mediate challenge is preparing those already on the job for the changing workplace. "Most of us still think education is for kids," he said, "[but] it's today's adults that face the intense competition." It is their performance that will determine competitive success, "not tomorrow's kids."

At Ford's Ypsilanti plant, UAW local president Bob Bowen echoes the concern for today's work force and the critical need for flexibility. "If you have an educated person, they can adapt to the change," he said, proudly listing fellow workers who have signed up to take high school courses in makeshift factory classrooms. "The only way we can be competitive is to have the best workers."

ABM TREATY INTERPRETATION

● Mr. McCONNELL. Mr. President, this morning, during the Senate Foreign Relations Committee consideration of the State Department authorization bill, the members spent the entire session debating interpretations of the ABM Treaty. There are sharply divided views on the committee.

To contribute to the discussion, the Senate Foreign Relations Committee minority staff prepared a report entitled, "The Anti-Ballistic Missile Treaty of 1972: Treaty Formation and Interpretation Under the Constitution." I would like to submit the summary of findings for the record.

I think my colleagues will find this report a straightforward, fair, and full presentation of an issue that has been discussed by some of my colleagues prematurely and with far too little emphasis on the Soviet record of violations and the Soviet's interest in SDI research and development. We have heard from a number of witnesses in the Foreign Relations Committee who have raised concerns about what we might, could, or should not do within the context of the ABM Treaty terms. There has been little discussion of the severe constraints that a new, restrictive interpretation would have on the security of our Nation. There has been little emphasis on the Soviet's SDI plans, programs, and goals.

I think the minority staff report is a useful reminder that this discussion is not just an abstract legal debate; there are very real security interests at stake.

I would like to submit the report's summary of findings and commend it to my colleagues for their consideration.

The summary follows:

THE ANTI-BALLISTIC MISSILE TREATY OF 1972: TREATY FORMATION AND INTERPRETATION UNDER THE U.S. CONSTITUTION

(Report of the Minority Staff to the Committee on Foreign Relations)

INTRODUCTION

Our Administration has stated that the Soviet Union now has an overwhelming strategic offensive first strike capability, and also an emerging nationwide ABM defense. This dangerous strategic imbalance is demonstrable objectively with unclassified data, and it presents a grave threat to American national security. It is precisely what the SALT treaties and negotiation process was supposed to prevent.

President Reagan's Strategic Defense Initiative essentially is our best response to this Soviet threat, but before the U.S. can deploy SDI we must first develop and test it. The Soviets, too, are hard at work on their own SDI-type systems, and the President has warned that they may be ten years ahead of the U.S. in space defenses.

The ABM Treaty has prevented neither a Soviet nationwide ABM defense, nor a Soviet lead in SDI-type systems development. It should not hinder the United States from developing our own responsive SDI either.

The issue is whether the ABM Treaty constrains American SDI development and testing. The Soviet interpretation of the treaty has always been that SDI-type development and testing is permitted for them, but since March 1985 they have tried to induce the U.S. to adopt a restrictive interpretation. The restrictive interpretation would make the U.S. SDI merely an endless, wasteful research program, thereby eventually choking it off and preventing a U.S. response to the grave Soviet threat. This is why the Soviets are trying so hard to induce the United States to adopt the restrictive interpretation.

The broad interpretation of the ABM Treaty would permit SDI development and testing, but not actual deployment. Unfortunately, it is only SDI deployment that will actually protect us.

The following is the draft SUMMARY of FINDINGS of a lengthy study by the Minority Staff to the Senate Committee on Foreign Relations. The study is entitled The Anti-Ballistic Missile Treaty of 1972: Treaty Formation and Interpretation Under the U.S. Constitution. This carefully researched study examines the Constitution and the rules of the U.S. Senate together with the 4 main sources for interpreting a treaty under international law: the terms of the treaty itself; the negotiating record; the ratification record; and the subsequent practice of the parties.

Analyzing the first 3 sources, the study concludes that the broad interpretation of the treaty is legally correct, but Soviet subsequent practice in violation of the treaty gives the U.S. the right to suspend or even terminate it in whole or in part. Moreover, the study concludes that a fundamental change of circumstances also provides a basis for the U.S. to amend, supplement, or terminate the treaty.

It would be tragically ironic if, in circumstances of Soviet ABM Treaty violations extreme enough to justify U.S. termination of the treaty, the U.S. instead should decide to constrain itself unilaterally in such a way that we were prevented from developing SDI as a response to Soviet ABM Treaty break out.

SDI development and testing is vital to American national survival, and the broad interpretation is not only legally correct, but it is also vital to deploying SDI.

II. FINDINGS REGARDING THE AGREEMENT OF THE TREATY PARTIES

1. The ABM Treaty instruments are consistent with a permissive or broad interpretation of development and testing rights for ABM systems based on "Other Physical Principles" (OPP.)

2. The ABM Treaty instruments, taken together, are inconsistent with a restrictive interpretation, by which future-type ABM system development rights would be limited to fixed, land-based systems and components. If Article II defining ABM system components encompasses future-type systems for purposes of Articles III through IX, then Agreed Statement D exempting development and testing of ABMs based on "Other Physical Principals" (OPP) would be superfluous, in failing to augment Article III deployment limits. Moreover, Article V(2) would be defective. Article V(2) limits development, testing, and deployment of automatic or semi-automatic systems for rapid reload of ABM launchers, but does not address laser or other directed energy systems with continuous fire capabilities. Thus the text of Article V(2) implies a scope that actually excludes future-type or OPP systems.

3. The negotiating record, properly reviewed per Article 32 of the Vienna Convention on the Law of Treaties, indicates:

(a) the Soviet version of Article II defined an ABM system as one consisting of the three conventional components, i.e. ABM interceptor missiles, ABM launchers, and ABM radars;

(b) the Soviet delegation accepted inclusion of the phrase "currently consisting of" to precede the list of then-existing ABM components only upon explicit U.S. assurance that the issue of possible constraints on future-type or OPP systems would be settled elsewhere than in Article II;

(c) the Soviet delegation recurringly excluded (or bracketed as non-agreed text) explicit limitations upon future-type or OPP ABM systems within the text of current Article V;

(d) Agreed Statement D was the sole textual agreement regulating future-type or OPP ABM systems and components; it mandated discussions before deployment, but not before development and testing; and

(e) neither Agreed Statement D nor a reported oral reference to it in January 1972 established a Soviet commitment to limit future-type of OPP ABM system development to fixed land-based systems.

4. The ABM Treaty instruments and negotiating record establish unambiguously that future-type ABM systems and components based upon "Other Physical Principles" than those embodied in ABM systems existing in 1972 may be developed and tested without limit upon their mode of potential deployment.

5. Future-type or OPP ABM systems or components may be tested as mobile land-based, sea-based, air-based, or space-based systems, so long as a system or component of a system, and not merely a subcomponent, is "created" subsequent to May 26, 1972 and is based on "Other Physical Principles" than those of the systems existing on May 26, 1972.

6. Agreed Statement D, together with Soviet assurances in the course of its negotiation, may be reasonably construed as precluding post-discussion deployments of future-type OPP ABM systems without amendment of the treaty by agreement of the parties, or by withdrawal from the treaty after six months' notice of jeopardy to "supreme national interests" of a party.

7. The Soviet Union may retain a claim-of-right to deploy ABM systems based upon "Other Physical Principles" in a fixed-land based mode after discussion and notice, but without the consent of the United States. The Soviets may claim: fulfillment of "the obligation not to deploy ABM systems and their components except as provided in Article III of the treaty," per Agreed Statement D; the right to modernize ABM systems per Article VII; fulfillment of a consultation duty in the Standing Consultative Commission per Article XIII; and no need for specific limitations per Article XIV amendment to the treaty, beyond the 1974 Protocol.

8. Interpreting the ABM Treaty as preserving development and testing rights for future-type OPP ABM systems and components accords with general principles of

"I want to be prepaed when it gets here," 55-year-old Daniel Hughes said of the new technology.

Hilton H. Schaarschmidt, who uses a computer to distribute automobile parts to be assembled by other workers, summed up his choice after more than two decades in the factory. "If I can't work the computer, someone else can; I would be back out on the [assembly] line," he said. "I don't want to be back out on the line."

RETRAINING WORKERS FOR THE YEAR 2000

Three-quarters of today's work force will still be working in the year 2000, so the training and retraining of current workers is critical in reviving the nation's standing in the world economy. Many believe that the next 10 or 15 years will be the period of the most intense global competition.

"We're going to make it or break it with these workers," said Pat Choate, director of policy analysis at TRW Inc. and a noted author on the subject of American competitiveness.

But for the long term, competitiveness must rely on the quality of education being offered in elementary and secondary classrooms, to youngsters still years away from their first paycheck.

"A failure in basic education in 1987 will be extremely difficult to rectify because of the very large scale and intense kinds of technological changes we know will be taking place in the future," University of California professor Shaiken said.

American schools, however, are doing "very poorly" in supplying a broad basic education, Shaiken said. "Many students graduate from high school without any grasp of basic math or reading skills. To the extent that continues, then competitiveness is just something you talk about."

Recent studies comparing the mathematics test scores of American schoolchildren to their international counterparts support Shaiken's pessimism. While Japanese schoolchildren finished first or second in most categories, American scores ranked in the middle in comparisons of eighth-grade arithmetic and algebra skills for 20 countries. U.S. achievement dropped even lower, to the botton quarter, in geometry and measurement. There was similar low performance among American 12th-graders in algebra and calculus.

"In school mathematics, the United States is an underachieving nation and our curriculum is helping to create a nation of underachievers," according to the Second International Mathematics Study, released this year.

While most experts put heavy emphasis on education as a competitive strategy, there is a minority viewpoint, based primarily on productivity statistics, that plays down education as a factor.

"I don't think we have strong evidence at all that losing competitiveness is due to the lack of a well-education populace," said Thomas G. Sticht, a San Diego consultant who has studied the link between literacy and productivity and participated in a recent Department of Education study of literacy. The loss of manufacturing jobs to workers overseas, he said, is due to the availability of cheap labor—not to higher educational levels abroad.

"That has nothing to do with the fact that somebody can't calculate a percentage," he said. Henry Levin, a Stanford University professor in education and economics, agrees that education is overrated as a factor in competitiveness. He asserts that most newly created employment in this country requires relatively low-level skills in service sector jobs, such as clerical work or jobs in the electronics component industry. Few of the new positions are for engineers or highly educated technicians.

And while the sophisticated products of an increasingly high-tech economy may be designed by a few highly skilled engineers, the real profits will come when the product is produced and sold. That will not require a highly sophisticated work force, Levin said.

"It's easy to talk about education as the problem . . . [but] what is it about education that's going to make a difference?" he asked. "Education is part of the solution, but it's not as crucial a solution as people make it to be."

THE JAPANESE PHILOSOPHY: IMPROVEMENT

Down the road from Ford's Ypsilanti building, executives at a new Mazda plant in Flat Rock, Mich., say they have a very clear idea of how education can make a difference.

They want their new employees to be able to work in teams, to rotate through various jobs, to understand how their task fits into the entire process, to spot problems in production, to trouble-shoot, articulate the problem to others, suggest improvements and write detailed charts and memos that serve as a road map in the assembly of the car.

For the Japanese-owned company, it adds up to a management philosophy modeled on the Japanese concept of *kaizen*, roughly translated as "improvement." That means that every employee, executive to custodian, is expected to help find ways to build "the best car at the lowest price."

"The plant of the past required individuals . . . to perform a task within very specific parameters, very routine," said David Merchant, vice president for personnel at the Mazda facility. "The plants of the future, which are the plants of today, require people to do a lot more than that . . . . Education is important in terms of preparing people to do that."

Merchant is overseeing an extraordinary effort to create a work force—mostly American—that matches the Japanese philosophy. In preparation for its assembly line to open this fall, the company is sifting through more than 96,000 applicants to fill 3,100 hourly positions, using what it says is the most complex hiring process in the United States or Canada.

Applicants are given a two-hour written test in reading, writing and math. They are interviewed at length, asked to undergo a medical exam and given a two-step "assessment." Before they complete the process, successful applicants may have been in the pipeline for two months and will have spent up to six hours being observed in discussion groups and another six hours at a simulated team assignment, assembling an automobile part, for example.

The company, which every week tests 600 applicants and interviews and assesses more than 100, has been "a little disappointed" at the number of applicants who lack the basic math and language skills, but nevertheless has found plenty of qualified people to hire, Merchant said.

Compare that handpicked batch of fresh employees to the work force at Ford, where the average hourly worker has more than 17 years on the job. Financial hard times, largely due to foreign competition, have cut the company's hourly work force nearly in half. The remaining workers are those with the most seniority, hired at a time when little attention was paid to education skills and the rule of thumb for hiring was, as one union official said, "FBI": friends, brothers, in-laws.

At Mazda, there has been no need to offer remedial programs in reading, writing or math to the hundreds of workers who have so far been hired. But ford and other longtime employers have found that before they can retrain, they must help substantial numbers of employees become literate.

"It's pretty hard to give somebody computer training if they don't have the three Rs," said Mark Dillon, a spokeman for American Crystal Sugar Co. in Moorhead, Minn.

As his company added computerized testing equipment to its sugar manufacturing process, it became clear that some employes were unable to read and write and could not be trained without remedial courses. But fewer than two dozen employes signed up for the literacy classes the company began offering. "It takes a pretty big person to say, 'I have to learn to read,'" Dillon said.

FIGHTING U.S. FUNCTIONAL ILLITERACY

"Functional illiteracy" among American aduts often is cited as one of the biggest obstacles in the nation's efforts to improve productivity. While 95 percent of young adults are literate, there are large numbers who fail at more complicated tasks required to function effectively in most jobs.

A recent survey by the National Assessment of Educational Progress reported that only 43 percent of Americans in their early 20s could decipher a street map, for example.

Donald Fronzaglia, director of personnel for the Polaroid Corp., said his company because aware of the literacy problem years ago when a supervisor was investigating why the rate of scrap—material discarded as unusable—had gone up significantly in one section of the plant.

When the supervisor asked an employe to demonstrate how he was cutting film into sections, he found that the worker couldn't read a tap measure and was throwing away large sheets of film that could have been cut into usable pieces. The supervisor eventually discovered that other workers lacked similar basic skills.

Polaroid has introduced literacy programs, also aimed at preparing workers to participate more in problem-solving on the production line. "We believe the people closest to the problem are in the best position to understand what went wrong," Fronzaglia said. "People who don't have [basic] skills may repeat the same error."

Aside from the challenge of retraining those on the job, there is the problem of the growing number of Americans who, largely because of poor skills, will never find work or will end up moving from one menial, low-paying position to another. The financial drain on society created by this group—in welfare, drug problems, urban crime and incarceration—will have increasingly serious implications for the nation's economic health and competitive position, according to several recent studies.

A report by the National Alliance of Business warns of the dramatic change in the worker pool looming ahead over the next 10 to 15 years.

"Most striking will be the growth of less-well-educated segments of the population that have typically been the least prepared for work," the report said. "The number of minority youth will increase while the total number of youth of working age will decline. The number of high school dropouts will rise as will the number of teen-age mothers."

The report urged businesses and government to improve education, training and retraining. "No [economic] sector can afford a growing underclass that cannot get or keep jobs. . . ."

Despite the dismal predictions, economist Choate and many others argue that the im-

international law. It preserves a permissive construction, when a restrictive construction would impair on an indefinite basis an attribute of sovereignty, the right of self-defense. It accords with Article 51 of the United Nations Charter, which codifies the inherent right of individual and collective self-defense, and with Article 103 of that Charter, which precludes impairment of Charter rights by subsequent treaties.

III. FINDINGS REGARDING RATIFICATION OF THE TREATY

9. The U.S. Senate gave its advice and consent for the President to ratify the ABM Treaty without any amendment, reservation, declaration, or interpretation whatsoever intended to qualify the obligations of the treaty parties as signed by the President on May 26, 1972.

10. The Senate Rules in effect during consideration of the ABM Treaty were those for the 92nd Congress. See S. Doc. 92-1. Review of Rules XXXVI and XXXVII (now revised as Rules XXIX and XXX) indicates that the Senate could act only as a body, whether in the procedures for amendment to the treaty text in the Committee of the Whole, or in the procedures for interpretation of the treaty, namely, by amendment to the resolution of advice and consent to ratification by the full Senate, per Rule XXXVII(1). Thus the Rules of the Senate in effect in 1972, then as now, preclude amendment, reservation, or interpretation affecting the obligations of treaty signatories except by action by the Senate as a body. See Rule XXXVII.

11. All of the official documents submitted by, and testimony of the officials presumptively authorized to bind the United States in making treaties—the President, the Secretary of State, and the Head of the SALT I delegation—are consistent with a limitation of future-type OPP ABM systems before deployment only. Development and testing of future-type OPP ABM systems and components is not prohibited. Moreover, neither in the treaty instruments submitted by the Secretary of State and transmitted by the President, nor in the official testimony of Secretary Rogers and Ambassador Smith was there a single statement explicitly limiting development and testing of future-type OPP ABM systems only to a fixed land based mode.

12. On June 13, 1972, the President transmitted seven Agreed Statements signed by the heads of delegation, within the ABM Treaty instruments. These are within the scope of the resolution of ratification of August 3, 1972, and are within the treaty instruments exchanged between the two governments on October 3, 1972. These Agreed Statements include Agreed Statement D, and other agreed interpretations. The Senate acted upon the ABM Treaty, including Agreed Statement D, as a body, in accordance with Senate Rule XXXVII. Agreed Statement D establishes a duty, in event that future-type ABM systems or components based on Other Physical Principles "are created in the future:"

"In order to ensure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty . . . specific limitations on such systems and their components would be subject to discussion in accordance with Article XIII [establishing the Standing Consultative Commission] and agreement in accordance with Article XIV [for amendment] of the Treaty." (Emphasis added.)

13. Senate rules in effect during the 92nd Congress, as now, require for amendment, reservation, or binding effect of an interpretation of a treaty more than mere interpretative declaration of either an individual witness or a member of the Senate in the course of hearings or during Floor debate, unless the Senate as a body formally approves this interpretation by amendment to the treaty or by reservation contained within the resolution of advice and consent to ratification. See Rule XXXVII.

14. Interpretive declarations of witnesses or members during hearings of the Senate Committee on Foreign Relations or the Committee on Armed Services have no effect upon legal duties under a treaty with an unqualified resolution of advice and consent to ratification. The main evidence in the Nunn Report is irrelevant to the role of the Senate in treaty formation. The Senate must act as a body, as in the Committee of the Whole, or as the full Senate, to affect the obligations under a treaty. The Rules of the Senate, together with customary practices under the Rules, as amended, establish that the internal deliberations of committees are not authoritative acts of the Senate for purposes of qualifying obligations under a treaty pursuant to Senate Rule XXXVII (in 1972), now revised as Rule XXX.

15. Where the Senate as a body does not condition its advice and consent to ratification upon an amendment to the treaty, reservation, or qualification of the resolution of ratification, the internal deliberations of a Senate committee may have only a supplementary, probative value in ascertaining the meaning of the terms of a treaty, if the meaning of the terms in the treaty instruments, as supplemented by the generally more pertinent preparatory work on the treaty, remains unclear. Internal Senate deliberations may be utilized as supplementary means of interpretation, per Article 32 of the Vienna Convention.

16. When the terms of a treaty are explained by a report of a committee of the Senate, the report of the committee is neither binding on the U.S. nor on other parties, but it may constitute a supplementary means of ascertaining the agreement of the parties. The Senate Committee on Armed Services did not even issue a report on the ABM Treaty. The Senate Committee on Foreign Relations issued a report in July, 1972. It explicitly treated "future exotic types" of ABM systems in a brief summary at pages 3-4. It stated that future exotic types of OPP ABM systems "may not be deployed even in permitted areas." It specified for future exotic type ABM systems no limitation on the development or testing, other than the specific prohibition on deployment. It relied on the section-by-section analysis of the Secretary of State that also identified only a prohibition upon deployment, not upon development and testing of future-type exotic or OPP ABM systems.

17. The debate on the ABM Treaty on the Floor of the Senate occurred subsequent to inconsistent testimony by officials testifying before committees: the Secretary of State, Head of the SALT I delegation, and Chairman of the Joint Chiefs of Staff indentified the deployment phase as the first prohibited phase regarding future-type OPP ABM systems or components, without specifying any limitation on development and testing or of the permitted mode of basing of OPP ABM systems being developed and tested. These were the most authoritative witnesses, because two of them has the authority to bind the United States in the negotiations.

In contrast, hand corrected testimony of Dr. John S. Foster, a written response to supplemental questions to defense Secretary Laird, and various other statements of witnesses indicated that some Executive Branch officials who were not present at the negotiations considered that the Soviet government had acquiesced in limiting development and testing of future-type OPP ABM systems and components to a fixed land based mode.

18. Notwithstanding notice of alternative interpretations of rights and restrictions upon future-type OPP ABM systems, no member of the Senate among the 90 members present and voting on the ABM Treaty, proposed an amendment to the treaty itself, a reservation, binding interpretation, or other amendment to the resolution of advice and consent to ratification. The resolution of advice and consent to ratification passed by a Senate vote of 88 to 2 on August 3, 1972.

19. By passing a "clean" resolution of ratification, the Senate had no reason to and did not instruct the President to communicate any particular interpretation of the obligations under the treaty respecting future-type OPP ABM systems. Even had the Senate acted as a body to qualify its consent to ratification, which it did not, the failure to communicate that qualification to the President, and from the President to the other treaty party, would have the effect of deleting the qualification from the treaty obligations.

It was, in 1972, settled law that a proviso adopted by the Senate to qualify a treaty, if excluded from the instruments of ratification, and not communicated to the other treaty party, will have no legal effect on the other treaty party. This is still settled law today.

See *New York Indians* v. *U.S.* 170 U.S. 1 at 23 (1897). The same lack of legal effect results from later enactment of a resolution of the Senate attempting to reinterpret a previously-ratified treaty: "It cannot be regarded as part of the treaty, since it received neither ther approval of the President nor the consent of the other contracting power. . . Obviously, the treaty must contain the whole contract between the parties, and the power of the Senate is limited to a ratification of such terms as have already been agreed upon between the President, acting for the United States, and the [representatives] of the other contracting power. The Senate has no right to ratify the treaty and introduce new terms into it, which shall be obligatory upon the the other power, although it may refuse its ratification or make such ratification conditional upon the adoption of amendments to the treaty." See *Fourteen Diamonds* v. *U.S.*, 183 U.S. 176 at 182, 183 (1901) (Brown, J., concurring opinion). As Professor Louis Henkin wrote in 1972: "Attempts by the Senate to withdraw, modify, or interpret its consent after a treaty is ratified have no legal weight; nor has the Senate any authoritative voice in interpreting a treaty or terminating it." (*Foreign Affairs and the Constitution*, page 136, emphasis added.) Where a foreign party to a multillateral convention has failed to transmit the act of its legislature, even when the legislature has acted as a body to qualify the applicable provisions of the (Warsaw) convention, a U.S. court will apply the terms of the treaty without the legislative qualification. See *Kelly* v. *S.A. Belge*, 242 F. Supp. 129 (1965) at 141-142. Moreover, a foreign government's insistence upon an interpretation of a treaty provision, not officially transmitted to U.S. treaty negotiators, will not be considered by a U.S. court. See *sullivan* v. *Kidd*, 254 U.S. 433, 442 (1921).

20. Only two members of the Senate, both of whom were among the 88 who voted affirmatively to give advice and consent to reatification, mentioned future-type OPP ABM systems during the floor debate. Neither of the two Senators who mentioned possible treaty effects on development and testing of future-type OPP ABM systems

relied upon his understanding of this issue as a basis for voting to ratify the treaty.

Senator Hiram L. Fong of Hawaii expressed support for the ABM Treaty and the SALT I Interim Agreement. Senator Fong expected that research and development was allowed, "but not the deployment of exotic or so-called future systems." Senator Fong expressed an interest in extensive arms limits, not in reliance upon but despite the perception of a permissive development regime for future-type OPP ABM systems. Congressional Record, pp. S-26707, 26708, August 3, 1972.

Senator Strom Thurmond of South Carolina expressed support for the ABM Treaty in spite of the Senator's perception of a restrictive regime for exotic future-type OPP ABM systems. Senator Thurmond identified as a drawback of the ABM Treaty a perceived limit on developing "new kinds of systems to protect our population. The most promising type appears to be the laser type, based on entirely new principles. Yet we forego forever the ability to protect our people." Congressional Record, S-26700, August 3, 1972. Senator Thurmond explained his vote in favor of the ABM Treaty despite, not because of, his perception of development and deployment limits on future-type OPP ABM systems: "It is my judgment that, on balance, the ABM Treaty should be approved despite the drawbacks. I cite the negative side so that we do not enter into this treaty in a state of euphoria." S-26700, August 3, 1972.

Thus in the Senate Floor debate, only 2 out of the 88 Senators who voted affirmatively on the ABM Treaty specifically referenced development of future-type OPP ABM systems. The public record indicates that neither of the two Senators considering this issue voted affirmatively in reliance upon either restrictive or permissive conditions for mobile or space-based "exotic" future-type OPP ABM systems. Senator Fong favored the ABM Treaty despite a perceived permissive development regime. Senator Thurmond favored the ABM Treaty despite a perceived restrictive development regime.

The only Senator shown by the Floor debate to have possibly relied upon a restrictive regime, Senator James L. Buckley, voted against ratification. But Senator Buckley had already announced his "grave misgivings" about the SALT I agreements before "future system" limits were publicly identified. See The New York Times, May 27, 1972, pp. 1-8. Because Senator Buckley's oppostion to the ABM Treaty preceded the very limited Senate consideration of future system development issues, this is scarcely strong reliance. The Congressional Record for August 3, 1972, at S-26700, indicates Senator Buckley's greater concern that future-type OPP ABM systems might not be legally deployed than that they not be developed. Both the restrictive and permissive interpretations ban deployment. Either way, Senator Buckley opposed the ABM Treaty. This is scarcely evidence of reliance on the issue of future systems by Senators who voted the opposite way and who did not mention future systems in the Floor debate.

21. If the only two affirmatively-voting Senators who mentioned the future system development issue took opposite positions on what the treaty allowed, and voted in favor of the ABM Treaty despite their views on this obscure issue, what does this imply about the degree of reliance by the 86 affirmatively-voting Senators who failed to mention the development of future-type OPP ABM systems during the Floor debate? It strongly suggests that the 86 Senators who were silent on this future systems issue did not indicate any reliance upon it in casting their affirmative votes.

22. The clear inattention to exotic ABM technology, which Henry A. Kissinger, former Assistant to the President for National Security, said was regarded in 1972 like "science fiction," was part of a general inattention to the details of the entire ABM Treaty on the part of the Senate as a body. The entire summary of treaty provisions occupied only two pages in the SALT I Report of the Senate Committee on Foreign Relations. Most of the Senate's attention was focused on the merits or demerits of a defense of the national capital, and the effects of limiting strategic offensive weapons under the Interim Agreement.

23. Senate Majority Leader Mike Mansfield summarized the clear lack of concern for ABM Treaty effects and the lack of Senate interest in studying, debating, or interpreting the treaty during the Floor debate of August 3, 1972.

"We are considering one of the most important treaties to come before this body in a good many years. Yet, there seems to be little interest on the part of the membership to discuss the pending business. We will have to twiddle our thumbs and wait for the expiration of the time limit unless . . . [members] undertake their constitutional responsibility." Quoted in H. Purvis and S.J. Baker, Legislating Foreign Policy, Boulder, Colorado: Westview Press, 1984, pp. 162-163.

24. To characterize the views of Senators and Executive Branch witnesses as "unanimous" in supporting a restrictive interpretation, as Senator Biden stated on March 11 and 26, 1987, is to seriously misrepresent the entire ratification process.

25. To characterize the inaction of the Senate as a body as "reliance" upon a restrictive view of rights, as does the Nunn Report of March 1987, is to misconstrue the actions of the Senate on the ABM Treaty. The Senate neither amended, reserved, or conditioned its advice and consent to ratification upon any view of future-type OPP ABM systems.

26. The Senate Committee on Foreign Relations in its July 1972 report did at least assert that exotic future-type OPP ABM systems "may not be deployed even in permitted areas." (Emphasis added.) Senators may have relied upon this report in consenting to ratification of the treaty. There was no contrary testimony, in contrast to positive assertions stating the permissibility of developing and testing mobile ABM systems and components based on Other Physical Principles.

27. In the event of perceived ambiguity regarding the scope of Agreed Statement D, the duty of good faith incumbent upon all treaty parties may lead the U.S. to interpret Agreed Statement D as prohibiting deployment of future-type OPP ABM systems unless a party suspends or withdraws from the treaty, the parties amend its terms, or the U.S. ascertains through review in the Standing Consultative Commission that the Soviet Union reserves a claim to deploy future-type systems in the one permitted land based ABM area.

IV. SUBSEQUENT PRACTICE AFFECTING TREATY OBLIGATIONS

28. Subsequent practice of the parties includes amendment of the ABM Treaty by the Protocol of 1974 (restricting each side to a single deployment area), and by Agreed Statements in October 1978 and June 1985 (affecting concurrent SAM-ABM missile and radar testing and duties pertaining to Article VI on ABM-mode testing constraints). These agreements establish a practice of modifying treaty rights and duties only by express written agreement. These agreements do not materially affect interpretation of the right to develop future-type OPP ABM systems.

29. There has not been subsequent practice in the application of the treaty which establishes the subsequent agreement of the parties regarding interpretation of Articles III and V, and Agreed Statement D, per Vienna Convention Article 31(3)(b).

30. Subsequent statements proximate to treaty ratification by officials presumptively authorized to represent and bind the U.S. government—the President, the Secretary of State, and the Head of the SALT I delegation—are consistent with a permissive (broad) interpretation of ABM development rights for future-type OPP ABM systems.

31. A Statement "on behalf of the Soviet government" proximate to treaty ratification by the Presidium of the USSR on September 29, 1972, expressly rejected unilateral U.S. declarations interpreting SALT I obligations during the U.S. ratification process. Pravda reported on September 30, 1972 the proceedings before the closed meeting of the Presidium of the USSR in the Kremlin on September 29th:

V. V. Kuznetsov, First Deputy Foreign Minister, stated "on behalf of the Soviet government"

"At the same time, to this day there are political figures in the United States who continue to insist on pursuing 'from a position of strength' policy with regard to the Soviet Union. During the discussions of the Soviet-U.S. agreements in the United States, these figures advanced various far-fetched 'conditions' and 'interpretations' for the agreements which had already been signed, thus intended to obtain one-sided advantages for the United States . . . The treaty and the interim agreement need no far-fetched interpretations or conditions. It is important that the clauses of the agreements which have been concluded be steadily implemented in both their letter and their spirit." Pravda, September 30, 1972, pp. 1-2.

This top level Soviet statement also suggests that the USSR would have rejected any U.S. attempts to condition ratification of the treaty in any way, just as Soviet negotiators had repeatedly rejected U.S. attempts to restrict development and testing of future-type OPP ABM systems.

32. Other Soviet official statements, subsequent to the ABM Treaty signing but preceding ratification, are consistent with a permissive, broad interpretation of future-type OPP ABM development and testing rights. During U.S. Senate consideration of the ABM Treaty, on June 21, 1972 the USSR Ministry of Foreign Affairs signed to press an article apparently written by Victor Viktorovich Shustov, an official of the Soviet Ministry of Foreign Affairs. The article appeared under Shustov's usual pseudonym, V. Viktorov, and was entitled "Agreements of Historic Importance." The "Viktorov" article, published in Mezhdunarodnaya zhizn [International Affairs], Number 7, July 1972, at pp. 18-27, contained a paragraph which referred to "the emergence [poiavlenid] of new deployed ABM systems." An inference could be drawn that new ABM systems might "emerge" until the stage of deployment. An alternative translation of the Russian word "poiavlenid" is the word "appearance," in the context of the initial appearance of the fully developed system. Either of these translations is consistent with a permissive interpretation of the future-type OPP ABM system development issue:

"The significance of the Soviet-U.S. SALT accords signed in Moscow is exceptionally great. These documents are primarily an ex-

pression of the sides' intention to avoid a new round in the nuclear missile arms race. Consistent implementation of these accords will prevent the emergence [poiavlenid] of new deployed ABM systems. This in turn will considerably reduce the incentive to develop more sophisticated types of offensive weapons. These would inevitably appear if ABM systems developed without restriction since the desire constantly to improve ABM defense would lead to a situation in which the arms race process would continue to gather momentum uncontrollably."

Later, during the Soviet Presidium's consideration of the ABM Treaty preceding their vote recommending ratification on September 29, 1972, Soviet Defense Minister Grechko asseted:

"[The ABM Treatly] imposes no limitations on the performance of research and experimental work aimed at resolving the problem of defending the country against nuclear missile attack . . ." (Emphasis added.)

In The Washington Post on September 30, 1972, Robert Kaiser wrote an article which placed the Senate on notice, three days before the exchange of instruments of ratification, of the prospect that the Soviet Union had a rationale for a permissive interpretation of future-type OPP ABM development and testing rights:

"Grechko's curt remark does not provide enough evidence to say whether the Soviets now have another interpretation. It is possible that the Soviet defense minister was only reassuring hardliners here [in Moscow] that research and development on all kinds of weapons will continue . . ."

33. Excepting official statements proximate to ABM Treaty ratification, which provide supplemental evidence consistent with the permissive interpretation of the treaty, subsequent abstract statements that precede the actual "creation" of new ABM systems or components lack the practical foundation by which to infer practical construction of the treaty. Agreed Statement D is contingent for its application upon the future occurrence of a condition subsequent, i.e. creation of future-type OPP ABM systems or components.

34. Between May 1972 and June 1985 there is no record of official Soviet reference to or legal analysis of Agreed Statement D in open, unclassified publications. As evidenced by a letter from Ambassador Henry Cooper placed in the CONGRESSIONAL RECORD by Senator Quayle, as recently as March 1985 the Soviet Union tabled a draft arms control treaty to limit weapons in space, indicating that in the Soviet view the ABM Treaty did not heretofore prohibit development and testing of ABM systems or components of future types in a space-based mode.

35. Official Soviet statements since May 1985 indicate official Soviet interest in adopting, after 13 years of protecting their own right to develop and test mobile future-type systems, a restrictive interpretation of rights to develop and test ABM systems and components based on "Other Physical Principles," at least as it would apply to the U.S.

36. Official U.S. statements in the period 1978 to 1984, in connection with Arms Control Impact Statements prepared by the U.S. Arms Control and Disarmament Agency, indicate either a disruption of institutional memory of the failure to obtain Soviet agreement upon a restriction of future-type OPP ABM system development rights, or an effort on the part of some U.S. Executive Branch officials to extend restrictions upon future-type OPP ABM systems to accomplish what the ABM Treaty negotiators failed to accomplish between 1969 and 1972 during the negotiations. But even these official U.S. statements in the period 1978 to 1984 are not indicative of an intent by the U.S. government to modify the terms of the ABM Treaty, or to bind the U.S. unilaterally to more restrictive obligations than apply to the Soviet Union.

37. Establishment of the U.S. Strategic Defense Initiative Organization (SDIO) in 1984 created conditions under which ABM development rights had a potential practical impact, and was a precondition to U.S. practical construction of the ABM Treaty's Agreed Statement D.

38. Commencing with Department of Defense initiatives to review ABM development rights in 1984-1985, the Reagan Administration commenced the assembly of ABM Treaty negotiating records in January 1985, and initiated review of the ABM Treaty obligations in 1984-1985. In October 1985 the Legal Adviser in the Department of State completed a preliminary review of the ABM Treaty instruments and the negotiating record, and concluded that a permissive or broad interpretation of development and testing rights for future-type OPP ABM systems was supported by that record.

39. In August 1986 the President reviewed a supplemental memorandum of the Department of State Legal Adviser on the ABM Treaty. The President decided to provide the U.S. Senate access to the negotiating records of the ABM Treaty, pursuant to the request of Senator Sam Nunn and members of the Committee on Foreign Relations, following passage of an amendment to the Defense Authorization Bill to compel the production of documents.

40. Following review of the negotiating record, and concurrent with the release of the first installment of the 157 page Nunn Report on ABM Treaty interpretation on March 11, 1987, Senator Joseph Biden introduced S. Res. 167, which if enacted would bar recourse to the ABM Treaty negotiating record to ascertain the meaning of the terms, or any special meaning given to a term, in contradiction of Article 31(4) and 32 of the Vienna Convention on the Law of Treaties and the incorporation of customary international law in the U.S. Constitution.

V. SUBSEQUENT SOVIET PRACTICES IN VIOLATION OF THE ABM TREATY PROVIDE THE UNITED STATES THE RIGHT TO SUSPEND OR TERMINATE THE ABM TREATY IN WHOLE OR IN PART

41. Practices of the Soviet Union subsequent to ratification of the ABM Treaty in 1972 constitute evidence of an expanding pattern of Soviet violations of ABM Treaty duties. The Soviet Union embarked upon concurrent testing of ABM and air defense system components virtually from the outset of the ABM Treaty's ratification. The Soviets demonstrated a capability for rapid relocation of a moveable ABM-3 type radar, the Flat Twin, quickly moving it from Sary Shagan to Kamchatka in 1975. The Soviets continued development work on moveable radar systems with ABM applications. Even before signing the SALT II Treaty in 1979, the Soviet government had underway a program to construct the large ABM radar near Krasnoyarsk, in violation of Article VI(b) of the ABM Treaty. This radar was completed externally in 1986, after fruitless U.S. diplomatic efforts to induce a halt in its construction.

42. A variety of activities, some legal and some almost certainly illegal, suggest Soviet provision of a base for the defense of the national territory of the Soviet Union, even while some members of the Senate propose to restrict unilaterally the U.S. testing and development of future-type OPP ABM systems and components.

43. Official unclassified findings of Soviet violations of the ABM Treaty are summarized in the following table:

PRESIDENTIAL REPORTS TO THE CONGRESS ON SOVIET NONCOMPLIANCE WITH THE ANTI BALLISTIC MISSILE TREATY OF 1972

Issue	GAC report, Dec. 2, 1983	President			
		Jan. 23, 1984	Feb. 1, 1985	Dec. 23, 1985	Mar. 10, 1987
Overall assessment			Potential violation	May be preparing defense of national territory.	Continuing concerns; may be preparing defense of national territory.
Deployment of Krasnoysrsk radar	Violation	Almost certainly a violation	Violation	Violation; no corrective action	Violation; appeared to be completed externally in 1986.
Mobility of ABM components	FLAT TWIN radar move; violation	Potential violation	Potential violation	Potential violation	Potential violation.
Concurrent testing of ABM and air defense components.			Highly probably violations	Highly probably violations	Highly probably violations.
ABM capabilities of modern SAMs				SA-X-12 may have some ABM capability.	Evidence insufficient.
Rapid reload of ABM launchers			Classified report	Serious cause for concern	Serious cause for concern; legal ambiguity.
Deliberate concealment measures	Violations				

Sources: Report by the President to the Congress of October 10, 1984, summarizing the GAC Report of Dec. 2, 1983; Reports by the President to the Congress on Soviet noncompliance, Jan. 23, 1984, Feb. 1, 1985, Dec. 23, 1985, and Mar. 10, 1987.

44. The United States has the right to suspend or terminate, in whole or in part, the ABM Treaty as a consequence of acts of the Soviet Union that defeat an essential object or purpose of the treaty, as provided by Article 60 of the Vienna Convention on the Law of Treaties.

45. The United States has the further rights to withdraw from the ABM Treaty in event that "extraordinary events" jeopardize its "supreme interests," per Article XV(2) of the ABM Treaty.

46. The United States has the right to defer withdrawal from the ABM Treaty while seeking through negotiations the cessation of ongoing illegal Soviet activities; the United States may preserve its right to withdraw from the treaty as a consequence of material breach.

VI. A FUNDAMENTAL CHANGE OF CIRCUMSTANCES (REBUS SIC STANTIBUS) PROVIDES A BASIS TO AMEND, SUPPLEMENT, OR TERMINATE THE TREATY

47. Article 62 of the Vienna Convention on the Law of Treaties permits a party to invoke as a ground for terminating or withdrawing from a treaty a "fundamental change of circumstances" in accordance with the doctrine of rebus sic stantibus. The existence of the circumstances which have changed must have "constituted an essential basis of the consent of the parties to be bound by the treaty;" and "the effect of the change" must be "radically to transform the extent of obligations still to be performed under the treaty."

48. A statement of the Head of the U.S. SALT I delegation, Ambassador Gerard C. Smith, on May 9, 1972, is evidence that an essential basis of the ABM Treaty, on the U.S. side, was the continuing efficacy of limitations on strategic offensive arms, so as to "constrain and reduce on a long-term basis threats to the survivability of our respective strategic retaliatory forces."

49. Soviet evasion of SALT I Interim Agreement limits on "heavy" ICBM deployments between 1972-1979, Soviet augmentation of strategic offensive forces between 1972-1979, Soviet creation of an overwhelming first strike counterforce threat, Soviet maintenance since 1985 of strategic nuclear delivery vehicles in excess of those agreed for SALT II, Soviet violations of the qualitative limits of SALT II, and the termination of SALT II as a political commitment by reason of Soviet treaty violations in May 1986, preclude "the survivability of our strategic retaliatory force" with the ABM Treaty limits established in 1972, and further limited by the ABM Protocol of 1974.

50. The failure of the parties to the ABM Treaty to further constrain and reduce on a long-term basis threats to the survivability of the respective strategic retaliatory forces constitutes a fundamental change of circumstances essential to safeguarding the purposes of the ABM Treaty itself.

51. Systematic Soviet evasion of ABM Treaty provisions intended to preclude covert or rapid overt deployment of illegal ABM systems, constitutes a further and fundamental change of circumstances essential to achieve ABM Treaty purposes. Soviet acts that defeat the confidence building purposes of the ABM Treaty include: concurrent testing of strategic surface-to-air interceptor missiles and radars in an ABM-mode with ballistic missiles and ABM system components; the deployment of more than ten thousand SAM systems that are largely mobile and that some Soviet officials admit can intercept ICBMs; the deployment and ongoing construction of permitted large phased array radars (LPARs) on the periphery of Soviet territory, but with redundant, overlapping, and interneted coverage and potential or actual roles in ABM battle management and the deployment of an illegal LPAR near Krasnoyarsk.

Timely warning of the provision of an illegal base for the illegal defense of national territory can no longer be assured as a consequence of the concurrent development, testing, and deployment of long-lead time components of Soviet systems that may be or become part of a territorial defense of the Soviet Union against ballistic missiles.

52. On the U.S. side, the Strategic Defense Initiative research program indicates the potential feasibility of developing technology and systems that may provide the means for exercising the right of national self-defense. The right of self-defense is inherent in national sovereignty and customary international law as codified in Article 51 of the United Nations Charter. The potential feasibility of developing future-type ABM systems that include components based on "Other Physical Principles" than those of ABM systems in existence when the ABM Treaty was signed may constitute a fundamental change of circumstances.

53. The inability to constrain and reduce threats to the survivability of strategic retaliatory forces, the inability to provide reliability warning of covert or rapid overt deployment of Soviet ABM systems as a consequence of acts not expressly banned by the ABM Treaty, together with concurrent testing that is irreversible, and the potential feasibility of developing ABM systems based on "future-type" OPP ABM technology, altogether constitute fundamental changes of circumstances since the signing of the ABM Treaty fifteen years ago.

54. The aforementioned fundamental changes in circumstances provide the policy and legal basis for amending, supplementing, or terminating the ABM Treaty for the purpose of strengthening international security in future decades.

PRELIMINARY RECOMMENDATIONS

1. Unless unequivocal information is reported by the Legal Advisor of the Department of State, contradicting the findings of the August 1986 report indicating failure of the contracting parties to restrict, in 1972, rights to develop mobile ABM systems or components that are based on "Other Physical Principles," the United States should adopt a permissive or broad interpretation of ABM Treaty development and testing rights.

Various objectives may be served by adopting a permissive or broad interpretation of the ABM Treaty:

(a) The Strategic Defense Initiative Organization and the military services can design a test program for the purpose of demonstrating system performance with lesser expenditure of time and funds if ABM Treaty development rights for mobile and space-based development and testing for future-type OPP ABM systems are exercised;

(b) The President has already placed on the bargaining table a proposal to defer ABM system deployment until 1996. Adoption of a permissive interpretation of development and testing rights as fully in accord with the treaty obligations agreed upon in 1972, strengthens the credibility of the President's proposal during ongoing arms control negotiations; and

(c) Adoption of a legally correct interpretation of the ABM Treaty signals to the Soviet Union that its increasingly brazen pattern of expanding ABM Treaty violations will not, by intimidation or threat of further violations, cause the United States to impose upon itself a policy of unilateral vulnerability.

2. The Senate should request that the President expedite determination of criteria that distinguish "Other Physical Principle" future-type ABM systems from current type ABM systems.

The President should advise the Senate regarding whether an ABM system that relies upon one component that was not in existence as of May 26, 1972 qualifies the entire AMB system as an OPP system.

3. The Senate should recommend to the President declassified publication of:

(a) ABM Treaty negotiating records pertaining to development, testing, and deployment rights for ABM systems and components based on "Other Physical Principles"; and

(b) A history of the SALT I negotiations, encompassing both the ABM Treaty and the Interim Agreement, and their integral links and interdependence.

4. Bearing in mind that the President and the Senate have a shared responsibility to assure that the treaty making process establishes mutuality of obligations, the Senate should reject proposed legislation (e.g., S. Res. 167) designed to preclude use of treaty negotiating records even though other treaty parties may use them to assert rights or purported obligations of the United States, in accordance with Article 32 of the Vienna Convention on the Law of Treaties.

5. To fulfill its constitutional responsibilities in treaty making, the Senate should review all treaties before it to ascertain whether a qualification of the resolution of advice and consent to ratification is required. The Senate should condition or qualify its consent to ratification in a manner that:

(a) is legally binding;

(b) assures mutuality of obligations;

(c) provides timely notice to treaty parties through the exchange of instruments of ratification; and

(d) does not forego the Senate's responsibility to advise and consent by prior ratification of incomplete treaties.

Ever since President Polk sought prior ratification of a treaty to establish the Oregon boundary in 1846, if not earlier, presidents have sought prior ratification of a treaty, even when a condition has not been fulfilled or an instrument is not yet agreed. See S.B. Crandall, "Treaties: Their Making and Enforcement," at pp. 67-72 (2nd edition, 1916). If the Senate is to meet its constitutional responsibility, as with the Threshold Test Bank Treaty now before it, it should insist upon the completion of all of the essential treaty instruments including a new Protocol on verification before rendering its advice and consent.

6. The Senate may, from time to time, request that its members serve as observers during treaty negotiations. It may, from time to time, request access to the treaty negotiating records. It should, without exception, obtain a detailed section-by-section analysis of any treaty transmitted for advice and consent to ratification. Ultimately, the Senate and the President depend upon the good faith conduct of the two branches of government, in the exercise of a shared power.

7. To preserve and strengthen the role of the Senate in treaty formation, it is essential that the Senate respect its own rules for the ratification process: Rule XXXVII as it applied to the ABM Treaty in 1972, and Rule XXX in effect today have safeguards for qualifying consent to ratification of a treaty, so that all treaty parties are on express notice of whether and how the Senate has modified the treaty obligation that the President may elect to ratify. The action that counts under the Senate's own rules is not the testimony before committees, but the reduction of proposed qualifications in the form of an amendment to the treaty itself, or an amendment or reservation to the resolution of ratification. Only by faithfully applying its own rules can the Senate facilitate "the restoration of constitutional balance in the making of the foreign commitments" that the Senate, by S. Res. 85 in the 91st Congress declared to be "not only compatible with the requirements of efficiency, but essential to the purpose of democracy."●

some of the loaves rectangular, some rounded like a soccer ball sawed in half.

Cohen throws ingredients into a big mechanical vat that looks vaguely like a cement mixer. "Anybody can bake bread," he says almost scornfully. "Put it in the oven, wait awhile, take it out. Making the dough is difficult." A bucketful of eggs, pails of water, bag after bag of flour, a scoop of yeast, a dose of straight gluten to improve the dough's elasticity. He works from a recipe in his head, varying the quantities as he goes. He depends on his estimation of the qualities of the ingredients and the current temperature, humidity, and—for all I can tell—the state of his psyche.

"I'm not a baker," Cohen says. "I bake bread, but I do it by the seat of my pants. Over at Nissen's, they're the real bakers. You want to get a real story, go over to Nissen's. They have formulas and big machines and controls. When something goes wrong with the dough, they know why and how to fix it. When something goes wrong with my dough, I have to guess at the problem and fix it by trial and error." What he doesn't say is what all aficionados of Jewish rye know: a mechanized bakery produces a mechanized loaf. A loaf of rye from the Bangor Rye Bread Bakery has guts.

Short, stocky, stoop-shouldered, with forearms like Popeye and hands like a peasant, Reuben Cohen drags himself around the bakery like an automaton, his face expressionless. "How long have I been doing this?" he asks. "Since 1929. I started out with my father and uncle. We had a different bakery up the street, the New York Model Bakery. We bought this business in 1936."

Cohen's father was a Russian Jew who emigrated to New York, then Boston, finally Bangor. Reuben was born in New York, visited Russia with his family as a tiny boy, but basically grew up in Bangor. "I don't know why we came here," he says. "Maybe they needed bakers." The entire family worked in the bakery: father, uncle, brother, sister. "We used to make a lot of rye bread in those days," he says, "much, much more than now. There were a lot of Polish and Russian Jews here. They were real Jews, my countrymen. They all died off. The young ones today, they don't come in. I don't know where they buy their bread. Maybe they don't eat bread." He smiles mischievously. "Watch out for the flour. You'll get it on your trousers."

A little after 11:30 p.m., Reuben's son Bobby comes in the door, bringing a blast of cold air with him. He doesn't say a word, just pulls off his jacket and starts cutting into loaf-size portions, weighing each on a scale. He's wearing a black T-shirt with a white skull on the front and an inscription on the back that says: "Welcome to the Rock and Roll Zone." Reuben says, "I can't even listen to the radio anymore. All they have is rock and roll." Bobby keeps hacking at the dough.

The Bangor Rye Bread Bakery is still a family affairs. Cohen's wife comes in once in a while, and his daughter-in-law and granddaughter work at the counter. His daughter Marlene is married to another baker across town. Another son, Billy. . . . Well, out on the wall in the salesroom there's a clipping from the *Ellsworth American*, a review of a new book of poems by Rubie's son, Billy. *A Baker's Nickel*, it's called. Above it is pasted a blue and white bumper sticker. "Senator Bill Cohen," it says. That's United States Senator William S. Cohen, Republican, Maine.

"Yes," says Reuben. "Billy works here once in a while . . . when he's campaigning." For the second time tonight he flashes that mischievous smile.

How did a family of working-stiff bakers get a politically ambitious son who writes poems? "Damned if I know," Cohen says. "There must be something I don't know about back there in my forebears. He didn't get it from me. I took the commercial course in high school. I was too busy to study. Poolrooms and dance halls, that was what I was interested in." He seems genuinely surprised by his son, unable to see that the example of hard work in a bakery can be applied to hard work in the political arena. Billy must see it, though, hence the title of his book of poems.

The arrival of a baker and a couple of helpers jacks up the pace. Machines start rolling, stamping, and twisting dough. The oven is lit, raising the temperature in the room and altering the aroma from sourishly yeasty to sharply pungent. This is an all-bread bakery—no pastry—so that head-spinning sensuousness is absent. Nevertheless, it's a pleasant down-homey, Mother's-kitchen smell.

His dough made, Reuben retires to the wicker chair. "I live here," he says, and drops off to sleep. A couple of hours later Bobby sticks a sign on the door: "Yes, We're Open." Reuben wakes up, dozes off, wakes up, dozes. . . . "Hey, Rubie!" someone yells. A wholesale customer comes in to pick up several dozen rolls. Night is over. Cohen rings up the sale, then goes out back to wash up and admire the French bread and the Jewish rye while Bobby and a helper deliver a stationwagon-load to the Brewer IGA.

The night crew starts hassling Cohen at about 6:30 a.m. "Hey, Rubie, you better get going with the deliveries," someone says. "It's getting late." Reuben doesn't seem to be in much of a hurry, but he finally stirs himself. We fill the car with paper bags of bulkie rolls and rye bread and Italian sandwich rolls and big, fat loaves of French bread.

Our first stop is a warehouse for a trucking company that delivers upcountry. Signs on the trucks says: "Ben's Frankfurts, Dean of Franks." The Dean of Rolls piles his bags just inside the door and scratches a reminder of the quantity in an order book. Then we're off to a small market on Broadway. "Hey, Rubie," the fellow behind the counter says. "Do you think it's going to storm?"

We hit them all. Dunkin' Donuts ("They serve my rolls with the soup"). Braley's River City Restaurant, where we accept the cook's hospitality and drink from cups of steaming coffee and Reuben tells the cook he's charging too much for his breakfast special ("Same thing is cheaper down the street"). Braley's Lunch on the corner, where people are hunched over breakfast ("Reuben," the cook says, "Have a cup of coffee"). McDonald's AG Market, the Neighborhood Market, Paul's Restaurant, Yogurtime and Salad Too—an altogether "now" takeout counter in the Bangor Mall. At each place the talk is the same: business and the weather. Reuben has opinions about both.

At the M&M Restaurant in the Broadway Shopping Center we have more coffee and a couple of doughnut holes. There's much joshing with the cook, a Japanese-American. A sign in the kitchen says: "This is not Burger King. You get it our way or you don't get the son of a bitch." At the Shop & Save Reuben examines the bread baked in the supermarket's own kitchen. "Feel how light their challah is. For this they get $1.49. Ours is heavier and we get eighty-nine cents."

The New Waverly Restaurant, the Greenhouse ("Some place. Come on out here and look at the front"), Miller's Restaurant, where Cohen shows off the buffet table as if it were his and pauses to sample the half-sour pickles ("Not bad"), La Cucina, Sing's ("What's a Chinese restaurant doing with Jewish rolls?"), it goes on and on.

About 10 a.m., Reuben Cohen, seventy-eight years old and tougher than a boiled boot, glances over at me and says, "You look tired." I look tired? What about him? He doesn't look any different than he did at nine the previous night, at four this morning. In fact, he seems to be perking up, hitting his stride. At noon he'll pick up his wife and take her to lunch. At 1 p.m. he'll go home and watch the soaps. He'll sleep for a couple of hours, eat supper, watch the television news to keep up on things and see if his son Billy has anything to say, and return to the bakery at nine to make dough.

When are you going to quit, Rubie? When are you going to pack it in? "Never," he says. "I wouldn't know what to do with myself. On Sundays, my day off, I'd go crazy if there weren't any ball games on the television."

"Work and sleep. Work and sleep. That's all I do and that's all I ever want to do."

THE ABM TREATY DEBATE SHOULD BE ABOUT ABROGATION

Mr. HELMS. Mr. President, the Senate is in the midst of a dispute focusing on, mainly, the strictly legal points of an 18-year-old negotiating record and a 15-year-old ratification hearing record on the SALT I Anti-Ballistic Missile Treaty. This is a very esoteric and highly complex debate which, in my judgment, misses—or at least obscures—the vital point: America's security.

I believe that we should return to the basics of the ABM Treaty, and debate what is really important. What is important is that the Soviets have cut the heart out of the ABM Treaty by their violations, especially Krasnoyarsk. Why should we fine tune an interpretation, whether narrow or broad, for a U.S. ABM Treaty compliance policy, when the Soviets are violating the most important provisions of the treaty?

The Soviet violations, especially their Krasnoyarsk radar, are clear cut, and have been confirmed six times by President Reagan.

The Krasnoyarsk radar is supposed to be on the periphery of the U.S.S.R. and oriented outward, yet it is 750 kilometers in the interior and oriented inward toward a border 4,000 kilometers away. It is an early warning radar with ABM battle management capabilities.

Mr. President, the Soviets are building 9 illegal ABM radars and mass producing four types of illegal mobile ABM interceptor missiles and small radar systems. There are thousands of these ABM's. The Soviets are therefore "breaking out" of the ABM Treaty, as I have been pointing out to the Senate since 1983. Here we are in the United States arguing over how to interpret our obligations to comply with the ABM Treaty, regarding our vitally important strategic defense ini-

AMENDMENT NO. 57

(Purpose: To make additional technical and other amendments)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. PROXMIRE] proposes an amendment numbered 57.

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

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

The amendment is as follows:

On page 6, strike out lines 1 through 7, as amended by the Proxmire-Garn amendment, and insert in lieu thereof the following:

"(H) an industrial loan company, industrial bank, or other similar institution which—

"(i) is chartered under the laws of a State which on March 5, 1987, had in effect or under consideration on its legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act; and

"(I) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

"(II) has total assets of less than $100,000,000; or

"(III) is not acquired by a company; or

"(ii) does not, directly or indirectly or through an affiliate, engage in any activity in which it was not lawfully engaged as of March 5, 1987.

No institution shall retain the exemption provided by this subparagraph if it permits any overdraft, including any intra-day overdraft, or incurs any such overdraft in its account at a Federal reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyong the control of the institution and affiliate.

On page 19, lines 4, 5, and 6, strike out "until one year after the date of enactment of the Competitive Equality Banking Act of 1987" and insert in lieu thereof "until March 1, 1988".

On page 33, in the new subsection (b) of section 106, as added by the Proxmire-Garn amendment, strike out "one year after the date of enactment of the Competitive Equality Banking Act of 1987" and insert in lieu thereof "on March 1, 1988".

On page 86, strike out section 313, relating to the powers of the Federal Savings and Loan Insurance Corporation, as added by the Proxmire-Garn amendment.

On page 108, strike out section 408, relating to the authority of the Federal Deposit Insurance Corporation, as added by the Proxmire-Garn amendment.

On page 86, line 24, delete the word "and".

On page 87, line 2, strike the period and insert, in lieu thereof, the following: "and liberal extension of forbearance with respect to net worth requirements for institutions that have made supervisory acquisitions."

Mr. PROXMIRE. Mr. President, this amendment makes technical changes in S. 790 and has been cleared with the minority. These are strictly technical changes and they are noncontroversial. I note that the bill currently contains a provision authorizing the FSLIC to issue regulations and orders defining terms used in the statutes it administers. The amendment deletes that provision because the FSLIC already has such authority under existing law. This the provision is redundant.

The PRESIDING OFFICER (Mr. SIMON). Is there further debate on the amendment offerd by the Senator from Wisconsin?

The Chair hears none. The question is on agreeing to the amendment.

The amendment (No. 57) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, might I ask the two managers, as I am getting inquiries from our colleagues, what is their estimate, if they care to make an estimate at this time, as to the hour by which the Senate may complete action on the bill tomorrow?

Mr. PROXMIRE. I do not know how we can possibly tell. It depends on how much time it will take. The Senator from West Virginia knows that better than anybody in the body. I would hope we could finish at an early hour tomorrow afternoon, but I may be mistaken.

I know of noboby who intends to delay the bill. Both the ranking minority member and myself, I think, are both anxious to move this along expeditiously.

Mr. GARN. Mr. President, I cannot predict the length of debate. I was surprised this afternnon at the number of Senators who showed up to speak who I had no idea were coming. I have an airplane I would like to leave for at 4 o'clock, so I hope we are finished by then.

Mr. BYRD. It sounds pretty good to me, if the Senator wants to be on an airplane at 4 o'clock.

That is about the best we can say to our colleagues.

MORNING BUSINESS

Mr. BYRD. Mr. President, if there is no further action on this measure, I ask unanimous consent that there now be a period for morning business, not to extend beyond 15 minutes, and that Senators may speak therein for up to 2 minutes each.

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

REUBEN COHEN, FATHER OF SENATOR COHEN

Mr. MITCHELL. Mr. President, the April 1987 edition of a publication printed in Maine but read all across the country, Down East magazine, contains an article about a Bangor, ME, institution, the owner of the Bangor Rye Bread Bakery, Bangor's most famous and beloved Cohen, Reuben Cohen.

For nearly 50 years now Rubie Cohen, following in the footsteps of his father, has worked in or operated a bakery in Bangor. His son, who has chosen another path to fame, is, of couse my distinguished senior colleague from the State of Maine, BILL COHEN.

The Down East article conveys well Reuben Cohen's inimitable style, a real Maine original. I commend the article to all of my colleagues and ask unanimous consent that it be printed in the CONGRESSIONAL RECORD following this statement.

Reuben Cohen says, "I am not a baker, I bake bread, but I do it by the seat of my pants." Mr. President, Rubie Cohen saying he's not a baker is like Larry Bird saying he's not a basketball player, or Roger Clemens saying he's not a baseball player, or, even, BILL COHEN saying he's not a Senator. They all are, and are very good at what they do. Mr. President, take it from one who's eaten many a roll in Bangor, Reuben Cohen is a baker.

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

[From Down East Magazine, April 1987]

COHEN'S THE NAME, BAKING'S THE GAME

At two o'clock or so in the morning, a certain period of nothingness comes to the small city of Bangor—a motionlessness, a deep northern sleep that allows sounds, normally obscured by the bustle of earlier and later hours, to be heard. You can step out into the road and hear the streetlights humming and the ice creaking in the Kenduskeag Stream and the diesel locomotives ticking over in the freight yard down by the Penobscot River.

This is the time when Reuben Cohen begins his nightly two hours of sleep, three if he's lucky. He sits slumped in an old wicker chair, a sweater loosely covering his chest, his head rolled back against the fake-brick wall of the Bangor Rye Bread Bakery salesroom, his mouth wide open. He snores quietly.

"Hey, Rubie," one of the night men says, nudging the sleeper and pointing at me. One eye opens; the other flutters weakly. "You're early," he says. "We don't open until four."

Open is a meaningless word at the Bangor Rye Bread Bakery. It is true that the shop is open from 4 a.m. to noon, six days a week. It is also true that the shop is closed the rest of the time. Yet you can telephone the bakery at, say, 11 p.m. and someone will answer; so, too, at 3 a.m. In fact there are precious few hours in the course of a day when the bakery is not open.

Nine in the evening, that's when Reuben Cohen, seventy-eight years old and a tough old buzzard if there ever was one, arrives at the bakery and locks himself in with the 100-pound sacks of pumpernickel flour and pure white rye, Dixie Crystals Cane Sugar, and Buckeye Pure Gold Yellow Corn Meal. He shuffles around alone for two and a half, three hours, making the dough for the next day's bread. White dough for the bulkie rolls, the French bread, the Italian sandwich rolls, the tea rolls, the twisted challah (Thursdays only), the onion rolls (Saturdays only). Dark dough for the rye bread;