

EXECUTIVE SESSION

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WEDNESDAY, JUNE 13, 1979

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United States Senate,
Committee on Finance,
Washington, D. C.

The Committee met, pursuant to notice, at 10:25 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long, chairman of the committee, presiding.

Present: Senators Long, Ribicoff, Nelson, Bentsen, Moynihan, Baucus, Boren, Dole, Packwood, Danforth, Chafee, Heinz, Wallop and Durenberger.

The Chairman: Now, let's talk about the budget matters. We have to decide them today, do we not?

Mr. Stern: Yes, sir.

Mr. Chairman, the Budget Act requires that once a Budget Resolution has been passed by the Congress, in order to take up any legislation for any committee after that, you have to have filed -- the Committee would have had to file a Budget Allocation Report for this purpose.

The Senate Budget Committee tells the Finance Committee and other Committees how much has been allocated to that Committee under the broad program categories for new legislation and for existing legislation.

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1 There is some flexibility in living within the totals.
2 At any rate, they furnish you with the assumptions they made
3 for the purpose of coming up with the numbers in the Budget
4 Resolution.

5 You have in your folder a mimeographed paper called
6 "Allocation of Amounts Allowed under Fiscal Year 1980 Budget
7 Resolutions for Finance Committee Programs" and we have taken
8 the major numbers that are in there and put them on the
9 blackboard that is over behind the window so you can see them
10 all in one place.

11 This year, for the first time, the two Budget Committees,
12 when they met in Conference, did not resolve the assumptions
13 underlying the budget with consequences that are very
14 confusing.

15 In the past, the assumptions have been consistent between
16 the two committees so that the House Budget Committee told the
17 Finance Committee's counterpart committees in the House the
18 same thing as the Senate Budget Committee was telling the
19 Finance Committee

20 This year, there is a very significant difference in the
21 assumptions for new legislation, a difference of more than \$1
22 billion. That is to say the Senate Budget Committee is
23 telling the Finance Committee that to be consistent with the
24 First Budget Resolution, the Finance Committee has to report
25 legislation with net savings of \$2.8 billion while at the same

1 time the House Budget Committee is telling our counterpart
2 committees that all they have to save is \$1.7 billion.

3 I have also put on the blackboard the assumptions that
4 they have for new legislation in fiscal years 1981 and '82,
5 why you do not have to file an allocation report involving
6 those two years.

7 It does show, in each case, they assume the savings are
8 going to grow. So taking the first category, income security,
9 the House Budget Committee is assuming that new legislation
10 should save \$100 million. The Senate Budget Committee is
11 assuming savings of \$600 million that will grow to over \$1
12 billion in the next two years.

13 In the health area, they are assuming savings of \$1.8
14 billion in the Senate in 1980, growing to \$3.8 billion in
15 1982. That is based on the administration's assumption --

16 The Chairman: How about someone's pointing to the
17 figures up there? Mr. Humphrey, go up and take a pencil and
18 just point to the particular figures that you have in mind.
19 Just anybody can go up there and point to the figures that you
20 have in mind, so that we can sit here and we can all be
21 reading the same figure.

22 Mr. Stern: To return to the income security category,
23 looking at the new legislation, the Senate Budget Committee is
24 saying that the Finance Committee should save \$600 million in
25 1980. That is the top line, fourth column.

1 That number will grow to more than \$1 billion in 1981 and
2 1982.

3 The Chairman: We should save that much.

4 Mr. Stern: That is how much you should save in that
5 legislation. If you would report out legislation that would
6 cost money, you would save that much more.

7 For instance, the Finance Committee has pending before it
8 now a Trade Adjustment Assistance Bill that costs a couple of
9 million dollars. If you want to report that out, that would
10 mean you ought to achieve savings of \$800 million so that you
11 net a \$600 million savings.

12 Actually, the number of \$ 600 million is fairly
13 consistent with what the Finance Committee estimated it could
14 save in its original submission to the Budget Committee.

15 The second line of health, the figure for new legislation
16 in 1980, according to the Senate Budget Committee, is \$1.8
17 billion in savings. I should mention that the original
18 administration estimate of how much the hospital cost
19 containment proposal would save was \$1.7 billion. The
20 Congressional Budget Office is now saying that it would save
21 \$600 million, so that the current estimate of savings of that
22 proposal is already \$1.1 billion less than at the time that
23 the Finance Committee originally looked at its recommendations
24 to the Budget Committee in late February.

25 The Chairman: Well now, at what point does that matter

1 become crucial? At what point does the rub occur when we find
2 ourselves into a situation when we have an erroneous
3 assumption that we are going to save \$1.8 billion and then we
4 discover that even if we pass the legislation recommended by
5 the administration on which that figure is based, we do not
6 save \$1.8 billion; we saved \$700 million.

7 Now, at what point -- what happens? At what point does
8 the squeeze occur and we have to do something, or not do
9 something?

10 Mr. Stern: For purposes of the Budget Act, the numbers
11 themselves are immutable, although the assumptions might come
12 and go. The point at which that becomes critical is after the
13 Second Budget Resolution. Were these numbers to remain the
14 same, you might be in a situation where when the Finance
15 Committee wants to take up the Health Bill that it might be
16 subject to a point of order because it did not achieve savings
17 sufficient to get the overall health number for the Senate
18 below whatever the total is at that time.

19 The Chairman: Suppose the Health Bill is a plus, in so
20 far as it goes; that it does not create any additional burden
21 -- in fact, it might raise a little money.

22 Is that subject to a point of order if the bill actually
23 tends to reduce the deficit rather than raise the deficit? Is
24 it subject to a point of order just because it does not wipe
25 out the deficit?

1 Mr. Stern: If it is an entitlement bill that does not
2 save enough money to bring the total health amount below the
3 amount in the Second Budget Resolution it might be subject to
4 referral to the Appropriations Committee.

5 The Chairman: For what purpose? To refer to the
6 Appropriations Committee?

7 Mr. Stern: The Budget Act says if a Committee reports
8 legislation in the entitlement area that is inconsistent with
9 the Budget Resolution, it gets referred to the Appropriations
10 Committee, not to exceed 15 days.

11 The Chairman: How can it be inconsistent if the bill is
12 either revenue neutral or if the bill raises more revenue than
13 it spends? How can it be inconsistent with an objective to
14 save money?

15 Mr. Stern: I have to admit, Mr. Chairman, we are sort of
16 breaking new ground. In the past, we never had a situation
17 where everything was savings.

18 The Chairman: What is the Appropriations Committee
19 supposed to do with it? Recommend a tax? I would be curious
20 to know: what are they going to do when they get it?

21 Mr. Stern: The theory of it was that entitlement
22 programs were a kind of uncontrollable spending and the
23 Appropriations Committee, at the time that the Budget Act was
24 put together, tended to blame committees that handled
25 entitlement programs as being responsible for deficit

1 problems.

2 So the accommodation that was made in cases where
3 entitlement programs were increased inconsistently with the
4 budget that those would then be funneled through the
5 Appropriations Committee. They could recommend cutting back
6 on the amount of spending involved, or something like that.

7 Senator Moynihan: Mr. Chairman?

8 The Chairman: Yes, sir.

9 Senator Moynihan: As you know, I am a member -- as is
10 Senator Packwood. We are the two committee members that are
11 on Budget.

12 The Chairman: We are counting on you two to save us.
13 You show us how.

14 Senator Moynihan: We will try to save you, as long as we
15 do not have to understand what it is that we are doing and
16 this is, as far as I can see, this has not been resolved.
17 Senator Packwood may have a different view.

18 These savings are estimates of what will occur in
19 entitlement programs by changing -- in the main, these savings
20 will come from changing those regulations in entitlement
21 programs such that 18 months or so after the fiscal year
22 involved you will add up all the claims and it will turn out
23 to have less money than otherwise.

24 But how can that be known? It can only be estimated.

25 Senator Packwood: The only thing we will know for sure

1 is that the figure will not be the estimate.

2 Senator Moynihan: That is the only certainty that we
3 seem to have.

4 Are we going to be facing a Budget Committee that holds
5 us to the unknowable? I do not think that is the disposition
6 of the Budget Committee, but it could be the tendency of the
7 system. It is crazy if it is.

8 Mr. Stern: The convention is to accept the Congressional
9 Budget Office estimates at any one time as representing the
10 truth.

11 Senator Moynihan: All right. Estimates. Emphasis on
12 estimates and an estimate of what may happen.

13 The Chairman: Well, we have a real problem here
14 gentlemen. The way I understand it in trying to balance this
15 budget, we are told by our Budget Committee we ought to save
16 \$2.8 billion.

17 Now, the way I understand it, in these assumptions --
18 mind you, we helped to bring this situation around to make it
19 this way now, you know. We cooperated in arriving at this
20 particular point in order to bring that around.

21 We estimated that we were going to save \$1.8 billion with
22 the administration's cost containment bill and the
23 Congressional Budget Office says, even if you pass the bill
24 the way they recommend it, you are only going to save about
25 \$700 million. Is that not right?

1 Mr. Stern: Yes, sir. It is a difference of \$1.1
2 billion.

3 The Chairman: All right.

4 So what we are really looking at is the burden of saving
5 \$3.9 billion, or else raising that much in taxes. All right.

6 Now, gentlemen, we have a real job cut out for us.

7 Yes, sir?

8 Senator Moynihan: Mr. Chairman, I have to make it worse.
9 I spoke with Dr. Rivlin this morning about the story that led
10 the Washington Post over the week-end about the new CBO
11 estimates about the recession. That was a garble. The CBO
12 has not made such an estimate.

13 In any event, they have not finished their work of
14 re-estimating, but they do know where they are coming out and
15 in July they will estimate to us a markedly lower level of
16 economic activity which will reduce estimates and increase
17 almost every cost on that board.

18 So it is not just that \$3.9, sir. We have a larger
19 amount. That, for practical purposes, has happened.

20 The Chairman: Now, when I look at that board I do not
21 see where we are going to save all of that money. I can think
22 of some possibilities. At this moment, I do not know of any
23 that I could predict with any confidence would muster a
24 majority vote in this committee.

25 What kind of suggestion can you offer us, Mr. Stern, as

1 to how we might live with this situation until we can have
2 another try and vote on some of the specifics?

3 Mr. Stern: In the past, the Committee has approved cuts
4 in the income security area that probably amount to \$500
5 million or \$600 million, and really not in any of the other
6 areas. I cannot think of any precedents that you already have
7 approved.

8 In the health area, when you finish the cost containment
9 proposal you are working on now, there is a list in the
10 blue book of a number of suggestions that staff simply
11 proposes for your consideration of how you could save more
12 money.

13 You could -- and we will try to have a similar list in
14 the income security area of how you can save money, too.

15 In social services, even though the amount shown on the
16 blackboard is plus \$4 million, that, in fact, was to simply
17 continue the present level of the social services program. It
18 is \$2.9 billion; in present law, it drops to \$2.5 billion. So
19 the \$.4 million remains at the present level.

20 Revenue sharing. The assumption is that the program
21 should drop from a \$7.1 billion level to a \$6.7 billion level
22 and remain that way for the next few years.

23 The large plus amount under the new legislation in
24 1981-82 reflects the difference between present law and \$6.7
25 billion. So in those two entitlement programs, the

1 expectation is that in one case it will stay level and in the
2 other case it will drop and then stay level, so that the areas
3 of possibility for you to act in are in income security,
4 welfare, social security and unemployment. In health, you
5 will have a number of suggestions. In social services, you
6 really only have one basic grant program, plus some small
7 programs, and Revenue Sharing.

8 One way you could do it, if you do not want to allocate
9 where the cuts will come in new legislation at this time would
10 be just to have some line that shows something like savings
11 under new legislation, or undistributed savings under new
12 legislation, \$2.8 billion, and see how you can handle it as
13 you go along.

14 But I think that will be a difficult total to achieve.

15 The Chairman: Well, it seems to me we are going to have
16 to do something like that because I can see how some savings
17 might come that we are not counting on right now. For
18 example, in this committee, the majority of us, including the
19 Chairman, voted to say that we would continue the general
20 Revenue Sharing to the states. As I understand it, the House
21 is moving in the other direction. Is that right?

22 Mr. Stern: They voted in the course of their
23 consideration of the Budget Resolution to cut back \$700
24 million on the states.

25 The Chairman: But was that the final result or what the

1 House did?

2 Mr. Stern: Yes, it was a Floor amendment during the
3 couple of weeks they were considering the budget process.

4 The Chairman: I see.

5 Now, one thought occurs to me. If we had to cut
6 something in the Revenue Sharing area, I think that is what I
7 would have to vote to cut, if I was forced to do it. I would
8 rather not do it at all, but if I was forced to, maybe that is
9 where I would have to cut.

10 Mr. Stern: Let me correct what I said before. The Floor
11 amendment was to cut out the state share, which was \$3.2
12 billion; the \$.7 billion is what they wound up with as being
13 their view as to where they stood after conference. The
14 House, as a whole, apparently has indicated its sentiment to
15 cut back on the state share.

16 The Chairman: All right.

17 Now, if we took the attitude, all right, that is how the
18 House feels. The House voted for that, I take it?

19 Mr. Stern: Yes, sir.

20 The Chairman: The House voted on that. The Senate has
21 not supported that position. That is one of the items that
22 can be considered. After all, that is the House position, not
23 the Senate position, but that is one of the items in
24 controversy, one of the items we can talk about.

25 Then we can talk about any one of these other suggestions

1 that you indicated, made reference to. Maybe we could just
2 meet the problem for the moment by simply giving them an item
3 and saying the savings from new legislation, \$2.8 billion, and
4 go ahead and continue to carry forward that assumption that we
5 think is in error and see what the Budget Committee wants to
6 do with it.

7 After all, by the time we have these insoluble problems I
8 welcome somebody to share that, how you solve that which I do
9 not see how you can solve.

10 Senator Packwood: Let me add a word of admonition while
11 we are solving it. I will not ask the Budget Committee for
12 its recommendations as to how it will solve it, because they
13 will give them to us and I would just as soon not start down
14 that road.

15 The Chairman: Well, what do you suggest, Senator?

16 Senator Packwood: All I am suggesting is that, given the
17 "wiggle room", the Budget Committee and the path they have
18 gone on, they say they do not want a line item, and if we
19 threw this in their lap, what do you expect? They will make
20 some recommendations with less knowledge than this committee
21 has, but it will be the start of that Committee's starting to
22 indicate to us where to make the cuts. I think that is a bad
23 precedent.

24 Senator Ribicoff: Mr. Chairman, if this ws discussed
25 when I was out of the room, I will not pursue it. Talking

1 about where you find the money, are you not in the situation
2 that whatever you do in 1980 you could not do anything until
3 the last quarter of 1980 anyway. So that is only giving you
4 one quarter to work with, which is a lot less than the whole
5 year. It is not a question of trying to find where you are
6 going to pick up \$1.8 billion for fiscal 1980. Maybe you are
7 only going to have to pick up one-quarter of it. Is that
8 true?

9 Mr. Stern: The numbers apply to the entire fiscal year,
10 whenever you save them during that fiscal year. The
11 assumption is \$1.8 billion in the total fiscal year.

12 As you notice looking across that line, that amount goes
13 up to \$2.5 billion in 1981 and \$3.8 billion in 1982, so they
14 assume very substantial savings in 1980 and savings that will
15 increase in the following two years.

16 Senator Ribicoff: 1980. It does not have to be
17 substantial. You are not talking for a full year. You are
18 only talking for a quarter.

19 If we went for catastrophic to rewrite the insurance
20 policies, new policies, rewrite them -- if you put in you are
21 working on two basic factors in the health field, are you not:
22 CHAP or catastrophic?

23 Mr. Stern: Those are the plus items.

24 Senator Ribicoff: Where you are going to spend more
25 money. So if you are going to save, you have much less that

1 you have to have on the expenditure side, because you are not
2 going to spend anything near that in 1980.

3 Mr. Stern: That \$1.8 billion is a net figure, Senator.
4 In other words, if you were to enact something that cost \$200
5 million in the last quarter, you would still have to save then
6 \$2 billion in the total year. So you would net out with the
7 total year of \$1.8 billion.

8 It is true that the expenditure items could be very
9 small. Still you have to wind up with a net savings of \$1.8
10 billion, according to the Budget Committee assumptions.

11 Senator Ribicoff: What are you saving on cost
12 containment? Is that not what your objective is here?

13 Picking up the money in cost containment?
14 Mr. Stern: At the moment, what the committee has decided
15 up to this point, the cost containment bill actually costs
16 money. It costs about \$30 million, roughly. We can show you
17 that in detail when we get into the cost containment bill.

18 Even if you were to enact the administration proposal on
19 cost containment, the CBO estimate now is that the savings
20 would be \$600 million, so you would still only have achieved
21 one-third of the total.

22 Senator Nelson: May I ask at that point -- there is a
23 difference, of course, between the administration estimates in
24 the five-year span and CBO. I think the administration is \$53
25 billion and the CBO is \$33 billion in that span of time. Is

1 that correct?

2 Mr. Constantine: \$31.7 billion.

3 Senator Nelson: What is the CBO estimate of the savings
4 under the Talmadge bill?

5 Mr. Constantine: \$20 million.

6 Senator Nelson: What about five-year?

7 Mr. Constantine: Between \$800 million and \$900 million.

8 Senator Moynihan: Mr. Chairman, I would like to support
9 Senator Packwood in his statement about not going back to the
10 Budget Committee and saying we cannot work this out, can we
11 get some advice from you?

12 The Budget Committee has in its normal disposition -- we
13 are the largest sums that come before that. It is the
14 easiest to say take it out.

15 I think, however, that there is going to be a new set of
16 economic forecasts that are going to change all these numbers
17 in July, that we would do well to accept the staff
18 recommendation to simply indicate that we are presently
19 disposed to find \$2.8 billion in savings that we will, in due
20 course, reveal to those who are interested.

21 Senator Packwood: I agree.

22 Senator Moynihan: I do not think we have any other
23 alternative. We would be spending a lot of our time trying to
24 resolve matters that will soon become irrelevant. The numbers
25 will have changed completely the next time they are on the

1 board.

2 The Chairman. If we do that, if we just buy the figures
3 that are up there on that board, what problem is that going to
4 give us as we try to advance that legislation?

5 Mr. Stern: I think that the problem, whether you lump
6 everything together in one contingency fund for new
7 legislation or whether you distribute it separately, it will
8 be the same: namely pretty much whatever you report out will
9 probably have to have a net savings to it. That is, to give a
10 specific example, you have pending in the committee a trade
11 adjustment bill that costs a couple of million dollars. You
12 would be in difficulty reporting that bill out all by itself.
13 You would have to find at least offsetting savings and do
14 something in the income maintenance field, so when you report
15 the bill out it has some kind of net savings in 1980, not
16 because of any parliamentary maneuver it would not be subject
17 to a point of order.

18 Here you have a list of savings you are supposed to
19 achieve and you would be reporting out legislation that did
20 not save money. I think practically any significant piece of
21 legislation would have to wind up saving money.

22 The Chairman: That particular thing is going to be one
23 that is going to come down from the White House and we cannot
24 amend it, right?

25 Mr. Stern: The Trade Adjustment Assistance is a separate

1 bill that is not a part of the multilateral trade negotiation
2 package. This is something separate that the House has acted
3 on.

4 The Chairman: So, tell me what this is again?

5 Mr. Stern: I guess that is an example. That particular
6 bill liberalizes what amounts to unemployment benefits for
7 workers whose unemployment is due to the impact of imports.

8 The Chairman: So if we did not bring that bill out there
9 without a tax to pay for it --

10 Mr. Stern: Or some kind of offsetting savings.

11 The Chairman: Or offsetting savings, then the net bill
12 -- why it would not be subject to a point of order. It would
13 violate the spirit of the budget.

14 Senator Packwood: It would not be subject to a point of
15 order until we go over the entire income security limit or
16 whatever the category is. They may, at the time, say it was
17 the assumption of the Budget Committee in this area that no
18 more money would be spent, more than \$100 million.

19 Senator Moynihan: That is not valid, and we will resist.

20 Senator Packwood: That is not valid. All they can do is
21 cross-walk and point out as we are going. Ironically, this is
22 a race to the Courthouse, and the last bill that comes along,
23 no matter what its merits, if it happens to be the bill that
24 goes over the budget ceiling for that category, it is subject
25 to a point of order.

1 Mr. Stern: Points of order do not lie under this First
2 Budget Resolution. What has been the limiting factor has been
3 a political limiting factor. Generally, committees have not
4 wantd to be accused of breaking the budget. They do not want
5 to brig a bill out and have the Budget Committee Chairman
6 stand up and say you are breaking the budget. That has been
7 the limiting factor, not points of order per se.

8 That, I would assume, would be the limitation here, that
9 the Finance Committee, having committed itself, or having said
10 it committed itself to a \$2.8 billion savings in various
11 categories would not have reported legislation to that effect,
12 but rather legislation that costs money. That would be the
13 criticism that would be leveled.

14 That is why if you report out a bill, even if it had only
15 a small savings to it, you could at least say that this is
16 consistent with our attempt to achieve savings, where if you
17 did report bills where you cost money, that would look like
18 you were moving in the other direction.

19 The Chairman: Let us just see what the items are where
20 we think we could make it.

21 You think, Mr. Stern, based on how this committee has
22 acted in years gone by, the kinds of things that we have
23 recommended savings in the income security areas, do you think
24 we could save \$600 million, that we could recommend
25 legislation to save \$600 million?

1 Mr. Stern: Yes, sir. That is one area where you had a
2 recommendation that was a little bit higher than that. You
3 had told the Budget Committee in your March report that you
4 could save \$700. There you have some precedent, because you
5 actually have reported out legislation that would save
6 substantial amounts.

7 The Chairman. So it is your thought that this committee
8 has the potential to meet that first item?

9 Mr. Stern: Yes, sir.

10 The Chairman: The second item, you do not see how we can
11 do it?

12 Mr. Stern: No, sir, particularly since it is already
13 June and the fiscal year begins in October.

14 The Chairman: The third item, social services. Do you
15 think that is an area --

16 Mr. Stern: That continues the level of the present
17 program, although there is interest and the House bill will
18 probably be coming over shortly. That increases it above the
19 present \$2.9 billion, but it certainly would not be a
20 hardship.

21 Senator Moynihan: Mr. Chairman, may I make a point there
22 so that all the members of the Committee will understand that
23 the social services line out to 1982 is a flat level of
24 expenditure, the current level of expenditure. It happens
25 that this is an entitlement program in which the level of

1 entitlement is \$400 million below what we have been spending
2 for some time now, and so it just technically shows up as an
3 increase. There is no increase.

4 Mr. STern: That is correct.

5 The Chairman: In revenue sharing --

6 Mr. Stern: Revenue sharing. The assumption there is
7 that the program level will be reduced from \$7.1 billion to
8 \$6.7 billion and at that time would continue flat and not
9 increase in future years.

10 The Chairman: Well, in other words, as far as I am
11 concerned, looking at what is expected of us at this point,
12 unless we can find some revenues from some other source, I
13 guess I would be willing to say I go by that figure. We will
14 have to get by with a lesser amount of revenue sharing.

15 I have indicated why I think I would have to take it if I
16 had to take that much of a cut.

17 That leaves us on interest. That is not in dispute. We
18 think we can live with that, do we not?

19 Mr. Stern: The interest figures are basically the amount
20 they think they will save if all the committees respond by
21 reducing expenditures and entitlement programs to the extent
22 consistent with the Budget Resolution. That is not really.
23 That one, you can assume, will be achieved in the course of
24 the budget process.

25 The Chairman. Well, then it seems to me if we just buy

1 the items that are up there, we are left with one big
2 headache: how do we comply with that health figure? And we
3 have that bill to go to work on, and we can see what we can
4 do.

5 Now, if someone can show me another way to meet it right
6 now, I will certainly be glad to entertain the suggestion.

7 Mr. Stern: I might mention that we have put in every
8 allocation report the statement that the report is subitted as
9 a part of the budget process and so on, not as a statement of
10 specific legislation decisions. The amounts that are shown
11 are sufficient to accommodate the legislative actions taken by
12 the committee and so forth, but the committee might find it
13 appropriate to recommend the funding effective in the table,
14 or the committee may recommend offsetting reductions in other
15 programs.

16 It is a statement of flexibility. While you intend to
17 stay within the budget titles, that is not a specific recipe
18 for legislative decisions.

19 The Chairman: I have sort of been hoping at some point
20 that David Boren would save us. If everybody had an
21 unemployment insurance program operating the way his has in
22 Oklahoma, we could save enough to handle all of this, and if
23 he could manage to make the entire nation conform to the
24 Oklahoma practice that his administration pursued out there,
25 that would save us. The problem would be solved.

1 I am hoping, Senator, that you will go to work on that.
2 I will try to help you save some of that money. I would guess
3 if we come in by the time of the Second Budget Resolution, we
4 think we can save some money over here, and unemployment
5 insurance area -- what is that item?

6 Mr. Stern: That is the top item. Income security.

7 The Chairman: Income security.

8 If we can find some major savings up there, we think we
9 might do something.

10 I know that we have seen some areas where we think of
11 this money that will have to take a low priority, maybe we can
12 save some there.

13 Senator Bentsen: Mr. Chairman, that brings up the
14 question of revenue sharing. I notice the House of
15 Representatives assumed a \$700 million saving in that regard,
16 where we are talking about a \$400 million. Of course, as I
17 have spoken before on the question of the states' revenue
18 sharing, you have probably gone through a period of time that
19 we could not do what I frankly would like to do -- cut it all
20 out.

21 Perhaps we could review that in so far as revenue sharing
22 for the states exclusive of that which has been committed to
23 some of the subsidiaries that flow through, to some of the
24 subsidiaries, you might look at it from that approach and see
25 what could be done, as one of the savings.

1 Senator Boren: Mr. Chairman, I certainly would like to
2 second Senator Bentsen's comment. Perhaps we could look at
3 cutting out half of the state revenue sharing. That would get
4 you over the \$1 billion mark.

5 Just to share with the committee, after I cast one of my
6 first votes here, I think three or four people said they would
7 be willing, on a show of hands, to do something on state
8 revenue sharing.

9 This was publicized at home. Our legislative responded.
10 Both houses passed resolutions by a lopsided majority saying
11 they felt that we should do away with state revenue sharing,
12 reaffirming again their commitment to local revenue sharing.
13 That is very important, that the local units of government do
14 not have the base, I really think when we compare -- and I
15 would like to say we could come up with \$1 billion in
16 unemployment savings. We certainly could come up with some,
17 although nothing approaching that kind of figure.

18 I think when we look at health and other areas, it is
19 more reasonable to look again at Senator Bentsen's proposal to
20 take a look at state revenue sharing.

21 Senator Nelson has been Governor. He is in sympathy with
22 that, too.

23 The Chairman: You know, some things have more appeal
24 when you look at your options than they did before you look at
25 what your alternatives are.

1 Senator Bentsen: I rather thought they might, if we went
2 along.

3 The Chairman: Why do you not recommend what you see up
4 there? If I could think of something better, I would do that,
5 but at the moment, it seems to me we might as well just stay
6 with that.

7 Mr. Stern: All right. We will include the usual
8 paragraph that says, in effect, that if you can achieve
9 savings in one area rather than another, you would show the
10 amounts in the categories: income security, \$600 million;
11 health, \$1.8 million, and so forth.

12 The Chairman: Then you would have a paragraph there to
13 say that it may very well be that we cannot meet the budget
14 objectives in some of these areas. If not, we hope to meet
15 them in other areas of our jurisdiction.

16 Mr. Stern: All right.

17 The Chairman: Incidentally, while you are at it, you
18 might make reference to what Senator Moynihan said about some
19 factors being beyond our control, or anyone else's control,
20 such as economic conditions that are going to develop and make
21 reference to a study that they, themselves, have going on at
22 the moment.

23 Mr. Stern: I should mention one last thing in connection
24 with this, Mr. Chairman. Since the Budget Resolution modifies
25 the fiscal year 1979 figures which is the year that will be

1 ending at the end of this September, you have to include
2 fiscal '79 figures in this allocation mimeographed at the end
3 of page 8. We show possible allocation which basically shows
4 nothing for new legislation except an amount too small to
5 round out to \$100 million and income maintenance and Social
6 Security.

7 We wanted to be particularly sure to show that because
8 the Senate has already passed your amendment which
9 retroactively relates to child support services for nonwelfare
10 families and day care hiring of welfare recipients.

11 They do not add up to a significant amount, but at least
12 the committee shows that in the Budget Report.

13 The Chairman: Coming in with \$100 million there, I have
14 reason to think the next time we have a conference with the
15 House they are going to go along with us on what is in
16 conference already.

17 Mr. Stern: The total amount was \$46 million. It was
18 distributed between these two categories. As long as we do
19 not show a number "zero", as long as we show an asterisk --

20 The Chairman: Showing .1 on the other.

21 Senator Moynihan: The numbers are less than .05. That
22 meets the Budget Committee standards, Mr. Chairman. The
23 estimate of \$47 million. We indicate there is a cost, but not
24 at the level that was included. We round off at one.

25 The Chairman: Is that right, then? We do not need to

1 put something in there? We can just send it a zero?

2 Mr. Stern: What we are showing is not zero. We are
3 showing a little asterisk that says that there is some money.
4 We are not saying it is zero.

5 If it comes in and the bill costs \$40 million or so, that
6 would not round to a tenth of a billion. They cannot say you
7 said it was going to cost zero. We do say there is a cost
8 associated with it and we simply are suggesting showing it with
9 a little footnote.

10 The Chairman: It seems to me that we would be a little
11 bit better off to indicate a larger saving in some other item
12 and to give us a .1 on the other so we have a little room to
13 maneuver.

14 Mr. Stern: In any case, the net amount should be
15 something that rounds to less, 0.05 billion. Perhaps we can
16 think of a way to do that where we would show under income
17 maintenance 0.1 billion and put the asterisk somewhere else so
18 it winds up being a net cost that does not round to a tenth of
19 a billion, something like that.

20 The Chairman: It seems to me you could have your
21 reduction on revenue sharing of \$100 million, or whatever you
22 have got to have to arrive at that conclusion.

23 Mr. Stern: I would only be concerned that this could be
24 something that is subject to a point of order, because in the
25 case of fiscal year 1979, you are passed the Second Budget

1 Resolution.

2 The Chairman: Just to put an asterisk alongside the zero
3 then.

4 Mr. Stern: Instead of a zero, I would put the asterisk.

5 The Chairman: All right. Without objection, agreed.

6 Mr. Stern: That concludes the budget allocation report,
7 Mr. Chairman.

8 The Chairman: Without objection, we will recommend this.
9 I do not know how we are going to live with it. If I had a
10 better answer for it right now, I would be suggesting it.

11 Mr. Stern: We have prepared, so you could see it from a
12 budgetary standpoint, what you have done so far on the health
13 legislation.

14 On the blackboard, we show the major item of savings that
15 you have already approved. We have shown that in terms of
16 fiscal year 1980, since that is the one that you are concerned
17 about for budget purposes, and fiscal year 1984, so you can
18 see what a full year effect is out five years.

19 And actually what you have done so far next to a cost,
20 your savings of \$72 million in fiscal year 1980 have been more
21 than offset by costs of \$100 million and similarly, in fiscal
22 year 1984, the savings of \$191 million have been more than
23 offset by costs of \$258 million.

24 However, I should point out that the major item there,
25 home health services, was originally estimatd as having a very

1 small cost, and the Congressional Budget Office has very
2 substantially revised its estimate of how much that will cost.

3 The Chairman: All right.
4 What that shows at the moment, if I understand what you
5 are saying at the moment, we have not saved any money?

6 Mr. Ginsburg. That is correct, Mr. Chairman.

7 The Chairman: But we have hopes?

8 Mr. Ginsburg. Yes, Mr. Chairman.

9 The Chairman: Well, then, let us proceed.

10 If there is no objection, we will recommend the figures
11 we have on the board there as far as the budget is concerned.

12 Mr. Stern: Where you left off, Mr. Chairman, you were in
13 the middle of discussing Senator Nelson's proposal for
14 hospital cost containment, and you started working your way
15 through a discussion of that at your last session on cost
16 containment.

17 The Chairman. Senator Dole has asked for recognition.

18 Senator Dole?

19 Senator Dole: Well, I have discussed with the Chairman
20 briefly; it seems to me it is in our interest to try to
21 determine which way we are going as far as cost containment is
22 concerned, whether we are going to go the route of the
23 Talmadge bill that we had almost completed, I guess. There
24 were four or five pending amendments, and we are going to
25 reverse that now and start down the administration path.

1 It seems to me that we have to recognize that we are
2 going to rely on triggered mandatory controls in one event or
3 a system of incentives and one that addresses the underlying
4 cause of inflation in the Talmadge proposal.

5 I think we have had some progress in the last five
6 months. It does seem to me to be a bit paradoxical when the
7 administration is talking about decontrolling one industry and
8 at the same time controlling another. We are about to
9 decontrol oil prices, but now we want to control hospital
10 costs in some mandatory way.

11 I do not know whether the Chairman has done this a few
12 times, I understand **that** he has much better touch with the
13 number of votes he has and the number of votes anyone else
14 might have on the committee, to sort of get a consensus on
15 which way we should proceed.

16 And I think just to find out, I would like to move that
17 we suspend consideration of any mandatory trigger hospital
18 cost control program and proceed to figure consideration of S.
19 505.

20 Senator Nelson: The Talmadge bill?

21 Senator Dole: Yes.

22 Senator Nelson: Mr. Chairman, I agree with Senator Dole.
23 We have walked through both bills and there is a whole lot in
24 the Talmadge bill that I would agree with and that the
25 administration agrees with. Senator Talmadge's bill was here

1 first. We have walked through him, it seems, and we ought to
2 go ahead and take up Talmadge's bill.

3 There is a lot in there that is not in the conflict that
4 everybody would agree with. Let us go through it and see
5 what we agree on, and after we have done that, I am
6 interested, of course, in all party payers being covered.
7 Whatever any of us think should be done when we walk through
8 Talmadge, the option is open to offer amendments. That is he
9 only way that we are going to make headway.

10 We still favor the administration's bill, as I did last
11 year. The Committee has to make its decision. If anybody
12 does not like the final result, we will be in the posture we
13 were in last year of offering a substitute on the Floor.

14 In all fairness, we have walked through both. Let's take
15 up Talmadge. When we have a look at it, have another meeting.
16 I am sure there are some amendments I will want to make after
17 we have settled all the other questions.

18 Let's do it that way.

19 The Chairman: What points can you point us to now that
20 we should be deciding here, Mr. Constantine?

21 Mr. Constantine: Mr. Chairman, if you shift now to the
22 Talmadge bill, it would start on page 18 of the blue book. I
23 am sorry. Number 10 of the blue book.

24 Continuing with that, what we have here --

25 Senator Nelson: I wonder if I could interrupt for one

1 moment.

2 Mr. Chairman, I think it would be helpful if Mr. Champion
3 or someone were available at the desk in order if we wanted
4 him to make a comment on any of the proposals as we go along.

5 The Chairman: Would you take a seat up here?

6 Mr. Constantine: What we have, beginning on page 18 of
7 the provisions of the Talmadge-Dole bill that were not acted
8 on, on which action was not completed in the previous
9 sessions; followed by a series of possible alternative
10 cost-savings proposals for the committee's consideration.

11 The committee instructed us to come up with as many
12 potential means of reducing costs for budgetary purposes and
13 otherwise.

14 The list we have that follows the Talmadge bill is not
15 necessarily proposals that we endorse, but everything we can
16 think of that might save money for the committee's
17 consideration.

18 We think some of the provisions you will find are
19 noncontroversial and supported by the administration, and will
20 save money.

21 Section 2 of the Talmadge bill, on page 18, relates to
22 the reimbursement reform and the payment of hospitals and
23 other institutions and facilities under Medicare and Medicaid.
24 It is not a revenue limitation. It relates to how we pay
25 hospitals primarily.

1 It establishes a system and it is similar to the proposal
2 that the Finance Committee approved last year, and the Senate
3 approved, as a part of the Nelson amendment on the Floor.

4 It essentially proceeds on the basis of establishing a
5 system of classification and comparisons of hospitals by type,
6 size, location.

7 It then, with the Hospital Cost Commission, seeks to
8 refine the system to make it as equitable as possible.

9 The essence of the Talmadge approach is to determine the
10 reasonableness of a given hospital's cost by comparing that
11 hospital's cost with similar hospitals adjusted for area wage
12 levels and any usual price differentials which might occur in
13 one area as opposed to the other.

14 It rewards efficient hospitals as defined: hospitals
15 which are below the average for the group and it penalizes
16 those hospitals which are significantly above the average for
17 their group, that is namely more than 50 percent of the
18 average, unless for good cause.

19 The program starts out with adjusted routine costs. That
20 is those which approximate about 40 percent of hospital costs.
21 The adjustments include taking out malpractice insurance
22 costs, capital-related costs, energy costs and then medical
23 staff costs, because some hospitals, as you know, have
24 extensive health staffs and others do not, and that creates a
25 skewing until such time as a reasonable equitable means of

1 comparison can be made.

2 Subsequent to this, with the routine costs on an as-ready
3 basis the Commission would develop means of classifying
4 ancillary services in whole or part. The ancillary services
5 are those such as x-ray, pharmacy, laboratory, operating room,
6 and so on.

7 You bring them in on as-ready basis. It has the
8 capacity to compare them. It is developed to compare them
9 fairly.

10 That is as it is described here. It is virtually
11 verbatim, identical with the provision approved by the
12 Committee last year. We did have, in responding to the
13 Committee, concern -- a couple of things have happened.

14 Number one, the administration has proceeded under
15 existing law to implement the Talmadge approach for Medicare
16 and Medicaid as it affects adjusted in-part routine hospital
17 costs without, perhaps, the sensitivity that the Talmadge bill
18 has to adjustments, and so on, and without the incentives that
19 the Talmadge bill has. That is one reason why the first
20 year's savings were reduced, because the administration has
21 pre-empted some of those savings.

22 On the ancillary side, the CBO estimate of savings over
23 the five years relates only to routine. It does not assume
24 that any progress will be made in comparing those other costs,
25 ancillary costs, the non-hotel costs of hospitals, that the

1 administration itself says is unrealistic.

2 They believe that within a year or two years they will be
3 prepared to compare total cost on a case mix basis by types of
4 cases, and so on.

5 Meanwhile for the committee's consideration, what the
6 staff did was again, without necessarily recommending the
7 modification, developed an interim approach, if the committee
8 believes that it has to come up with substantial costs savings
9 in the near future.

10 It essentially -- and it is described at the bottom of
11 page 20 and the top of page 21 -- it essentially would
12 establish a standby interim limitation on hospital ancillary
13 costs for Medicare and Medicaid only, in the event that the
14 voluntary effort does not succeed. It would then limit the
15 rate of increase of ancillary costs under Medicare and
16 Medicaid adjusted for area wage levels and a market basket of
17 goods and services that hospitals actually purchase.

18 The savings, as you can see, are very, very substantial.
19 Unfortunately, they do not assume an intensity factor that we
20 would also recommend and which would probably help those
21 savings considerably. Those savings would be half of those
22 described here if an intensity factor were added to the standby
23 ancillary limit.

24 The intensity factor that we would suggest is very
25 simply that a hospital which is at the 90th percentile of the

1 median and the average group would receive 2.5 percent. Then
2 it would be a one-tenth of a percent reduction up to 115
3 percent, 15 percent above the average. So if you were at the
4 average, you would receive a 1.5 percent intensity factor and
5 if you were at 15 percent above the average, you would
6 receive a zero intensity factor, but you would get that market
7 basket plus a wages adjustment.

8 We would also suggest that any approved capital
9 expenditures, any operating costs associated with an approved
10 capital expenditure also be passed through. The net effect of
11 those -- we estimate as having the savings under the ancillary
12 described on page 21, but as you can see,, those ancillaries,
13 the savings are very substantial.

14 The committee can also, if it did vote a standby for
15 Medicare-Medicaid only, on the ancillary and if the voluntary
16 effort succeeded, could also claim credit for savings
17 approximating the magnitude of those described. Either way,
18 if you have the standby and it is triggered, you would achieve
19 savings -- what the adjustments we described, about half of
20 those described here, by using the voluntary effort as a test
21 over the five-year period. If the voluntary effort succeeds
22 as established by the voluntary sector, by the hospital and so
23 on, you would achieve savings of approximately the same
24 magnitude we described, half of this here, either way, and
25 that, we believe, will go a substantial way --

1 Senator Dole: Of what?

2 Mr. Constantine: Of these numbers, page 21. They do not
3 include an intensity factor. Adjusting for an intensity
4 factor, as I described it, would probably conservatively help
5 those numbers, so that by 1984, the savings would approximate
6 \$2 billion on the ancillary side in Medicare or Medicaid only.

7 We are suggesting that for your consideration as
8 another possibility towards meeting the budgetary objectives.
9 We are not necessarily advocating it; we are simply proposing
10 another approach.

11 The Chairman: So you would save half of what is
12 suggested there?

13 Mr. Constantine: Yes, sir. For Medicare-Medicaid only
14 with a standby on ancillaries if the voluntary effort fails
15 and the voluntary effort as established by the hospitals and
16 physicians and so on.

17 The Chairman: Shall we vote on this?

18 Mr. Champion: Mr. Chairman, may I comment on the
19 administration's position?

20 As Senator Nelson pointed out, we continue to believe
21 that it is an important matter to have all payers covered
22 rather than only Medicare and Medicaid. I think it is
23 important to point out that when we restrict Medicare-Medicaid
24 only, the hospitals then have substantial freedom to pass
25 through costs to the other payers, something like 50 to 55

1 percent.

2 So whereas we would get budget savings, we would not
3 handle any of the inflationary problems. At least, we would
4 handle very few of them.

5 The other point that should be made here is a point that
6 Mr. Constantine raised with respect to routine costs. We have
7 acted. We now have put the regulations which would produce
8 around \$215 million on the routine side. We have ample
9 authority to do that.

10 We also have ample authority to go ahead on the auxiliary
11 side as soon as that case mix is, in fact, established, which
12 we do propose to do.

13 Our concern is that as we do these things we will have an
14 inflationary effect on the other pairs. That is the major
15 difficulty with this approach.

16 I might add that the savings on the routine alone will
17 largely be offset by the incentive bonuses proposed here so
18 that you will get no effective savings from routine at all
19 beyond those we have already achieved. As a matter of fact,
20 some of them will be offset by the bonuses that will be offset
21 under this bill.

22 We do agree with millions of suggestions being made in
23 the Talmadge bill. We think Section 2 is one that is not
24 productive of savings. Any that can be achieved can be
25 achieved under the authority of present law. It does not

1 require any further change and in fact what we do is we force
2 to the extent that we rely on this approach alone, we force a
3 lot of cost out into the rest of the hospitals' purchasers and
4 the insurance companies, the carriers, and the people who pay
5 the premiums to them are eventually going to pay some of this
6 money that is saved in taxes unless we find a way to control
7 the cost to them as well.

8 Senator Ribicoff: What is the percentage of
9 Medicare-Medicaid and the other payers, as far as hospitals
10 are concerned?

11 Mr. Champion: I think the government now pays about 45
12 percent. The total of the third party carriers is 94 percent,
13 I think. That is our last figure. It is roughly split
14 between the government and Blue Cross-Blue Shield.

15 The Chairman: As I understand it, you do not think this
16 provision saves anything, Mr. Champion?

17 Mr. Champion: Not as we have gone. As Mr. Constantine
18 said, we went ahead under existing authority and took the
19 routine cost savings. We have promulgated those regulations.
20 We anticipate they will save \$215 million this year, but what
21 we will get back with this approach is some incentive bonus
22 payments to the more efficient hospitals that will negate part
23 of those savings.

24 Senator Ribicoff: Let me ask you, if there is some sort
25 of health bill passed, the Long approach, the Carter approach

1 problem of overall costs, you are not going to be able to
2 really support the President's or the Long proposal without
3 taking into account his suggestion.

4 The Chairman We are all going to attack the costs. That
5 is what we are here for. But I do not feel like being blamed
6 because of the world I find myself in.

7 I did not ask to be a part of this world. I find myself
8 here. There are some shortcomings that I had nothing to do
9 with creating and there will be some when the good Lord calls
10 me home.

11 So to try to blame me for the situation I have found is
12 something I do not think people want to do in fairness.

13 Senator Nelson: You adjusted very well when you got
14 here, I might say.

15 The Chairman: Mr. Constantine, what is your reaction to
16 what Mr. Champion has to tell us?

17 Mr. Constantine: Mr. Chairman, CBO advises us that these
18 numbers were netted out for the incentive at the time they
19 calculated it. The other point we would make in a somewhat
20 self-serving way, this Committee has come up with a number of
21 cost-saving recommendations over the last several years in the
22 health field, aggregating many hundreds of millions, which the
23 administration subsequently has implemented by regulation, but
24 you do not get any credit for it.

25 In other words, if they do what this suggests here, by

1 regulation ultimately, the administration gets credit for the
2 savings, not the Congress, in trying to meet its budget
3 objectives.

4 Secondly, as far as the shifting problem is concerned,
5 that is when any cost payer constrains its reimbursement. The
6 allegation is made that those are then shifted to other
7 payers. That has been an allegation that long antedates
8 Medicare-Medicaid. It was made with respect to Blue Cross,
9 primarily a cost payer, and any other states that paid on a
10 cost basis.

11 You have that problem explicitly any time.

12 The Talmadge bill does contain a specific provision
13 prohibiting shifting of costs that are found to be excessive.
14 The staff would suggest, whether you take the ancillary
15 standby for Medicare-Medicaid, that that might be strengthened
16 to satisfy those who are concerned about any constraints
17 resulting in shifting by simply saying that the chief
18 executive officer of the hospital and the individual
19 responsible for that institution, certify -- and all these
20 certifications are subject to criminal penalty ---that they
21 did not shift costs, the costs that were determined to be
22 excessive were not shifted.

23 Presumably, assuming that they act on it, the costs will
24 not be shifted. If people want to shift costs, or play these
25 games, they can do it under any circumstances.

1 Mr. Chairman, you can strengthen the what we call the
2 Thou Shalt Not Shift provision in the Talmadge bill and just
3 require a specific certification by the hospital officials
4 responsible for accounting practices. That, they did not.

5 Senator Wallop: Mr. Champion, is there not an inherent
6 assumption on your part that there is nothing achieved by the
7 incentive program? It sounds to me you are ignoring that side
8 of it, where people are encouraged to be more efficient. The
9 bonuses -- that has to relate ultimately to noncovered payers,
10 as a savings to them.

11 Mr. Champion: That kind of incentive which, in effect,
12 is built around the notion that you are trying to average, or
13 bring everybody to some level, that level can keep rising and
14 the people who are under it get incentive payments as long as
15 they are on the low side of that.

16 But there is not the pressure to bring down what is the
17 administration objective, which is to bring health costs into
18 line with the regular inflationary costs in the economy with
19 some other allowances, to press down, in effect, the final
20 objective to contain the increasing percentage of GNP that is
21 being taken by health costs.

22 You do not achieve it through that kind of incentive.
23 You simply say those people who are better are allowed to get
24 money back that you recover from people who were above the
25 mean.

1 Senator Wallop: I would guess you are making the
2 assumption that I would have to disagree with. It seems to me
3 that nobody knows whether he is entitled to that bonus or not
4 before the year is up, and he is going to be doing everything
5 he can to come into that bonus situation.

6 It seems to me that the very obvious effect of the
7 incentive program is to pull down on that rather than push up.

8 Mr. Champion: My point here is in terms of the dollars
9 problem now being faced, in terms of the budget in the
10 immediate future, even if the bill works precisely as it has
11 been outlined by Mr. Constantine -- and I think Thou Shalt Not
12 is about all you can say about what the real pressure and the
13 shifting of costs. I think that is an honest statement. You
14 really cannot keep track of that.

15 In fact, you are not going to achieve any substantial
16 savings in the early years.

17 The Chairman: As I understand what you are saying, Mr.
18 Constantine, you are saying that it is always within the
19 potential of the department to save money by issuing new
20 regulations and when they do, they are entitled to claim
21 credit for it.

22 Right now, we are desperately in need of \$1.8 billion in
23 hospital costs and we cannot take credit for something they
24 did by regulation. All we can do is go there and tell the
25 Budget Committee what we have done is to vote for something

1 where by law we seek to achieve savings.

2 Is that the size of it?

3 Mr. Constantine: Yes, sir.

4 Senator Danforth: Mr. Chairman?

5 The Chairman: Yes.

6 Senator Danforth: I would like to ask a question that
7 Mr. Champion, Mr. Constantine, or both, can answer.

8 Suppose we went the Talmadge route and proposed Medicare
9 and Medicaid and presumed there is, then, shifting. Would
10 that be ascertainable?

11 Mr. Constantine: Yes, sir.

12 Senator Danforth: How long would it take to ascertain
13 it?

14 Mr. Constantine: As you know, the administration has
15 proposed under law the Uniform Hospital Reporting Provisions
16 which are somewhat controversial because they have --

17 Senator Danforth: Will they be ascertainable or not?

18 Mr. Constantine: Is that correct? Do you anticipate
19 during the year you will have the uniform reporting so you can
20 determine allocation of costs?

21 Mr. O'Connor: I do not now at this point.

22 Senator Danforth. It is a very simple question. If
23 there is the shifting that is being alleged by HEW, would that
24 be ascertainable?

25 Mr. Constantine: We believe it would.

1 Mr. Champion: In gross, I think in gross, you will be
2 able to see it. To pick out specific institutions and to show
3 where they have done it and to get the burden of proof
4 required in that kind of accounting exercise, we believe to be
5 virtually impossible.

6 Senator Danforth: You believe that the so-called Thou
7 Shalt Not Shift could not be policed, is that right?

8 Mr. Champion: That is correct, even with a full
9 reporting system.

10 Senator Danforth: Do you agree with that?

11 Mr. Constantine: No, sir, for two reasons. One is
12 our strengthened stand with the criminal penalty; you do not
13 have to stress it, but the fact that you require certification
14 from the principal officials of the hospitals personally
15 signing that to their knowledge would deter a few people. I
16 think it would deter --

17 Senator Danforth: I am not talking about deterrence. I
18 am talking about being able to ascertain it.

19 Mr. Constantine: Yes, sir.

20 One of the reasons that the uniform reporting legislation
21 went in, in previous years we tried to put limitations, the
22 government, on hospital costs on the in-patient routine costs.
23 We will put a limit on.

24 I know personally of several hospitals who have told me
25 they will be receiving \$4 or \$5 a day less than their costs

1 under the restraints. They then shifted those costs to the
2 out-patient department. In other words, pressed down at this
3 point and it popped out at another.

4 Consequently, under the new requirements on allegation,
5 uniform accounts and allocation of costs, are designed to
6 prevent precisely that kind of shifting from one segment to
7 another, if properly implemented by the Department and we
8 assume proper implementation until the mail comes in. That
9 should be detectable.

10 Senator Danforth: If there is such shifting, there are
11 at least two remedies, right?

12 One is the possibility of criminal prosecution. Is that
13 correct?

14 Mr. Constantine: Yes, sir.

15 Senator Danforth: The other words, if it proves even in
16 gross that we can ascertain the shifting, Congress can always
17 come back and treat that problem next year, could we not?

18 Mr. Constantine: Yes, sir.

19 Mr. Champion: I might have, in looking and dealing in
20 detail with overhead calculations, the Congress should
21 remember its experience with universities, and since I have
22 been at the university while this was going on, where audit
23 findings would run \$65 million, \$70 million, \$75 million and
24 final settlements would run \$200,000 or \$300,000.

25 We are in an area and in a relationship which cannot be

1 that adversarial if we are going to achieve good cooperation
2 together and I think to set up another such set of
3 relationships with the hospitals is one that is probably the
4 most difficult relationship between the government and the
5 universities. It is not an inappropriate thing to do.

6 We certainly want to protect against fraud, abuse, gross
7 neglect that kind of thing, but these accounting questions
8 frequently have arisen on both sides and people will choose,
9 depending on what the alternatives they are offered, what
10 works best for their institution.

11 One of the reasons we are having the controversy over
12 household reporting and accounting -- and we supported that.
13 It should only be supporting, and not accounting, because we
14 did not want to dictate accounting systems.* It is a
15 difficulty that is inherent in this kind of relationship.

16 We are customers; they are sellers, but we are about half
17 of their business and everything we do and every action we take
18 is very important on both sides.

19 And I think to rely on this to produce major savings in
20 the hospital situation really expects something that is not
21 going to happen.

22 The Chairman: I think you have made that clear.

23 I just want to vote on some of these things and make some
24 decisions. They can all be changed. If we find we are in
25 error, we can reconsider, at any time, any of them.

1 Do you want to say something, Senator Dole?

2 Senator Dole: As I understand it, the only issue this
3 morning is whether we want to accept the modification which
4 would be, in effect, another cap.

5 You talk about the word "trigger." When you mention that
6 word "trigger" you are right back to the administration's
7 program which I could not support the modification, but it
8 seems to me that Section 2, without the modification, is very
9 important. That is sort of the backbone of the Talmadge
10 proposal.

11 The incentive proposal, I believe, is a step in the right
12 direction.

13 In addition, we are talking about state programs. It is
14 a rather significant section, if you take a look at the text
15 of the bill itself.

16 As I understand it, the only way you are suggesting
17 without any recommendations whether or not in line with the
18 effort to make savings we should modify Section 2. Is
19 that correct?

20 Mr. Constantine: That is correct.

21 Under existing Section 2, the ancillaries would be
22 incorporated on an as-ready basis. Nobody knows when the
23 state of the art would effect sufficient comparison.

24 This would accelerate to have an interim standby on
25 Medicare-Medicaid ancillaries only. It does have a trigger,

1 a voluntary effort, if it fails, yes, sir.

2 The bill itself, Section 2 with all the modifications,
3 provides over time for achieving the same thing. It just does
4 not have a specified time.

5 Senator Dole: It is my view -- Senator Talmadge is not
6 here -- that he would like to preserve -- certainly he would
7 want to keep Section 2.

8 I cannot speak for him in reference to the modification,
9 but I would just suggest if we vote for the modification, in
10 effect we are voting for a cap on a mandatory program. You
11 can call it voluntary, a voluntary trigger program.

12 Mr. Constantine: Senator, it is. Make no mistake. It
13 is, assuming the voluntary effort fails this year, then this
14 limitation would apply to ancillary services. The trigger
15 would be pulled. This would apply to trigger measures under
16 Medicare and Medicaid.

17 Senator Dole: I understand we will have a chance to do
18 that under Senator Nelson's bill. I would suggest we accept
19 Title II without modification.

20 Senator Bentsen: Let me ask a question on the intensity
21 factor. Were you suggesting that, or not?

22 Mr. Constantine: Yes, sir, we were. We were suggesting
23 a further modification.

24 If you do not take this staff modification, the staff
25 thing, the intensity factor is irrelevant here, because the

1 active.

2 The essence of the amendment, including the staff
3 suggested change, which is more cosmetic than anything else --
4 we might as well be honest with you -- by dropping Section 6
5 and moving appropriate language over to Section 19.

6 We do the objection raised by the AMA about the possible
7 redefinition of physicians' services.

8 The staff recommendation here achieves the result, but
9 the issue very simply, Mr. Chairman, no matter how you slice
10 it, no matter how you state it here, whether we put it in
11 Section 19 or Section 6, whether in Medicare or Medicaid, it
12 is intended to continue to permit the payment to
13 hospital-based specialists, principally pathologists, of
14 percentages, that is, commissions on the total volume of
15 clinical laboratory work, unrelated to professional time and
16 effort.

17 That is where they get a specific percentage without any
18 requirement as to professional time or input. It is a
19 straight commission arrangement.

20 The staff recommendation essentially ---and the
21 Talmadge bill -- was for the pathologist, the work he does
22 personally, consultations, tissue studies and so on, he can
23 bill a fee, but for the generality of his supervision of the
24 laboratory that he be paid on a compensation arrangement with
25 the hospital on a basis reasonably related to his time and

1 effort.

2 It is not dissimilar from the way, for example,
3 in the hospitals, the Chief of Surgery, Chief of Medicine are
4 paid. They receive compensation for supervising the
5 department, for hiring, for scheduling, and so on. Then they
6 bill for their private patients, for those patients that they
7 do surgery for.

8 This is controversial. We understand the administration
9 does support the staff recommendation.

10 Senator Dole. The recommendation is delete and amend
11 Section 19, since they are related, and Senator Wallop has an
12 amendment to Section 19, and we ought to do both right now.

13 Senator Wallop: Mr. Chairman, the amendment I would have
14 recognizes what they were trying to do with the problem as
15 identified and described to us before with regard to
16 hospital-based physicians, we would continue to cover them and
17 permit the contract arrangement with people not hospital-based
18 and provide for a study to recommend, which was recommended to
19 the administration and HEW in the Arthur Anderson study that
20 they commissioned. In that study's findings, we believe that
21 major changes are completed* in the way hospital-based
22 physicians are reimbursed under public programs, such as
23 proposed in the Talmadge bill.

24 All major new policies should be tested under control
25 conditions before being implemented on a nationwide basis.

1 Such information should form an essential agreement in the
2 design of new reimbursement procedures.

3 What I would simply do is cover the hospital-based
4 physicians, which are identified as the primary problem in all
5 of this, and then call for a study in a two-year period based
6 on specific recommendations.

7 Let me read the language that I would suggest. I think
8 it has been passed around.

9 "The Secretary shall conduct a study and submit a report
10 within two years to the appropriate committees of the Congress
11 analyzing the impact and the effect on hospitals, providing
12 the physicians and beneficiaries related to cost, quality and
13 availability, appear that results directly or indirectly from
14 modified reimbursement procedures authorized by this
15 section."

16 It shall also include "other recommendations that the
17 Secretary deems necessary or desirable to reduce any improper
18 expenditures pursuant to Sections 5, 18 and 19 related to the
19 subject matter of this section."

20 It seems to me that it is a middle ground posture and
21 puts them in the recommendations of their own commissioned
22 study by Arthur Anderson and takes care of our problems in
23 rural areas where people are on a contract basis.

24 Mr. Champion: We strongly support this amendment. We
25 do not think there is any reason to examine this any longer.

1 It has been with us as a problem for a long time. I have been
2 confronted with it myself as an administrator. There is no
3 reason for a two-year delay in full coverage for this kind of
4 activity.

5 We think the staff's recommendation should be fully
6 supported.

7 Senator Wallop: There was a lot of money for the Arthur
8 Anderson study.

9 Mr. Champion: We got good advice and bad advice.

10 The Chairman: Those in favor of the Wallop amendment say
11 aye.

12 (A chorus of ayes)

13 The Chairman: Opposed, no?

14 (A chorus of nays)

15 The Chairman: The nays appear to have it.

16 Senator Wallop: A show of hands.

17 The Chairman: Those in favor of the Wallop amendment,
18 raise your hands.

19 (A show of hands)

20 The Chairman: Those opposed?

21 (A show of hands)

22 The Chairman: As of now, the amendment carries by a vote
23 of six to five.

24 Senator Nelson: Did the Chairman vote?

25 The Chairman: I voted.

1 Senator Ribicoff: I think we should have a roll call
 2 vote and give the absentees a chance to be recorded.
 3 The Chairman: Call the roll.
 4 Mr. Stern: Mr. Talmadge?
 5 (No response)
 6 Mr. Stern: Mr. Ribicoff?
 7 Senator Ribicoff: No.
 8 Mr. Stern: Mr. Byrd?
 9 (No response)
 10 Mr. Stern: Mr. Nelson?
 11 Senator Nelson: No.
 12 Mr. Stern: Mr. Gravel?
 13 (No response)
 14 Mr. Stern: Mr. Bentsen?
 15 Senator Bentsen: Aye.
 16 Mr. Stern: Mr. Matsunaga?
 17 (No response)
 18 Mr. STern: Mr. Moynihan?
 19 (No response)
 20 Mr. Stern: Mr. Baucus?
 21 Senator Baucus: No.
 22 Mr. Stern: Mr. Boren?
 23 Senator Boren: Aye.
 24 Mr. Stern: Mr. Bradley?
 25 (No response)

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1 Mr. Stern: Mr. Dole?

2 Senator Dole: Aye.

3 Mr. Stern: Mr. Packwood?

4 Senator Packwood: No.

5 Mr. Stern: Mr. Roth?

6 (No response)

7 Mr. Stern: Mr. Danforth?

8 Senator Danforth: Aye.

9 Mr. Stern: Mr. Chafee?

10 Senator Chafee: No.

11 Mr. Stern: Mr. Heinz?

12 (No response)

13 Mr. Stern: Mr. Wallop?

14 Senator Wallop: Aye.

15 Mr. Stern: Mr. Durenberger?

16 (No response)

17 Mr. Stern: Mr. Chairman?

18 The Chairman: Aye.

19 Senator Nelson: I have a proxy. I did not know the
20 decision was coming up.

21 The Chairman: The absentees can record themselves.

22 The ayes are six and the nays are five, and we will let
23 the absentees record themselves.

24 Senator Dole: Does that take care of Section 6 and 19?

25 Mr. Constantine: Not Section 19, but it takes care of

1 that aspect of 19. I think the Committee should also be
 2 aware, relative to this provision, just as a matter of
 3 information, that language identical to the staff
 4 recommendation was approved by the Human Resources Committee,
 5 doing exactly what is here approved by the Human Resources
 6 Committee as part of the Clinical Laboratory Improvement Act
 7 that they reported out three or four weeks ago.

8 If Senator Wallop's amendment carries, is approved, then,
 9 we would assume that you would want to make a jurisdictional
 10 claim on the Clinical Laboratory Improvement Act, or as to the
 11 extent that it affects the Medicare-Medicaid programs, that a
 12 similar provision be substituted.

13 We just wanted to alert you that the other committee --
 14 The Chairman: That is fine.

15 It is not even clear at this point that the majority for
 16 the amendment is necessarily what the majority will be when we
 17 hear from the absentees.

18 Senator Boren: I would like to ask a question of Senator
 19 Wallop. I voted for his amendment and am in sympathy with it.
 20 I am also in agreement with the staff position that the
 21 percentage contracts are a part of this problem and I wondered
 22 if, supposing his amendment were adopted, if he would object
 23 to having the report show that it was not his intent to
 24 support percentage contracts, but that it would still be our
 25 intent to allow percentage contracts to be prohibited through

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1 Medicare and Medicaid regulations?

2 Senator Wallop: You are absolutely right. It should
3 also contain language about the hospital based physicians, the
4 area that all the argument was made about this in the first
5 place.

6 Mr. Constantine: Senator, that could be handled, if the
7 motion is agreed to and report language. The Committee report
8 and the Department has its existing authority that is
9 unimpaired and presumably they could relate present payments
10 to reasonable time and effort.

11 Senator Bentsen: Let me also buttress what Senator Boren
12 has said. I am very much in agreement with him.

13 Frankly, this is a difficult decision, because we have
14 had some abuses on these percentage contracts and it ought to
15 be stopped. The only thing that finally tilted me over to
16 vote for this was my concern about some of the rural areas and
17 how we would get some of these kinds of services to them.

18 The Chairman: Let us go on to the next thing.

19 Mr. Constantine: Yes, sir.

20 The next provision is designed -- was also part of S.
21 5285, that bill approved by the Committee and the Senate last
22 year. It has some moderate savings. It deals primarily --

23 Senator Ribicoff: What page are you on?

24 Mr. Constantine: Page 23, Section 10.

25 It deals with the means of establishing a mechanism for

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1 difference between those two.

2 Basically, the effect of this provision will be to say
3 that we will be defining what is line, that we will not reduce
4 the doctors in Los Angeles under the situation I described,
5 but they would not be automatically increased until there is
6 movement upward. But it is only where he exceeds the
7 statewide median by more than one-third.

8 There are some very gross kinds of differences going on
9 which we will circulate to the committee. We asked the
10 Department, that is not within the states, but between states.
11 I think you will see the need to do something ultimately about
12 the Medicare reasonable charge determinations.

13 This will save some amount of money, not an excessive
14 amount. It will probably, however, lead to somewhat greater
15 equity in the future.

16 We understand the Department -- I do not know whether
17 they still oppose this provision.

18 Mr. Champion: Yes. We agree on the problem, and the
19 problem is there. We think the solution is somewhat more
20 complicated than proposed by this.

21 We would propose, in the absence of other action by the
22 committee to, in fact, issue a proposed regulation that would
23 give all the parties involved a chance to comment on it.

24 This is not a serious thing. We do think the problem is
25 serious, perhaps more serious than this particular approach

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1 would deal with. We think it might help a little in New York
2 and Virginia. We do not think it would solve the major problem
3 that exists here.

4 We do agree with the staff about the nature of the
5 problem.

6 Mr. Champion: Mr. Chairman, I should point out that this
7 provision has been around for about four or five years and has
8 been the subject of testimony. We have had extensive hearings
9 on the Talmadge bill and its predecessor bill. It is not a
10 new thing.

11 Senator Dole: How do you respond to the AMA who opposes
12 this provision on the theory that it discourages participation
13 in Medicare and makes the situation worse for the elderly who
14 need that service?

15 Is that a valid argument, or an AMA argument?

16 Mr. Constantine: I suspect it is an AMA argument.

17 Senator, on the self-serving part, there is another
18 section of this that increases the Medicare prevailing --

19 Senator Dole: No one objects to that section.

20 Mr. Constantine: I wanted to get that one out of the way
21 without missing it.

22 Also, we had a provision, you recall, several years ago
23 that said Medicaid that could not pay less than 80 percent of
24 what Medicare paid for similar service as a means of getting
25 physicians to take care of the poor.

1 The AMA objected to that one, contrary to the state
 2 medical societies and local societies which wanted it, because
 3 Medicaid payments were often substandard. The AMA's argument
 4 was that they wanted complete identity. They wanted Medicaid
 5 to pay it out, paid on a basis identical to Medicare. That
 6 went by the boards, as well.

7 The administration, I think, seeks to establish statewide
 8 fee schedules. That is in the President's proposal, a fee
 9 schedule basis throughout a state.

10 The staff has no approach. We cannot recommend something
 11 better than what the Talmadge bill has as a means of
 12 controlling the upper hand of really unusually high fees.
 13 They are generally in the city. For example, in New York, the
 14 physicians, the surgeons, do far fewer procedures, work less
 15 hours, and charge much higher fees than they do in other
 16 areas. It is just a distortion and a skewing.

17 We just do not know what to do and do not know what to
 18 recommend to you in the existing system, as defining some
 19 charges as being unreasonable.

20 We are not automatically increasing it.

21 The Chairman: Let us just vote on it. You will not end
 22 the world one way or the other.

23 All in favor, say aye.

24 (A chorus of ayes)

25 The Chairman: *Opposed, no.

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1 (No response)

2 The Chairman: The ayes have it.

3 Gentlemen, my colleague and I are hosting a luncheon for
4 Senators in Room 207. We have some good New Orleans food. I
5 would like to make everyone capable of legislating in the
6 remainder of the day.

7 I am going to leave. If you want, Senator Ribicoff, you
8 can take the Chair.

9 Senator Ribicoff: I can stay for a little while. You
10 have a lot of these members who want to join you, I assume.

11 Senator Dole: The next is 14, and Senator Boren has an
12 amendment.

13 Mr. Constantine: Yes, sir.

14 Senator Chafee: Mr. Chairman, could I ask a question
15 before you leave?

16 What is the intention here? Are we going to go through
17 with a vote on whether we want to proceed in the Talmadge
18 direction, or do we want to go in the administration's more
19 inclusive direction?

20 The Chairman: You have some amendments here to the
21 Talmadge proposal and I would think the kind of thing we have
22 been voting on here, we would want to vote on in any event.
23 We are perfecting the Talmadge bill at this moment, and
24 Senator Nelson will have the opportunity to offer a
25 substitute, or propose amendments to it.

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1 Senator Nelson: We agreed we will tackle the Talmadge
2 bill and complete it. When it is over with, we will have the
3 option of offering amendments. I will be offering an
4 amendment to cover all party payers, a number of things, once
5 I see what we have done.

6 Senator Chafee: I appreciate that.

7 My specific question is, are we going to have an up or
8 down vote on the Talmadge bill today?

9 Senator Ribicoff: I would say not. I do not think we
10 will be finished.

11 Senator Nelson: When we are finished, I want to look at
12 it, and then I will have some amendments to offer, anyway. I
13 would want to get them to the members in advance, so when we
14 meet --

15 Senator Dole: It would not be today.

16 Senator Ribicoff: Suppose we proceed to Section 14. I
17 understand Senator Boren has an amendment.

18 Do you want to offer your amendment before Mr.
19 Constantine explains it?

20 Senator Boren: Yes, Mr. Chairman.

21 I originally had considered offering an amendment that
22 would have repealed Section 249. If you look back on page 33
23 of the report, the staff suggestion of alternatives, the
24 smorgasbord, so to speak, had included this as a possibility
25 had included this as a possibility with savings somewhere

1 between \$60 million and \$70 million.

2 There was concern over that. My aim was to get away from
3 the cost-based reimbursement in the nursing home area that is
4 giving us trouble, in the hospital area, and also to cope with
5 the tangle of regulations that has come out from that section.
6 Very few words on that section. Eleven pages in the Federal
7 Reister; 33 pages of additional guidelines, and so on.

8 It has made it difficult for the states to operate.

9 There were concerns expressed that we might be opening
10 the door to some states not having adequate standards.
11 Certainly my aim was not to open the door to states not
12 providing adequate, long-term care, but rather to give the
13 states the flexibility of coming up with regulations that were
14 more simple, less cumbersome to comply with and therefore save
15 money in that way.

16 I would like to offer a substitute amendment to the
17 outright repeal, which I think would answer these concerns,
18 and it would amend Section 19.02(a)(13)(E) of the Social
19 Security Act as follows:

20 "Effective January 1st, 1980 , for payment of the skilled
21 nursing facility and intermediate care facility services
22 provided under the plan with the use of rates determined in
23 accordance with methods and standards developed by the state
24 which the state finds an assures are reasonable and adequate
25 (1) to meet the costs which must be incurred by facilities

1 which are efficiently and economically operated in order to
2 provide care and services in conformity with applicable state
3 and federal laws and regulations and ⁽¹⁾ to assure reasonable
4 availability of long-term care services so eligible persons
5 can receive such services included in the plan, at least to
6 the extent that such services are available to the general
7 population; that such rates paid to such facilities shall not
8 exceed an average basis amount that shall be determined in the
9 aggregate under Section 18.61 as a reasonable cost of extended
10 care services for the purposes of Title XVIII."

11 What in essence it would do, it would require the states
12 to come up with their own Title XIX plans which would assure
13 their meeting the costs and assure adequate standards, and the
14 Secretary would be able to review and look at these plans and
15 make sure they were in conformity.

16 I think it would give a lot more flexibility to the
17 states to find simpler methods and I think there would
18 substantial savings -- perhaps not as much savings as the
19 outright repeal, but very substantial savings.

20 Senator Ribicoff: Mr. Constantine and Secretary Champion,
21 would you like to comment?

22 Mr. Constantine: That is a judgment call for the
23 committee, Mr. Chairman.

24 Mr. Champion: Mr. Chairman, we agree with the purposes
25 of the proposal and have worked with Senator Boren on it. We

1 still have a question about the extent to which we can look
2 behind certification of the state, but in its present form, we
3 would not oppose it.

4 Senator Ribicoff: Senator Bentsen?

5 Senator Bentsen: Mr. Chairman, I am sympathetic to the
6 objectives of what Senator Boren is suggesting. The last four
7 lines I was listening to, I wonder if the Secretary does not
8 already have that authority and if this might put some
9 limitations on his flexibility and that there would be some
10 complexities, some difficulty, in arriving at those numbers.

11 Senator Boren: The Section XVIII cap, is there already
12 existing --

13 Mr. Constantine: Yes.

14 19.02(a)(30): The Secretary has the authority that the
15 costs are reasonable.

16 Senator Boren: With that assurance, Mr. Chairman I would
17 be happy to modify the amendment. That is, it would help by
18 deleting that last language, beginning on the fourth line from
19 the bottom, "except such rates paid."

20 Senator Ribicoff: Are there any further comments?

21 Senator Dole?

22 Senator Dole: I think it has been clarified. I am
23 trying to clarify it here.

24 I think we finally had the regulations implemented in
25 '78. Maybe HEW does not oppose it in the present form, but

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1 can suspend it. The first dates that they were implemented
2 -- they were concerned about the amendment. They think the
3 rates may be set too low. Perhaps maybe we could address it.

4 I would ask Sheila Burke on our staff if it is the intent
5 of the Senator from Oklahoma to permit the state to include
6 allowance in the form of incentive payments in regard to
7 efficient performance in the Medicaid payment system. Then we
8 would probably have no objection to it.

9 Do you want to address that point?

10 Ms. Burke: Senator, the language that Senator Boren has
11 offered does not exclude the inclusion of those kinds of
12 incentive payments. It is not clear in his attention at this
13 time if they are to be allowed, but they are not automatically
14 excluded.

15 You may want to include in the report language some
16 reference to the ability of the states to do that.

17 Senator Boren: I would certainly not object to saying it
18 was my intent to give the states that flexibility.

19 Senator Dole: We can do that in the report.

20 Mr. Champion?

21 Mr. Champion: My problem, if we delete that -- I think
22 that has an impact on the cap. We would want to examine that
23 very carefully. I think that might cost quite a lot of money.

24 Senator Ribicoff: I wonder, since there seems to be a
25 general consensus, but some clarification is needed, that

1 Senator Boren and the Department and Senator Bentsen and
2 Senator Dole's staff take a look at it and it will be the
3 first order of business when we meet again.

4 Senator Dole: Fine.

5 Senator Ribicoff: Is there any objection, Senator Boren?

6 Senator Boren: No.

7 Mr. Stern: The next meeting is 10:00 tomorrow morning,
8 Mr. Chairman.

9 Senator Ribicoff: We will recess until 10:00 tomorrow
10 morning.

11 (Whereupon, at 12:10 a.m., the committee recessed, to
12 reconvene Thursday, June 14, 1979.)

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