unit maintained by a rental dialysis facility.

ELIMINATE DISINCENTIVES TO TRANSPLANTATION

Several provisions are designed to eliminate disincentives to transplantation which expose transplant candidates to significant financial risk. Thus, the bill provides for:

1. Coverage for a transplant patient beginning with the month he is hospitalized, without regard to the waiting period of present law, if transplant surgery takes place within that month or the following 2 months;

2. Extension of the period of post-transplantation medicare coverage from 12 months to 36 months;

3. Immediate resumption of coverage, without a waiting period, whenever a transplant fails; and

4. Coverage for expenses incurred by live kidney donors, including the period of the donor's recovery.

REIMBURSEMENT METHODS

To assure more cost-effective reimbursement for dialysis services the bill provides for use of incentive reimbursement methods for services furnished by renal dialysis facilities to patients dialyzing in the facility or at home. Such methods may include prospectively set rates, a system for classifying comparable facilities, the use of target rates (adjusted for regional differences) with provision for sharing savings attributable to efficient and effective delivery of services, and other incentives to efficient performance. (The Secretary may use competitive-bid procedures, prenegotiated rate procedures or such other procedures as he finds feasible and appropriate in establishing the home dialysis target rates.)

The bill also clarifies present law concerning the alternative reimbursement methods available to physicians with respect to services provided in connection with routine maintenance dialysis episodes.

STUDIES, REPORTS, AND ADMINISTRATION

The bill requires the Secretary to conduct experiments and studies on ways to reduce program costs, without impairing quality of care, including studies relating to reuse of dialysis filters and the use of dietary controls, to increase public participation in organ donation programs and to assess alternative ways of financing renal disease services. The bill also requires the Secretary to submit an annual report to the Congress on the cost and operation of the program, and on developments in basic and applied research in the field of renal disease. The Secretary is authorized to develop appropriate administrative structures and arrangements to carry out his responsibilities.

TEACHING PHYSICIANS

In a provision whose applicability is not limited to the ESRD portion of medicare, the bill defers the effective date of a previously enacted provision (sec. 227 of P.L. 92-603) which deals with reimbursement under medicare for the services of physicians in teaching hospitals.

MINOR AND TECHNICAL AMENDMENTS

The bill amends the entitlement provisions of present law to clarify the intent that individuals with end stage renal disease are deemed to satisfy the requirements relating to disability beneficiaries. The bill also provides that the Administrator of the Health Care Financing Administration shall serve, in lieu of the Commissioner of Social Security, as the Secretary of the Board of Trustees of the Hospital Insurance and Supplementary Medical Insurance Trust Funds and shall be responsible for making reimbursement to HMO's under the medicare program.

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

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

The motion to lay on the table was agreed to.

REIMBURSEMENT OF U.S. MARSHAL SERVICE

The resolution (S. Res. 428) to authorize reimbursement of U.S. Marshal Service for service of committee subpenas, was considered and agreed to, as follows:

Resolved, That the Secretary of the Senate is authorized to pay out of funds appropriated to the Committee on the Judiciary, the sum of $1,777 to the United States Marshal for the District of Columbia as reimbursement for the mileage, witness fees, and expenses of five persons subpenaed by the committee, to testify at a hearing held by the committee on the nomination of Robert F. Collins to be a United States district court judge for the eastern district of Louisiana.

Mr. ROBERT C. BYRD. Mr. President, I ask uanimous consent to have printed in the RECORD an excerpt from the report (No. 95–725), explaining the purposes of the measure.

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

The resolution authorizes the Secretary of the Senate to pay from the funds allocated to the Committee on the Judiciary the sum of $1,777.00 to reimburse the U.S. Marshal for the District of Columbia for mileage, witness fees, and expenses of five persons subpenaed by the committee. In its consideration of the nomination of Robert F. Collins to be a U.S. district court judge for the Eastern District of Louisiana, the committee determined that it was necessary to subpena four persons from New Orleans, La., and one person from Baton Rouge, La., to testify on the nomination of Mr. Collins. The subpenas were issued by the committee and given to the U.S. Marshal for the District of Columbia for service by the marshal service, as authorized by section 569(b) of title 28, United States Code. The committee requested the marshal's service to disburse the necessary mileage and witness fees to the five persons at the time the subpenas were served and to reimburse them for lodging and other necessary expenses while attending the committee hearing which was held on March 3, 1978. While the five persons furnished written receipts to the marshal's service for these disbursements and expenses, the regulation of the Senate Finance Office would seem to require disbursement out of Senate funds direct to the witnesses involved. In order to avoid unnecessary paperwork and record-keeping, this resolution would authorize the disbursement directly to the U.S. Marshal as reimbursement for money expended at the request of the committee.

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

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

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, are there any orders for the recognition of Senators on tomorrow?

The PRESIDING OFFICER. There are none, I am told.

Mr. ROBERT C. BYRD. I thank the Chair.

ORDER FOR RECESS UNTIL 11:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11:30 tomorrow morning.

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

ORDER FOR RECOGNITION OF LEADERSHIP AND FOR ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow morning, after the prayer, the two leaders have not to exceed 5 minutes each and that following that there be a period for the transaction of routine morning business, with statements therein limited to 5 minutes each, the period not to extend beyond 12 o'clock noon.

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

Mr. ROBERT C. BYRD. At 12 o'clock tomorrow, the Senate would automatically resume its consideration of the treaty, would it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. And the pending question at that time would be on the adoption of the amendment by Mr. HELMS?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. There is a time agreement on that amendment of 1 hour, to be equally divided between and controlled by Mr. HELMS and Mr. CHURCH or their designees.

The PRESIDING OFFICER. The Senator is correct.

TIME FOR VOTE ON HELMS AMENDMENT TOMORROW

Mr. BAKER. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, in view of the commitments that a number of Senators have on our side tomorrow from 12 o'clock or approximately 12:30 until 2 o'clock, I wonder whether it might be possible to postpone the vote on the Helms amendment until, say, 2 o'clock in the afternoon.

Mr. ROBERT C. BYRD. Mr. President, there are similar needs on this side of the aisle.

I ask unanimous consent that the vote in relation to the amendment by Mr. HELMS occur at 2 p.m. tomorrow; that if the time on that amendment expires or is yielded back prior to that time, there be consent given for setting that amendment temporarily aside and for the purpose of proceeding with other amendments or motions with relation to the treaty; that if votes are ordered on such, they may be placed back to back, if there is a time agreement on those motions or amendments.

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

Mr. BAKER. I thank the majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, this means, then, that barring a vote for the purpose of establishing a quorum tomorrow, there would be no rollcall vote between 12:30 p.m. and 2 p.m. tomorrow. At 2 p.m. there would be a vote on the Helms amendment and possibly backup votes on other amendments and/or motions which may have been processed by that time. During the afternoon there will be other rollcall votes.

I understand that Mr. HELMS has a number of amendments. So tomorrow afternoon may be designated as "Helms day." I say that in good humor and with the understanding that Mr. HELMS does have, I believe, about five or six amendments to the article. He is quite willing to proceed, as he indicated today, with those amendments and under time agreements as we move along from amendment to amendment.

Mr. BAKER. Mr. President, if the majority leader will yield to me, I observed that the distinguished Senator from North Carolina does have a number of amendments. In his usual and characteristic spirit of cooperation, he has agreed to time limitations on all of them—I might add relatively short time limitations—and that has had a good effect on the likelihood that we could conclude consideration of several amendments remaining to this treaty before the time the Senate rises from the Committee of the Whole and proceeds to the consideration of the resolution.

Mr. ROBERT C. BYRD. That is in accordance with my understanding of the situation. Mr. HELMS is one of the most agreeable and cooperative of Senators.

Mr. LAXALT today indicated that consideration had been given earlier to the number of amendments that remain. He feels that, based on his information, the Senate will be able to take up each of the remaining amendments and allot a reasonable amount of time to them, and that Senators therefore will be able to have some discussion on those amendments before we rise from the Committee of the Whole at the close of business on Thursday.

So everything seems to be pretty well on schedule and on track.

RECESS UNTIL 11:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 11:30 tomorrow morning.

The motion was agreed to; and at 8:05 p.m. the Senate, in executive session, recessed until tomorrow, Tuesday, April 11, 1978, at 11:30 a.m.

NOMINATIONS

Executive nominations received by the Senate, April 10, 1978:

THE JUDICIARY

Alfred Laureta, of Hawaii, to be judge for the district court for the northern Mariana Islands for a term of 8 years (new position, Public Law 95–157).

FEDERAL ELECTION COMMISSION

The following-named persons to be members of the Federal Election Commission for terms expiring April 30, 1983:

John Warren McGarry, of Massachusetts, vice Neil Staebler, term expired.

Samuel D. Zagoria, of Maryland, vice William L. Springer, term expired.