

EXECUTIVE SESSION

2 WEDNESDAY, SEPTEMBER 18, 1985

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The committee met, pursuant to notice, at 9:43 a.m.  
7 in room SD-215, Dirksen Senate Office Building, the  
8 Honorable Robert Packwood (chairman) presiding.

9 Present: Senators Packwood, Dole, Roth, Danforth,  
10 Chafee, Heinz, Wallop, Durenberger, Armstrong, Symms,  
11 Grassley, Long, Bentsen, Matsunaga, Moynihan, Baucus,  
12 Boren, Bradley, and Mitchell.

13 Also present: Dr. Henry Desmarais, Acting Deputy  
14 Administrator, Health Care Financing Administration; Ms.  
15 Carol Kelly, Acting Associate Administrator for Policy,  
16 Health Care Financing Administration; Ms. Betty Stagg,  
17 Acting Director, Policy and Legislation, Office of Human  
18 Development Services; Charles Seagrave, Congressional  
19 Budget Office; Lou Enoff, Acting Deputy Commissioner,  
20 Social Security Administration; Bob Franks, General Counsel,  
21 Agricultural Committee; Dorcus Hardy, Assistant Secretary,  
22 Social Security Administration; Roger Mentz, Assistant  
23 Secretary for Tax Policy, Treasury Department; Mr. DeAngeles,  
24 Deputy Commissioner of Customs.

25 Also present: Bill Diefenderfer, Chief of Staff;

1 Donald Muse, Professional Staff Member; Ed Mihalski, Deputy  
2 Chief of Staff; John Colvin, Chief Counsel; Frank Cantrel,  
3 counsel; Dave Brockway, Chief of Staff, Joint Committee on  
4 Taxation; Leonard Santos, Trade Counsel; Ann Moran, Tax  
5 Counsel; Sydney Olson, Joseph Humphries, Bob Hoyer, Special  
6 Professional Staff Members; Donald Muse, Professional Staff  
7 Member; Michael Stern, Minority Staff Member; Randy Weiss,  
8 Tax Counsel, Joint Committee on Taxation.

9 (The press release announcing the hearing follows:)

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1 The Chairman. The committee will come to order, please.

2 I am aware that we don't yet have a quorum, but there  
3 are some matters we can start on and hope we can discuss  
4 and maybe reach some tentative conclusions, and we can  
5 ratify them when we get a quorum here.

6 As you will recall from yesterday, we had some  
7 uncompleted business on the spending side before we got to  
8 the revenue side.

9 In the Medicare area, it included an amendment by  
10 Senator Heinz on second surgical opinions. Senator  
11 Durenberger has an opinion on that. They will both be here  
12 today.

13 Also, we have Senator Heinz' amendment on ventilators  
14 and his questioning of the fact that, even though people  
15 would be taken care of at home, it did not seem to save any  
16 money.

17 And the objection raised by Senator Long to making  
18 hospice payments permanent instead of extending the sunset  
19 date.

20 We have Senator Moynihan's foster care issue. We had  
21 all of the budget neutral items that were on the sheet that  
22 was passed out yesterday. They are on pages 7, 8, and 9.

23 There are 37 or 38 budget neutral items, and I said  
24 those would all remain open. And if any member wanted to  
25 raise any question about any of them, that would be fine

1 today. Otherwise, we would adopt them en bank.

2 We had the minor and technical amendments on page 6,  
3 which the staff called to my attention we did not adopt.

4 I don't know of any objection to them, but these are  
5 minor and technical amendments, as opposed to that closing  
6 phrase we make authorizing the staff to make technical and  
7 minor changes, which is basically correcting our drafting  
8 errors.

9 And the Administration has one addition to the minor  
10 and technical amendments relating to Social Security on  
11 Samoa.

12 We have the custom user fee which we just left in  
13 abeyance, and we have an unemployment compensation amendment  
14 by Senator Baucus, when we get to the revenue section today.

15 Let me ask, taking the easier ones first, is there  
16 anyone here who had--and I will ask this later again--any  
17 question about the so-called budget neutral items that  
18 appeared on pages 7 to 9 of the chart?

19 (No response)

20 The Chairman. All right. And I will ask it when we  
21 have a larger crowd.

22 Were there any objections to the adopting of the minor  
23 and technical amendments on page 6?

24 Senator Heinz. Mr. Chairman, I have no objection to  
25 their adoption, but it strikes me that that might be a good

1 place to include another noncontroversial item, at least I  
2 believe it is noncontroversial, which is the issue of how  
3 to handle Social Security overpayments in the case of  
4 thousands of deceased beneficiaries.

5 We have had a series of hearings--a series of stories  
6 of how, when a payment has been made immediately after  
7 someone has died to the account, usually a joint account,  
8 the Social Security Administration under current law is  
9 compelled simply to demand that the bank take the money out  
10 of the account.

11 There is no notification of the beneficiary, and it is  
12 in effect a repossession without any due process--right?--and  
13 often they make mistakes.

14 We have, for the last year and a half, been working with  
15 the Social Security Administration to define what I have  
16 described as an overpayment for which they have somewhat  
17 more humane methods of going around. They just don't take  
18 money out of the widow's bank account any more.

19 And I think the Social Security Administration has  
20 finally come around to agreeing that what we are proposing  
21 will solve most of the problems; and it won't cause them  
22 heartburn.

23 I see that Social Security is represented here, and I  
24 don't believe they have any objection to the language we  
25 have worked out.

1 Mr. Enoff. Senator?

2 The Chairman. Give us your name, please?

3 Mr. Enoff. Lou Enoff, Acting Deputy Commissioner,  
4 Social Security Administration.

5 We talked to Larry this morning, Senator Heinz, and I  
6 think that there is a little glitch in what we had been  
7 talking about.

8 I think we have the same objective, and perhaps we can  
9 work out some language that you could then introduce.

10 As you say it is a Treasury regulation, and you want to  
11 extend the overpayment provisions. The question arises as  
12 to exactly what body of beneficiaries--whether it is a  
13 person who would be entitled on that account to have the  
14 joint bank account.

15 Senator Heinz. Mr. Chairman, what I would ask is:  
16 Conditioned on whether we do work out that language with  
17 Social Security, and I am advised by my staff that we will  
18 be able to work that out, would there be any objection to  
19 conditionally approving this technical change?

20 The Chairman. Let me ask a question because in this  
21 minor and technical change, I want to keep it as that. So  
22 long as you are willing to agree that if the Administration  
23 says, Senator, we simply cannot agree on this, you won't  
24 put it in this section.

25 Senator Heinz. That is correct. I think we are in

1 agreement that we want to make this change, and it is simply  
2 a technical drafting issue, as I understand it.

3 The Chairman. Under that understanding that it will be  
4 uniformly agreed to, no objection.

5 Senator Heinz. Thank you, Mr. Chairman.

6 Senator Moynihan. Mr. Chairman, would the gentleman  
7 from the Social Security Administration identify himself?  
8 We didn't get his name over here.

9 Mr. Enoff. Sure, Senator Moynihan. Lou Enoff. I am  
10 the Acting Deputy Commissioner for Programs and Policy.

11 Senator Moynihan. You are an acting deputy  
12 commissioner?

13 Mr. Enoff. Yes, sir.

14 Senator Moynihan. Is there anybody in the Social  
15 Security Administration who has a permanent job?

16 (Laughter)

17 Mr. Enoff. Yes, Senator, there are several--several  
18 thousand.

19 Senator Moynihan. Could you name one?

20 Mr. Enoff. There are several thousand.

21 (Laughter)

22 Mr. Enoff. Surely, there are. I happen to be in an  
23 acting position, but there are other deputy commissioners  
24 who are permanent.

25 Senator Moynihan. Are you a career officer, sir?

1 Mr. Enoff. Yes, sir, I am.

2 Senator Moynihan. Thank you very much.

3 The Chairman. What I would like to do, in this order,  
4 if it is all right. Malcolm, do you have an amendment?

5 Senator Wallop. I had an amendment, but what I have  
6 decided to do, if I may at this moment, is raise an issue  
7 and ask them for a response that the committee and you on  
8 the floor might see fit to --

9 The Chairman. To Social Security?

10 Senator Wallop. Yes, sir. The issue is this: In  
11 February --

12 The Chairman. Let me interrupt you just a second  
13 and tell the order I would like to do these.

14 Senator Wallop. Sure.

15 The Chairman. And Sydney, if you would be ready to go  
16 on your American Samoa amendment when we are done here, then  
17 if we could go to the custom fees because it is a big issue  
18 to Senator Moynihan. I know he has to leave.

19 And then go after that to the foster children. On the  
20 custom fees yesterday, the issue of the border crossings, and  
21 we held up the whole issue on that.

22 When Malcolm is done, I would like to just take care of  
23 this American Samoa Social Security amendment; then do the  
24 custom issue; then do the foster children issue.

25 We have some others to do, but I would like to do them



1 in that order.

2 Senator Wallop. Mr. Chairman, I will be brief.

3 On February 24, 1983, a bill S. 419, reported by the  
4 Senate Indian Affairs Committee, was passed without debate  
5 and by voice vote; and the bill became Public Law 98-64.

6 The subject was per capita payments made to tribal  
7 members from Indian trust funds. At least two types of  
8 funds exist.

9 The first is a trust fund created from damage  
10 settlements resulting from Indian suits against the U.S.  
11 Government. The suits successfully sought damage awards  
12 from the U.S. Government for violations of treaties involving  
13 taking of Indian lands, and the damage awards would be paid  
14 out to tribal members in per capita payments.

15 A second type of trust fund involves per capita payments  
16 from funds set up to distribute royalty payments from oil  
17 and gas revenues.

18 This involves two tribes in Wyoming on the Wind River  
19 Indian Reservation.

20 The 1983 legislation clarified the law passed in 1982  
21 to the effect that per capita payments from trust funds  
22 would not be counted as income for purposes of the Social  
23 Security Act and other welfare programs.

24 So, when an enrolled member of a tribe applies for  
25 AFDC benefits, for Medicaid, for SSI, or for food stamps,

1 the per capita payments could not be counted as income.

2 The only restriction is that the per capita payments  
3 above \$2,000.00 would be counted as income, but the law did  
4 not place any limit on how many per capita payments an  
5 individual could receive annually.

6 So, they could receive a number of payments, but if the  
7 payments are under the \$2,000.00 cap, the individual could  
8 receive welfare benefits despite substantial per capita  
9 payments.

10 Also, if each member of a family is enrolled as a member  
11 of the tribe, each member receives the per capita payment.  
12 The total family income thus could be quite substantial.

13 In Wyoming, each Shoshonie can receive \$300.00 a month,  
14 and each Arrapahoe can receive \$200.00 a month. Now, we  
15 asked for a response in early July, I think. We haven't  
16 had it.

17 We think that there are substantial savings to the  
18 Government, but we also think there are substantial burdens  
19 to the States by this and would like to propose an amendment  
20 and get the Department's comments.

21 For the purposes of any welfare benefits provided under  
22 the Social Security Act, the \$2,000.00 cap should apply on  
23 an annual basis to any family unit applying for benefits.

24 Since this motion restricts eligibility for benefits,  
25 it is a cost savings both to the Federal Government and to

1 the State Governments.

2 Mr. Enoff. Senator, I have seen your inquiry, and I  
3 haven't seen the final response yet.

4 I think we are still trying to determine if this  
5 creates any problems that we haven't yet come up with.

6 I don't have a problem in concept with what you are  
7 saying. We are still looking at it from the AFDC standpoint  
8 of whether this would cause any unforeseen problems.

9 Senator Wallop. It would be helpful if, before this  
10 all took place, we could have an answer and not have to wait  
11 another year.

12 The Chairman. It would also be helpful, though, if I  
13 can as the chair say that I would like to finish this issue  
14 today; and when we are getting into amendments like this,  
15 if we are going to have some disagreement, I would rather  
16 leave them out of the reconciliation package we are going  
17 to vote on this morning.

18 Mr. Enoff. I don't think we will have a disagreement.  
19 I would like to go back and try and get the final figures  
20 on that and get back to you before the day is out.

21 The Chairman. All right.

22 Senator Wallop. That would be satisfactory, Mr.  
23 Chairman. I would like to do it as well.

24 The Chairman. All right. Sydney, can you give us  
25 American Samoa?

1 Ms. Olson. Yes, Senator. There is a provision in the  
2 minor and technical changes bill which affects the treatment  
3 for taxation of benefits to residents of American Samoa;  
4 and it conforms the tax treatment to that of other residents  
5 of U.S. possessions.

6 The Administration doesn't oppose the provision, but  
7 they have brought to our attention that there is a drafting  
8 error which may cause them to have to withhold taxes  
9 retrospectively.

10 So, they are asking for the ability to change the  
11 provision that the House has passed.

12 The Chairman. Any objection?

13 (No response)

14 The Chairman. Without objection.

15 Senator Mitchell has a quick amendment for Senator  
16 Bentsen that I am sure there is no objection to.

17 Senator Mitchell. Thank you, Mr. Chairman.

18 Senator Bentsen, who has to be chairing another  
19 committee, asked me to offer this in his behalf.

20 It would change the term "crippled children" to read  
21 "children with special health care needs" wherever the term  
22 appears in Title V of the Social Security Act; and if  
23 necessary, make conforming changes in other statutes that  
24 may cross reference Title V.

25 I think it is a self-explanatory amendment.

1           The Chairman. Is there any objection from the  
2 Administration?

3           (No response)

4           The Chairman. Without objection.

5           We have a quorum here. I wonder if now we might just  
6 adopt the budget neutral items that were on pages 7 to 9  
7 of your chart yesterday?

8           I have had no comment from anybody as to any of them.  
9 Is there any objection to adopting them en bank?

10          (No response)

11          The Chairman. Without objection.

12          And is there any objection to adopting the minor and  
13 technical amendments that appear on page 6?

14          Senator Grassley. Mr. Chairman, I have no objection,  
15 but I did have cleared through staff three amendments in  
16 this area that I was going to offer yesterday, but I couldn't  
17 because I was chairing my Subcommittee on Administrative  
18 Practices and Procedures.

19          It would only be appropriate to do the one right at  
20 this point, and that deals with a study for Social Security  
21 recipients who fall into the notch years.

22          And it deals with the creation of a panel within HHS  
23 which would study this matter from the standpoint of inequity  
24 and the cost to the system, and to make recommendations; and  
25 they would do it through the Social Security Disability

1 Advisory Council, which will be reporting at the end of  
2 next year.

3 The Chairman. You are simply asking for HHS to do the  
4 study?

5 Senator Grassley. Yes. It would be a special panel  
6 appointed by HHS.

7 The Chairman. Let me ask the Administration. Do you  
8 have any objection?

9 Mr. Enoff. I am not sure, Senator, if you are saying  
10 that it should be done by the Secretary or by the outside  
11 council.

12 Senator Grassley. The Secretary.

13 Mr. Enoff. By the Secretary, I wouldn't have any  
14 problem. The Advisory Council on Disability.

15 Senator Grassley. All right. Let me clarify that.

16 The Secretary of HHS would appoint a panel to look at  
17 this issue and study it.

18 The recommendations would be submitted with the same  
19 report that the Social Security Disability Advisory Council  
20 will be reporting next year.

21 The Chairman. Any objection?

22 Mr. Enoff. Could we maybe work out how the panel would  
23 go or how we would do the study? I don't have any objection  
24 to the study. I guess I am getting confused on the council.

25 The Chairman. Senator Grassley, all I would ask here

1 is that if anybody has any objections, I would make the  
2 same request I did of Senator Heinz.

3 Senator Grassley. But I think we could work this out.

4 The Chairman. Is there any objection to including it  
5 if it is worked out? But I would rather have everybody sign  
6 off on it so we are not putting in things for the  
7 Administration to say, well, I am not sure about this.

8 Senator Grassley. And that is my intent as well.

9 The Chairman. All right.

10 Senator Grassley. But you aren't objecting to looking  
11 at it.

12 Mr. Enoff. No.

13 Senator Grassley. And quite frankly, we sought the way,  
14 and we thought we had it worked out--a way that would be the  
15 least controversial.

16 So, I think you and I are looking at it from the same  
17 standpoint. We want to get answers to questions.

18 The Chairman. Senator Wallop?

19 Senator Wallop. Mr. Chairman, on these outlay options  
20 without budget impact, could I ask three questions on home  
21 health agencies?

22 The Chairman. Yes. Which numbers are they?

23 Senator Wallop. Number 10. Page 7 of 9, item No. 10.

24 The Chairman. Yes.

25 Senator Wallop. The first is that the proposed

1 moratorium on the July regulations proposed by the Department  
2 of Health and Human Services is listed as having zero cost,  
3 but it is my understanding that the proposal is a cost item.

4 I wonder if the committee staff and the department  
5 would care to comment?

6 Mr. Mihalski. No, sir. It is a zero cost item because  
7 the changes that are presently being proposed in regulations  
8 are not in the CBO baseline; so therefore, delaying the  
9 implementation of those regulations with this one-year  
10 moratorium has no budget effect.

11 Senator Wallop. No budget effect is different than  
12 saying it has no cost effect.

13 Mr. Mihalski. That is correct. In fact, if the  
14 Administration goes ahead with the regulations, the  
15 regulations will reduce outlays in reality; but from a CBO  
16 scoring standpoint, if we put a moratorium on the  
17 regulations and delay them for one year, we do not lose  
18 those savings.

19 So, therefore, it has no cost. It is budget neutral.

20 Senator Wallop. The department's comment?

21 Dr. Desmarais. Well, I would only observe they are not  
22 proposed regulations. They are final regulations.

23 They took effect July 1st of this year, and we do  
24 believe there are certainly outlay implications from a  
25 moratorium.



1           Senator Wallop. If the moratorium is imposed, would  
2 this in effect reward the 36 percent of all home health  
3 agencies whose costs are above the limit set by the  
4 regulations?

5           Dr. Desmarais. Unfortunately, we have not seen the  
6 language on this moratorium, and we are concerned whether  
7 or not there will be any limits whatever if the moratorium  
8 is imposed.

9           And I think that is something where we will wait to see  
10 the specific language, but we certainly would prefer to  
11 continue with the regulations we have already promulgated.

12           Ms. Kelly. Senator Wallop, you are raising the issue  
13 of the impact of the regulation also; and indeed, these  
14 new per service regulation limits that we proposed, two  
15 thirds of the home health agencies offer services that are  
16 not impacted by these limits. That is correct.

17           Senator Wallop. Would the department comment as to the  
18 impact of their regulations on home health agencies serving  
19 rural areas?

20           If the cost of staff and services in rural areas is  
21 higher, will the regulations be an unnecessary burden on  
22 the development of home health services in rural areas?

23           Dr. Desmarais. We don't anticipate any negative impact  
24 in the rural area versus the urban areas. I think there has  
25 been a great deal of confusion.

1           You look at these limits, and the limits are set at  
2 120 percent of the mean, which means that in many parts of  
3 the country, it is above the mean.

4           We are willing to pay up to 20 percent over the average  
5 payment across the country. And if you look at these limits,  
6 they are \$50.00 per service up to \$80.00 per service, and  
7 that may be solely for one hour's work by either a registered  
8 nurse or a social worker and so.

9           So, we do believe they are generous enough that agencies  
10 can effect administrative changes and live within those  
11 limits.

12           And I would observe that the impact analysis that has  
13 been quoted assumes no behavior change. And when we observe  
14 things like hospital prospective payment, we know there is  
15 enormous ability for behavior change, and we expect that this  
16 management tool will lead in that direction.

17           Ms. Kelly. And the rural limits, Senator, are about  
18 \$5.00 to \$10.00 more in most cases than the urban limits.

19           Senator Wallop. I would like to go back to the cost.  
20 Is it likely that we will incur more costs if the moratorium  
21 is imposed?

22           Mr. Mihalski. Yes. In reality, that is correct.

23           If we legislatively adopt the regulations that the  
24 Secretary has issued, we will come up with an additional  
25 savings of about \$200 million over a three-year period.

1 Senator Wallop. \$200 million?

2 Mr. Mihalski. \$200 million.

3 Senator Wallop. And if we have a moratorium presumably,  
4 we don't have that savings?

5 Mr. Mihalski. That is correct.

6 Senator Wallop. It strikes me that it is a bit of  
7 wizardry to put it in as an outlay-- Well, it doesn't have  
8 budget impact, but that is sort of irrelevant to the deficit,  
9 isn't it?

10 Senator Heinz. Would the Senator yield?

11 Senator Wallop. I would be happy to.

12 Senator Heinz. Let me put in a good word for this  
13 proposal that is on page 35.

14 As I think almost all of us are discovering in our  
15 States, the diagnostic related group system--prospective  
16 payment--encourages hospitals to get people out of hospitals  
17 just as soon as they possibly can.

18 Unfortunately, we even have some specific information  
19 that hospitals are going beyond what is prudent and are  
20 even discharging people in unstable conditions, which they  
21 should never do.

22 It is to be expected, I think, that under any DRG  
23 prospective payment system, that hospitals will, and to a  
24 certain extent, should reduce the number of average days per  
25 patient stay.

1           And the notion was that there are other levels of care,  
2           be it skilled nursing care, intermediate care, home health  
3           care, that are in fact much less costly per day and that  
4           patients would be discharged into those settings, where they  
5           are available.

6           And so, it seems to me that if we look and say we  
7           should be able to save every single penny that DRGs will  
8           save us, and we expect not to incur necessary costs elsewhere  
9           such as in home health care, we are actually cutting back on  
10          the quality of health care at some risk to senior citizens.

11          And for myself, I don't want to be a part of that kind  
12          of effort. I have been arguing that we have to realistic,  
13          and we should be willing to plow back some modest part of  
14          the savings from DRGs into home health care as a method of  
15          making sure patients do not fall through the cracks.

16          We have too much evidence, I am sorry to say, that  
17          patients are, and it goes beyond just the fact that some  
18          hospitals and administrators are not--and doctors are not--  
19          meeting their responsibilities to the patients.

20          So, I would hope that we could retain this provision.

21          Senator Wallop. Mr. Chairman, that may or may not be  
22          the case, but the fact is it is listed as a no-cost item  
23          when it is going to cost us \$200 million.

24          It seems to be something of the nature of the wizardry  
25          of the budget amendment that we passed in the first place,

1 and I just think that we ought to consider the fact that we  
2 are undertaking a probable \$200 million expenditure, when we  
3 are saying it is zero cost.

4 The Chairman. What is the committee's pleasure?

5 Senator Wallop. I would hope that we would not put the  
6 moratorium in.

7 The Chairman. I would hope that, considering the value  
8 that we have already proven on home health care, that we  
9 would put it in because of the tremendous difficulties that  
10 we have had with waivers generally on home health from the  
11 Administration.

12 But rather than debating it further, I would just as  
13 soon put it to a vote, because we have very large issues to  
14 get to before the day is out.

15 Senator Chafee. Now, Senator Wallop would not have the  
16 waiver?

17 The Chairman. He would not have provision 10. He would  
18 not have the moratorium.

19 Senator Wallop. Not the moratorium on the regulation.

20 Senator Moynihan. Mr. Chairman, could I just say that  
21 I know you have a heavy schedule, and there is a lot more  
22 to be said on behalf of Mr. Heinz' amendment than has been  
23 said, and I would like to so state.

24 The Chairman. Those in favor of keeping Item 10 on  
25 the list, which means we will adopt it, will say aye.

1 Senator Chafee. That is to keep the moratorium?

2 The Chairman. Yes, that will keep the moratorium on  
3 the list. We adopt the moratorium.

4 Those in favor of adopting the moratorium, which is  
5 Item 10, say aye?

6 (Chorus of ayes)

7 The Chairman. Opposed, no?

8 Senator Wallop. No.

9 The Chairman. Senator Wallop, do you have some others?

10 Senator Wallop. No, sir.

11 The Chairman. All right. Let's move on. The rest of  
12 those items are adopted.

13 Let's move on to the customs fees.

14 Senator Grassley. Mr. Chairman, when you say move on  
15 to customs, are we now just dealing exclusively with revenue  
16 matters?

17 The Chairman. We are dealing with-- We haven't gotten  
18 yet to the increases that are in the tax matters today.

19 This is a leftover matter from yesterday involving  
20 customs.

21 We are going to get to all of the revenue matters today,  
22 but I was trying to wrap up what we had left over from  
23 yesterday.

24 Senator Grassley. Don't forget, then, too, that I have  
25 two that are left from yesterday as well.

1           The Chairman. I think those are acceptable, as I  
2 recall. We have got about 15 different matters that members  
3 have on the revenue side when we get to them.

4           I would like to finish yesterday's first.

5           Senator Chafee. Mr. Chairman, before this panel leaves,  
6 yesterday we adopted the quality control of AFDC, and I  
7 thought those also applied to Medicaid. I guess I was  
8 mistaken, but I would like them to apply to Medicaid as  
9 well.

10          Mr. Mihalski. Yes, sir. In the discussion yesterday,  
11 it was pretty much talked about AFDC; but there would be no  
12 problem in applying the same thing to Medicaid since it is  
13 essentially the same kind of system.

14          Senator Chafee. Would that be agreeable?

15          The Chairman. Without objection.

16          Yesterday, you will recall, we were on customs. We got  
17 bogged down in the issue of traffic between Canada and the  
18 United States--individuals, although they might be coming  
19 in cars, obviously--and Mexico and the United States.

20          And we left the whole item open on that issue, and I  
21 would like to call on Len Santos to tell me what you have  
22 come up with and what your revenue estimates are.

23          Mr. Santos. Senator, the proposal should have been  
24 distributed just now. It is similar to yesterday's  
25 proposal, with one major change.

1           We have not included a fee on persons or passengers  
2 entering from either Canada, Mexico, or from the Caribbean  
3 Islands.

4           This change, while it was a major revenue item in the  
5 original estimate, has not resulted in falling below the  
6 spending reductions required because the Congressional  
7 Budget Office, in the interim, has been able to complete  
8 its analysis.

9           And its analysis of the revenues that would be raised  
10 through these user fees was higher than the customs estimates  
11 that we had used.

12           So, the result is that we have been able to delete that  
13 item and still meet the spending reductions for the customs  
14 user fees that we had intended.

15           The Chairman. Senator Mitchell?

16           Senator Mitchell. Mr. Chairman, I would like to raise  
17 one minor matter. I would ask that it be amended under  
18 trains per car, to exclude trains which originate and  
19 terminate in a foreign country but which pass through a  
20 portion of the United States.

21           We have one particular train that runs between Montreal  
22 and the Canadian provinces and passes through northern Maine.  
23 The passengers are almost all Canadians, having trouble  
24 maintaining --

25           The Chairman. They don't even get off in Maine, you



1 mean--they just ride through?

2 Senator Mitchell. Very few of them do. It is good  
3 for Maine in that a lot of the railroad switching and repair  
4 and conductor positions are held by American citizens who  
5 live in Maine.

6 I think it would not affect the revenue item very much  
7 and certainly would not take it below the target.

8 The Chairman. There certainly cannot be very many  
9 situations, are there, where you have the train --

10 Mr. Mihalski. Mr. Chairman, that would be my reaction.

11 Unfortunately, I just learned about this and do not  
12 have a reading from CBO. I would just say that we could  
13 ask them for an estimate.

14 I can't imagine it would amount to enough to change the  
15 numbers.

16 The Chairman. It probably wouldn't amount to \$5,000.00,  
17 I wouldn't think.

18 Mr. Mihalski. I wouldn't think so, but I can't be  
19 certain.

20 The Chairman. Now, have we also taken care of the  
21 legitimate problems raised both by Senator Moynihan and by  
22 Senator Bentsen yesterday?

23 Mr. Mihalski. I think so, Senator. We have simply  
24 removed all fees on those crossings. I think that addresses  
25 their problem.

1 Senator Moynihan. Mr. Chairman, could I speak to that?

2 The Chairman. Senator Moynihan and then Senator Chafee.

3 Senator Mitchell. Mr. Chairman, is my amendment

4 agreed upon?

5 The Chairman. Is there objection?

6 (No response)

7 The Chairman. Without objection.

8 Senator Moynihan. Mr. Chairman, I do appreciate that,  
9 and so would this committee if it had any idea of what was  
10 about to happen.

11 There are 38 million Americans that come into the  
12 United States from Canada each year, as well as 54 million  
13 individuals. Obviously, there are many repeats here.

14 But could I just ask about these fees? What are we  
15 doing here? Is this a tax increase that we are denying is  
16 a tax increase, because we don't want to make the President's  
17 day?

18 (Laughter)

19 Mr. Mihalski. Mr. DeAngelus, who is the Deputy  
20 Commissioner of Customs, might want to respond to that. It  
21 was the Customs Service that developed this proposal.

22 Senator Moynihan. Is this a tax increase?

23 Mr. DeAngelus. Senator, we don't see it as a tax  
24 increase.

25 Senator Moynihan. I don't want to argue with you there,

1 but you don't see it as? We didn't see revenue enhancement  
2 as a tax increase.

3 Does it cost you \$5.00 to take people through Customs  
4 at Kennedy Airport?

5 Mr. DeAngelus. Senator, it costs us \$3.00 --

6 The Chairman. Let me respond. The budget committee  
7 counts this technically as a spending reduction, the reason  
8 being it is not funded by the General Fund.

9 And clearly, if we are going to impose a fee in terms  
10 of our reconciliation totals, they count this as a spending  
11 reduction.

12 That is neither here nor there--a rose is a rose is a  
13 rose--but from the standpoint of reconciliation, this is a  
14 spending reduction.

15 Senator Moynihan. That I grant, but could I ask you:  
16 Does any country in Europe impose such a fee?

17 Mr. Santos. Yes, Senator. There are a number of  
18 countries in Europe. France imposes a two percent customs  
19 processing fee on the value of all dutyable entries.

20 Senator Moynihan. You mean individuals? Supposing  
21 you just get off the plane?

22 Mr. Santos. Pardon me?

23 Senator Moynihan. I mean, on individuals, --

24 Mr. DeAngelus. On the processing of individual  
25 passengers? No. It is on all commercial entries.

1 Senator Moynihan. Yes, but this is a fee on the  
2 individual.

3 Mr. DeAngelus. That is correct. Yes.

4 There are a number of countries --

5 Senator Moynihan. Does the U.S. Travel Service want us  
6 to do this?

7 Mr. Santos. Belgium, for example, charges a \$5.00 fee  
8 upon departure.

9 Senator Chafee. Bermuda charges to get out of Bermuda.

10 Senator Moynihan. This is to get in.

11 (Laughter)

12 Senator Chafee. I would rather get into the U.S. than  
13 get out of Bermuda.

14 (Laughter)

15 Senator Moynihan. Mr. Chairman, I know the situation  
16 you are in, and it looks as though a huge amount of this  
17 is going to be paid by New York. New York is going to still  
18 be there. I am not thinking about New York.

19 I am just saying what a distortion of this--oh, my God,  
20 what we have done to ourselves. I mean, with our deficits,  
21 and our tax plans where we are going to cut revenues, and  
22 raise rates and raise revenues and all that.

23 Here we are. Is there nobody on the committee who  
24 thinks that this is something we ought to ask the U.S.  
25 Travel Service whether they want it, or ask the department?

1 Do we want to be in a place where we have to charge to  
2 come to our country?

3 The Chairman. When you say the U.S. Travel Service,  
4 as I recall, at least the Administration supports this.

5 Now, whether they speak for the U.S. Travel Service or  
6 not, I don't know.

7 Senator Moynihan. But you see, last evening the  
8 President explained that we are not a debtor nation, so  
9 why do we do this anyway?

10 The Chairman. Can we reasonably define the germaneness  
11 of the discussion to the issue before us?

12 Senator Moynihan. Mr. Chairman, I wish this weren't  
13 happening.

14 Senator Baucus. Mr. Chairman?

15 The Chairman. Max?

16 Senator Baucus. I would like to know what portion of  
17 the revenue is being collected with the \$5.00 per person,  
18 as opposed to the rest of the fees?

19 Mr. Santos. Senator, I don't have a breakout by  
20 category from the CBO. I only have totals by the year.

21 I am told by the Customs Service they believe it is --  
22 how much, Mr. DeAngelus?

23 Mr. DeAngelus. About \$190 million.

24 Mr. Santos. About \$190 million, they believe, is  
25 generated by that fee. That is per year.

1           Senator Baucus. That is approximately \$200 million then  
2 --from \$190 to \$200 million per year.

3           Mr. Santos. That is the bulk of this. I believe that  
4 would be a little higher than what CBO would say. Their  
5 numbers suggest a somewhat lower figure, I believe.

6           Senator Baucus. Another technical question. Why the  
7 big jump on commercial vessels between those under 100 tons  
8 and those over 100 tons?

9           Mr. Santos. There, we simply followed the recommendati  
10 recommendation of the Customs Service, based on their view  
11 of the costs of processing.

12          Senator Baucus. Mr. Chairman, personally, I don't think  
13 it is a very good idea to levy these fees.

14          I think the Service has done a good job in exempting  
15 Canada and Mexico. I think that makes good sense.

16          But beyond that, it just strikes me as a bad road to  
17 follow in starting to impose fees on people--Customs fees on  
18 Americans or non-Americans--entering the United States.

19          I am wondering how these fees are going to be collected.  
20 Could someone explain to me when they are going to be  
21 assessed and collected?

22          Mr. Santos. The travel agents would be expected to  
23 collect them upon the purchase of a ticket. The airlines  
24 would be expected to collect it if they are the selling  
25 agents. It would be collected at the point of the purchase

1 of the ticket.

2 The Chairman. Don't we pay a departure fee now to fly  
3 out of the United States?

4 Mr. Santos. There are departure airport taxes. Those  
5 go into an airport trust fund of some sort--\$3.00 fees.

6 Senator Baucus. Mr. Chairman, it might be a small  
7 point, but during this time, we have a lot of trade tension  
8 between the United States and other countries.

9 I just don't know if it makes much sense to add to it  
10 by adding these taxes, these fees.

11 Senator Moynihan. It is a tariff on people.

12 Senator Baucus. When people come in and out of the  
13 United States, and I will oppose this frankly.

14 Senator Moynihan. Mr. Chairman, it is a tariff on  
15 people, and I just don't know how it slipped into our --

16 Mr. Santos. Mr. Chairman, I believe it is a user fee.

17 The Chairman. On the \$3.00 airport fee, this is a  
18 national charge? That is not an airport-by-airport charge,  
19 is it?

20 Mr. Santos. I believe it is a uniform national charge.

21 The Chairman. The airports collect it.

22 Mr. Santos. That is correct.

23 The Chairman. But we have already entered into the  
24 business of charging people to leave the country.

25 Mr. Santos. That is correct, Senator.

1           Senator Chafee. Mr. Chairman, everybody is against the  
2 big ticket items, and we went all through that when we were  
3 here before.

4           And Senator Moynihan, as I recall, voted against those  
5 items; and now we get into the little ticket--nickel and  
6 dime stuff--and people are against that.

7           All right. Where are we going to get the \$1 billion  
8 from? No one is for any of this, and everybody invades and  
9 has firey speeches against the deficit.

10          But here is a little step in the direction of getting  
11 some revenue, and people are jumping all over it.

12          Where is the alternative?

13          Senator Wallop. Mr. Chairman, let me suggest one other  
14 thing. This is not as rare as people would imagine it to  
15 be. There isn't a major airport in this country that  
16 doesn't charge a landing fee for an airplane to arrive there.

17          And so, you are paying an arrival fee from New York  
18 to Denver, or vice versa. This is nothing new or outrageous.  
19 The cities do it. The States do it.

20          The Chairman. I think the point is pretty well taken,  
21 unless there is more discussion.

22          Senator Danforth. What is charged for a New Yorker to  
23 get from Queens to Nanette?

24          (Laughter)

25          Senator Moynihan. From Queens to where, sir?



1           Senator Danforth. I don't know. Where does the  
2 Tri-Borough Bridge go? How much does the Tri-Borough  
3 Bridge cost?

4           Senator Moynihan. 90 cents.

5           Senator Danforth. 90 cents?

6           Senator Moynihan. And it is well worth it.

7           (Laughter)

8           The Chairman. It is well worth it to get out of Queens?

9           (Laughter)

10          The Chairman. Let me just put this to a vote. Those  
11 in favor of the Customs user provision will say aye.

12          (Chorus of ayes)

13          The Chairman. Opposed, no?

14          (Chorus of nays)

15          The Chairman. The ayes appear to have it.

16          Senator Baucus. Mr. Chairman, I wonder if I might  
17 amend out the per passenger or per person portion of this  
18 and keep the rest?

19          The Chairman. How much is involved?

20          Mr. Santos. We believe it is in the vicinity of \$150  
21 million a year.

22          The Chairman. I would be opposed to it. You can offer  
23 the amendment, but I would be opposed.

24          Senator Baucus. I so offer, and I would like a recorded  
25 vote.

1 The Chairman. All right. Explain, Senator Baucus,  
2 what you are doing.

3 Senator Baucus. I move we adopt it but amend out the  
4 per passenger or per person provision--the \$5.00 per person.

5 The Chairman. All right. The Clerk will call the roll.

6 Senator Armstrong. Mr. Chairman, are we voting to  
7 approve the amendment or to strike it from the package?

8 The Chairman. We are voting for his amendment which  
9 will strike it from the package.

10 Senator Armstrong. All right.

11 The Clerk. Mr. Dole?

12 Senator Dole. (No response)

13 The Clerk. Mr. Roth?

14 Senator Roth. (No response)

15 The Clerk. Mr. Danforth?

16 Senator Danforth. No.

17 The Clerk. Mr. Chafee?

18 Senator Chafee. No.

19 The Clerk. Mr. Heinz?

20 Senator Heinz. No.

21 The Clerk. Mr. Wallop?

22 Senator Wallop. No.

23 The Clerk. Mr. Durenberger?

24 Senator Durenberger. No.

25 The Clerk. Mr. Armstrong?

1 Senator Armstrong. No.  
2 The Clerk. Mr. Symms?  
3 Senator Symms. No.  
4 The Clerk. Mr. Grassley?  
5 Senator Grassley. No.  
6 The Clerk. Mr. Long?  
7 Senator Long. (No response)  
8 The Clerk. Mr. Bentsen?  
9 Senator Bentsen. (No response)  
10 The Clerk. Mr. Matsunaga?  
11 Senator Matsunaga. (No response)  
12 The Clerk. Mr. Moynihan?  
13 Senator Moynihan. Aye.  
14 The Clerk. Mr. Baucus?  
15 Senator Baucus. Aye.  
16 The Clerk. Mr. Boren?  
17 Senator Boren. (No response)  
18 The Clerk. Mr. Bradley?  
19 Senator Bradley. Aye.  
20 The Clerk. Mr. Mitchell?  
21 Senator Mitchell. No.  
22 The Clerk. Mr. Pryor?  
23 Senator Pryor. (No response)  
24 The Clerk. Mr. Chairman?  
25 The Chairman. No.

1 The Clerk. Three yeas and 10 nays.

2 The Chairman. The amendment is defeated.

3 Is there any objection to adopting the Custom user  
4 provision?

5 (No response)

6 The Chairman. Without objection.

7 I told Senator Grassley that he could have time for  
8 two brief amendments back in the Medicaid section. Then,  
9 we will go to the foster children.

10 I think they have been agreed to by both the majority  
11 and minority staffs.

12 Senator Grassley. One of them is cosponsored by Senator  
13 Durenberger, and it would provide for cooperation--and I  
14 want to make sure that everybody understands it is not  
15 mandating--between Title V and Title XIX on technologically  
16 dependent children, so that there will be some case  
17 management through Title V, like we do some other programs,  
18 for these technologically dependent children that come  
19 under Title XIX.

20 And the other one would set up a task force to study  
21 how we could get greater cooperation between representatives  
22 of the Federal Government, State governments, health  
23 insurers, employers, and providers of health care of  
24 technologically dependent children so that the tremendous  
25 costs of those children beyond the Federal Treasury maybe

1 can be worked out with the insurance industry.

2 And that is a task force to study and report back to  
3 us.

4 The Chairman. As I say, I believe both of these  
5 amendments have been cleared on both sides. Is there  
6 objection?

7 Senator Durenberger. Mr. Chairman, let me just endorse,  
8 particularly the added value that Chuck's amendment will  
9 bring to the maternal and child health--the use of the money  
10 in that plan.

11 The Chairman. Without objection.

12 I might say to the other members that a good many of  
13 you on both sides have talked to me about amendments. Many  
14 of them have been cleared on both sides and cleared with  
15 the Administration, and there is no objection.

16 And I would appreciate if you would just be satisfied  
17 to accept the victory without the speeches on many of those  
18 amendments.

19 Senator Moynihan?

20 Senator Moynihan. Mr. Chairman, I would like to offer  
21 the amendment mentioned yesterday, although we were thinking  
22 of doing it in conjunction with some amendments on health  
23 care that Senator Heinz will introduce.

24 Senator Heinz. Mr. Chairman, is there a reason that  
25 we can't take up the second opinion right now?

1           The Chairman. Only because I told Senator Moynihan we  
2 would go with his amendment first.

3           Senator Moynihan. I would defer to Senator Heinz  
4 because I think we then have a way of funding.

5           Senator Heinz. My problem is that I have to go over  
6 to the floor around 11:00, and Senator Durenberger is here.

7           The Chairman. Go right ahead. We all have to go to  
8 the floor around 11:00.

9           Senator Heinz. Yes. Mr. Chairman, I think at least for  
10 my part, unless members of the committee have questions, I  
11 have talked about and argued in favor of the mandatory  
12 second opinion provision, that is more or less identical  
13 to S. 1325.

14           I know Senator Durenberger has some reservations about  
15 it. Rather than taking the committee's time restating the  
16 arguments I made on previous occasions, let me just say--so  
17 that everybody is clear on this--what is mandatory is getting  
18 the second opinion.

19           It is paid for, of course, by Medicare. It is not  
20 mandatory that the patient has to take the advice, and the  
21 greatest single virtue of it that, to my mind--even though  
22 it saves some \$260 million applying to both Medicare and  
23 Medicaid--apart from the fact that I really know of no  
24 consumer objection.

25           There is consumer support for it. Private employers are

1 using it, and it is often looked at as an additional benefit;  
2 but to my mind, the greatest single benefit of it is that  
3 senior citizens will not have to undergo a tremendous amount  
4 of unnecessary surgery, and all surgery is risky.

5 Maybe it is not a large risk. Maybe it is one percent;  
6 maybe it is five percent; maybe it is less than one percent.  
7 But for those people who experience that risk, that  
8 discomfort of surgery, it is something that you would just  
9 as well want to do without.

10 I have a letter which I will enter in the record from  
11 an individual who read about our discussions of mandatory  
12 second opinion, from a lady.

13 She says: "I am a senior citizen, and on June 17,  
14 1980, I was given a heart catherization. By looking through  
15 the medical records at a later date, the test was found to  
16 have been given for reassurance, not because it was  
17 necessary. The Government paid for the fee ... etc.

18 "Unfortunately, because of irreversible damage caused  
19 by the catherization, I am disabled and have to apply for  
20 disability benefits.

21 "Because I was not given a second opinion at the clinic  
22 where I was a patient, because I was uninformed ... my  
23 financial loss and that of the Government is compounded."

24 (THE PREPARED LETTER TO SENATOR HEINZ FOLLOWS:)  
25

1           Senator Heinz. And that is not a unique situation. So,  
2 I think that is one of the important issues here, and I know  
3 my friend, Dave Durenberger, has some concerns about this,  
4 but I hope after we listen carefully to what my friend has  
5 to say, that we will opt for the humane thing to do.

6           The Chairman. Senator Durenberger.

7           Senator Durenberger. Yes, Mr. Chairman and friend,  
8 John. I think we start on the same premise, and that is  
9 that, given the way we delivered and financed health care  
10 in this country in the last 15 to 20 years, doctors got  
11 into the business of making business for themselves, rather  
12 than prescribing always the most appropriate care for their  
13 patients.

14           And back in the late 1970s, when we were doing a  
15 variety of cost-containing measures, one of the things that  
16 our predecessors mandated was some studies of second opinion  
17 surgery.

18           Suppose you force somebody to get two opinions on  
19 certain kinds of surgeries, might that result in fewer  
20 surgeries?

21           And so, a group called Afton Associates up in Boston  
22 did the studies. They two studies of voluntary programs  
23 in Michigan and New York, and then they followed the  
24 Massachusetts Medicaid Program.

25           And it is on the results of their recommendations again



1 in this 1977 to 1980 time period that the whole notion that  
2 we can save money through second opinion surgery has caught  
3 on; and John, of course, has captured that notion.

4 I went up on Monday and visited with--I was up there,  
5 anyway, I must say--the investigators at Afton and found  
6 out that, to the degree that they had evidence, the second  
7 opinion surgery saved money, but it was all evidence from  
8 their Medicaid study in Massachusetts, and it was all in  
9 the period from 1977 to 1980.

10 It also was principally women and children and it was  
11 about 65 percent tonsils and adenoids. And if any of you  
12 still have your tonsils, you can still thank the Lord that  
13 at some point in time when you were 10 years old, you  
14 resisted the notion that some doctor would take your tonsils  
15 out, unless you never got ice cream except when you had a  
16 tonsillectomy.

17 Then, I think you can appreciate why some kind of a  
18 process that forces reevaluation of diagnoses--in that period  
19 of time, from 1977 to 1980--would have turned up the evidence  
20 that, no, you don't need to have your tonsils out, or no,  
21 you don't need to have an adenoidectomy or something like  
22 that.

23 Today, however, we are living now with this new  
24 environment in which in addition to doing DRGs and peer  
25 review of the utilization of the hospital-doctor system, we

1 also have preadmission certification as part of this process  
2 for Medicare.

3 In other words, as many of you know from complaints  
4 from your doctors, before a doctor can admit a patient to  
5 a hospital, he has to get certification to do so from a  
6 peer review organization.

7 Now, that process has done wonders --

8 Senator Heinz. Would the Senator yield?

9 Senator Durenberger. Yes.

10 Senator Heinz. It is my understanding that, in terms  
11 of the PROs, is that most of the PRO reviews are performed  
12 after the fact.

13 Senator Durenberger. No. There is an appeal process  
14 in effect that is an after-the-fact process in which a  
15 physician can be pulled into the appeal process, but there  
16 is a preadmission screening certification process that  
17 takes place in each of these cases, unless it is an  
18 emergency, a weekend, or something like that.

19 Let me hasten to the bottom line, which in effect is  
20 that we have taken John's proposal very seriously from the  
21 standpoint that there ought to be professional review.

22 And the staff had come up with a recommendation that  
23 we, in effect, incorporate the availability and the money  
24 for second opinion surgery in these--what is it?--eight or  
25 ten elective procedures, into the current process of a peer

1 review.

2 And after I give you a couple of quotations from the  
3 so-called experts, I will ask one of the members of the  
4 staff to just explain how this would work.

5 The AFT study, on which a lot of this is premised, says  
6 as follows:

7 "For the Medicare population, there is no specific  
8 evidence concerning the effects of a mandatory program on  
9 either costs or patient health."

10 And that is a tough factor for me because we don't know  
11 what putting one of our 80-year-old parents through two  
12 myleograms, in other words sticking a needle--a big thick  
13 needle--into your spine or something like that, in order to  
14 do a diagnosis on a back injury--we don't know anything  
15 about the health effect of the so-called second opinion  
16 surgery.

17 And so what AFT says, in effect, is that further  
18 research would be needed. They in effect recommend  
19 demonstrations of second opinion surgery on the Medicare  
20 population.

21 HCFA does the same thing. HCFA has a long paper in  
22 here. Even CBO, which has given some savings figures, which  
23 I can't quite figure out, recommends that there be  
24 demonstration of the utilization of second opinion surgery  
25 in connection with the Medicare population.

1           So, that is my recommendation. That and the fact that  
2 you are going to put 1.2 million elderly every year through  
3 a process that we might not need at a dubious cost is why I  
4 have to object to John's recommendation.

5           The Chairman. Does the Administration have an opinion?

6           Dr. Desmarais. Mr. Chairman, the issue of second  
7 surgical opinion is something that is under very active  
8 review now within the department.

9           I think we believe that there are some serious policy  
10 and administrative issues that remain to be worked out  
11 before we can find a way that would do this effectively,  
12 cost effectively, and also in a way that is not going to  
13 impose a lot of burdens on the beneficiary community.

14           That is sort of our goal in approaching this task. And  
15 I would observe that there are a lot of uncertainties, and  
16 in fact, the CBO cost estimate of a mandated program in  
17 their estimate acknowledged the fact--and I could read from  
18 paragraph 2.

19           They say that the estimated savings in Medicare,  
20 however, are very uncertain. "Because no study has been  
21 done of the reductions in surgery rates in Medicare or  
22 among the aged population, as a result of the mandatory  
23 second surgical opinion program, the second surgical  
24 opinion program's effects are largely speculative.

25           "It is possible that the cost of the second surgical

1 opinion program could exceed any savings or that savings  
2 could be even higher than the estimates."

3 And this is a letter from the Director of CBO.

4 The Chairman. You have such a wide variance that it  
5 could either save more than people estimate or lose money.  
6 You know, it is that "iffy" at the moment.

7 Dr. Desmarais. That is right. There is a lot of  
8 unsettled issues at the moment, but it is an area that we  
9 are actively examining.

10 And we know there has been a lot of interest in the  
11 Congress on this subject, and we are pursuing the issue.

12 The Chairman. Is there further discussion?

13 Senator Heinz. Mr. Chairman, just to clarify a couple  
14 of points.

15 Maybe we can yet resolve one thing regarding PRO--  
16 preadmission screening--which I think is what Dave was  
17 suggesting.

18 It is my understanding that very little preadmission  
19 screening is done by the PROs. They are required to do  
20 five percent; and some do that much, and some do somewhat  
21 more, but it is a small figure in general. What is that  
22 figure?

23 Senator Durenberger. Part of that reality is that  
24 four States do 100 percent, mine included, and maybe you  
25 know what the rest of them are.

1 Dr. Desmarais. Both types of review are done. There  
2 is a great deal of preadmission --

3 Senator Heinz. I am just talking preadmission.  
4 Preadmission screening. What is the percentage of the  
5 procedures in our bill that are screened?

6 Ms. Kelly. As I recall, Senator, I believe it is ten  
7 procedures in each area, and they are chosen by the PRO, and  
8 they are high volume procedures.

9 Senator Heinz. Yes, and what percentage of those high  
10 volume procedures are, in fact, screened preadmission?

11 Ms. Kelly. Ten in each area are done, I believe, based  
12 on those chosen by the PRO.

13 Senator Heinz. Ten? Out of 1.2 million a year?

14 Ms. Kelly. They are high volume procedures in that  
15 area.

16 Senator Heinz. Ten?

17 The Chairman. I can't hear you.

18 Senator Heinz. Ten procedures are 100 percent  
19 preadmission reviewed, you are saying?

20 Dr. Desmarais. I am not sure of the exact number. The  
21 issue here is what do you need to do to provide the sentinel  
22 effect, that is the basis of all of the cost estimate savings  
23 on the Medicaid side of the equation.

24 Senator Heinz. I understand that.

25 Dr. Desmarais. I don't know the answer as to what those

1 10 or 11 diagnoses --

2 Senator Heinz. My understanding is that it is well  
3 under 20 percent and could be under 10 percent. I don't  
4 have an exact number. So, less than one in five, and  
5 maybe far less than that, are actually being so-called  
6 preadmission screened.

7 What we ought to understand is that preadmission  
8 screening is where a piece of paper that is perhaps as much  
9 as a paragraph and sometimes less comes across the desk of  
10 somebody in the PRO who is not a doctor, and they look at  
11 this.

12 They do not have an entire medical file. These are  
13 not doctors who are reviewing this, and they are not, for  
14 the most part, shall we say overqualified to make judgments  
15 in this area.

16 And that is what preadmission screening is. It is that  
17 there is some doctor somewhere saying that this is necessary  
18 without much justification for it.

19 Now, isn't that more or less accurate?

20 Dr. Desmarais. Preadmission review is done in a variety  
21 of ways. Some of it is a paper review. Sometimes, it  
22 involves --

23 Senator Heinz. That is my point. It is not exactly  
24 what we think of as a carefully thought through medical  
25 review.

1           You mentioned the sentinel effect, and it is the key  
2 to getting the savings. All the studies, ABT, CBO, agree  
3 that the main savings here is going to come from a sentinel  
4 effect.

5           And if we do not have some form of a mandatory second  
6 opinion, we will not get the sentinel effect.

7           Senator Symms. Would the Senator yield for questions?

8           Senator Heinz. Yes.

9           Senator Symms. Is this what the Senator is getting at?  
10 Let's just say that a person who is on Medicare wants to  
11 go into her doctor or his doctor and have a problem fixed--  
12 that we are going to put them in a situation where we are  
13 going make them go get a second opinion?

14           Senator Heinz. Senator, that is absolutely correct.  
15 We are going to say to them that if they are going to do  
16 one of these high risk procedures, and there is a limited  
17 number of those procedures --

18           Senator Symms. Even if the patient wants to go ahead  
19 with it and they don't want a second opinion?

20           Senator Heinz. That is correct.

21           Senator Symms. I mean they like Dr. Brown, and his  
22 opinion is good enough for them.

23           Senator Heinz. That is correct.

24           Senator Durenberger. That is hernia repair, --

25           Senator Heinz. The list is coronary artery bypass,



1 cardiac pacemaker implantation, cataract surgery, gall  
2 bladder, prostate surgery, knee surgery, hysterectomy,  
3 back surgery, hernia repair, or hemorrhoidectomy.

4 Now, you don't want to rush in to any of those.

5 (Laughter)

6 Senator Heinz. There are a lot of people in this room  
7 who are especially thinking about that last one --

8 (Laughter)

9 Senator Heinz. And that is what you need, men. The  
10 point is that we also know from surveys conducted by the  
11 AARP and others two things.

12 First, that the vast majority of senior citizens would  
13 like to see second opinions, and we also know that a lot  
14 of them don't because they are afraid to offend their doctor  
15 by asking or going out and finding a second opinion.

16 People don't want to offend their family practitioner  
17 who treated them and their mother --

18 The Chairman. Senator Bradley first.

19 Senator Bradley. Mr. Chairman, I wonder if we couldn't  
20 find a middle ground here to get agreement so we don't have  
21 to go either all one way or all the other way?

22 It seems to me that what we want to do is to get PROs  
23 into the action, and we want also to get some second opinion.

24 Senator Heinz. But we also want to avoid unnecessary  
25 surgery and get some budget savings in.

1           Senator Bradley. Right. We will do that. What if  
2 we mandated secondary opinion, but then gave the PROs the  
3 power to exempt 50 percent of the cases?

4           We would get some budget savings. We wouldn't be  
5 making all the judgments. The PROs would be making the  
6 judgments. The PROs would be in the act.

7           The Chairman. That isn't bad. You mean, in all  
8 likelihood, where they would exempt them is those which are  
9 such common cases and so easily diagnosable that they would  
10 leave those out?

11          Senator Bradley. Right.

12          Senator Durenberger. I think if your concern, Bill, is  
13 that the peer review organization will not be recommending  
14 second surgical opinions because they don't have the money  
15 or something, that we ought to financially equip them to  
16 use in their judgment second opinion surgery whenever it  
17 is appropriate.

18          But I would oppose for reasons probably that HCFA has  
19 clearly set out in their letter to us earlier--oppose the  
20 mandating and then the exception process from the mandate,  
21 because that just doesn't make much sense to me.

22          Did you follow what Bill is recommending?

23          Dr. Desmarais. Yes. There are enormous implications.  
24 How do you pick the 50 percent? How does it work? What  
25 does the beneficiary have to know? What do the physicians

1 involved have to know?

2 In other words, every time one of those particular  
3 procedures is involved, does the physician or the patient  
4 have to call the PRO and ask permission? And then, the  
5 PRO at that moment in time can decide which of the cases to  
6 exempt from the second opinion?

7 I am not sure if that is what you are aiming at or --

8 Senator Bradley. When you have the PRO basically  
9 saying certain kinds of procedures would be exempt as a  
10 kind of general rule, and you wouldn't have to call?

11 Senator Durenberger. Bill, they have built this into  
12 this contracting process already. They have identified a  
13 number of these in which, through the preadmission screening  
14 process, they are in effect providing second surgical  
15 opinions and reducing --

16 I just used Minnesota as an example where we do have  
17 100 percent and where their contract is set up to zero in on  
18 some of these areas.

19 In Minnesota, they reduced the admissions--the Medicare  
20 admissions--by 13.7 percent in 1984 compared to 9 percent  
21 for all other populations.

22 So, it works through the existing process, and that is,  
23 the sentinel works. Everything works in this existing  
24 process; but if there is some doubt about the fact that some  
25 PROs are not adequately equipped with an expert tool, like

1 second surgical opinions, then our recommended alternative  
2 would equip them with that tool and let them use it, and  
3 let them get paid for it, so that they wouldn't be holding  
4 back on the utilization --

5 The Chairman. Gentlemen, let me ask a question. As  
6 important as this is, I am not sure that there is much more  
7 to be aired on it, and I would just as soon--if we cannot  
8 agree--put it to a vote and move on to some of the issues  
9 we have, and then to the revenue issues.

10 Senator Heinz. That is commendable. I just want to  
11 make one point about David's alternative, which is that  
12 David is proposing a voluntary second opinion approach, as  
13 I understand it.

14 The problem with any voluntary approach is that it  
15 doesn't work. There are two States where we have voluntary  
16 Medicare second opinion programs in effect. These are  
17 demonstrations, as I recollect.

18 Senator Durenberger. John, if you will yield? That  
19 is not the proposal.

20 The way it is set up the PRO can make it mandatory.

21 Senator Heinz. I understand, but let me argue against  
22 the notion of a voluntary system as being ineffective. I  
23 understand there is a difference in your proposal.

24 My concern, though, is that we understand that if  
25 something in fact is a voluntary second opinion, that is

1 really what we have now.

2 Medicare will pay for a second opinion now in most  
3 instances, or cover at least 80 percent of the cost.

4 The fact is that every study we have seen shows that  
5 they don't result in the kinds of cutbacks on unnecessary  
6 surgery.

7 Now, admittedly, David's proposal --

8 The Chairman: Excuse me.

9 Senator Heinz. Mr. Chairman, I have been waiting a day  
10 and a half to take this up. I waited three hours yesterday  
11 morning for us to debate this. If you could please hold  
12 for another 60 seconds, if you don't mind.

13 This program is not untested. There are a lot of  
14 employer-employee health plans that include mandatory second  
15 opinion requirements.

16 And every story we know about those plans, where the  
17 mandatory second opinion is required for employer-employee  
18 benefit plans, is that they are first effective in saving  
19 costs. They are effective in preventing unnecessary surgery,  
20 and most important of all, the beneficiaries like them.

21 They view the mandatory second opinion not as a burden  
22 but as an additional health care benefit, and they avoid  
23 the guilt trip of having to go to their doctor and say before  
24 I have a coronary bypass operation, I would like somebody  
25 else to check out my coronary tubes, one way or another.

1 and get an opinion here.

2 So, David's proposal, which is to allow PROs to  
3 establish mandatory second opinion programs, as I  
4 understand it --

5 You would allow PROs to establish mandatory second  
6 opinion programs or voluntary second opinion programs?

7 Senator Durenberger. No, they could work it out in  
8 their contractual relationships with HCFA to have mandatory  
9 with regard to certain surfical areas.

10 Senator Heinz. I would simply be concerned that that  
11 is neither going to produce the savings nor avoid the  
12 unnecessary surgery.

13 The Chairman. Senator Symms?

14 Senator Symms. Mr. Chairman, I will be very brief.  
15 I just want to say this, and I understand how sincere the  
16 Senator from Pennsylvania is on this effort, but as I see  
17 this, what is wrong--and the reason we are in here in this  
18 big mess we are in--is that we have the Government so far  
19 involved in medicine now that we have price controls on  
20 the doctors and we are rationing our medical services out  
21 there to people.

22 We won't take the votes in here to raise the cost of  
23 this--the people that are using it. Since we won't do that,  
24 you are going to get the Government involved in it further.

25 And the idea of denying people's freedom of choice--

1 If somebody has a problem that they don't want to ask the  
2 doctor for a second opinion, I don't know what I can do as  
3 a U.S. Senator about that.

4 I mean, there is a limit as to how far we can put the  
5 arm of the Government in here and improve anybody's medical  
6 care.

7 You are making an assumption here that somehow the  
8 whole doctor situation is that they are all in there ripping  
9 everybody off.

10 Now, if there are some abuses, the market has to have  
11 an opportunity to respond to that.

12 I just don't think that this mandatory thing is a good  
13 idea.

14 Senator Heinz. Senator, let me tell you what the  
15 alternative is to going with something that improves the  
16 information-- What I view second opinion doing is improving  
17 the amount of information available to the health care  
18 consumer--you and my constituents.

19 Information is what we are mandating in a sense that  
20 they get, but if we don't do that, the alternative is to  
21 allow on PROs, which do, according to David, whether we  
22 agree on the precise amount of preadmissions screening,  
23 the PROs actually are making decisions on whether or not a  
24 doctor--if it is a preadmission screening--is going to be  
25 allowed to--now, wait just a minute.

1 Senator Symms. I don't like that either.

2 Senator Heinz. But if we go in his direction, you are  
3 going to have some bureaucrats working for a Government  
4 organization, more and more of them, making those decisions.

5 I am trying, at least, to keep the decision making in  
6 the private sector by doctors and patients, as opposed to  
7 PROs.

8 I am not against PROs, but I don't want them to have  
9 a bigger and bigger role. And that is the direction that  
10 I think we are potentially headed in with my friend David's  
11 proposal, even though I don't think he intends to be that  
12 intrusive.

13 The Chairman. Let me ask how we want to put this, John.  
14 Do you want to put it for a vote on your mandatory second  
15 opinion?

16 Senator Heinz. I would, Mr. Chairman. I don't know  
17 whether I will win or lose, but let's just vote on it.

18 The Chairman. Do you want a roll call?

19 Senator Heinz. Yes, please.

20 The Chairman. The issue is mandatory second opinion  
21 in Medicare. Senator Heinz' amendment, and he has asked for  
22 a roll call on it. The clerk will call the roll.

23 Senator Long. Could I just ask a question? Is that  
24 expected to give us a savings?

25 Senator Heinz. Yes. \$260 million of savings, Senator.



1           The Chairman. The Administration said they weren't  
2 sure, didn't they?

3           Senator Heinz. No, that is a CBO number.

4           The Chairman. All right. The Administration says  
5 they are not sure.

6           Dr. Desmarais. I was quoting from the CBO cost, but  
7 the CBO says it is very speculative.

8           The Chairman. All right. The mandatory second opinion  
9 on surgical under Medicare.

10          Senator Heinz. Just to be clear, Mr. Chairman, it is  
11 limited to ten high-risk, high-cost procedures.

12          The Chairman. The clerk will call the roll.

13          The Clerk. Mr. Dole?

14          Senator Dole. (No response)

15          The Clerk. Mr. Roth?

16          Senator Roth. Aye.

17          The Clerk. Mr. Danforth?

18          Senator Danforth. Aye.

19          The Clerk. Mr. Chafee?

20          Senator Chafee. Aye.

21          The Clerk. Mr. Heinz?

22          Senator Heinz. Aye.

23          The Clerk. Mr. Wallop?

24          Senator Wallop. No.

25          The Clerk. Mr. Durenberger?

1 Senator Durenberger. No.  
2 The Clerk. Mr. Armstrong?  
3 Senator Armstrong. No.  
4 The Clerk. Mr. Symms?  
5 Senator Symms. No.  
6 The Clerk. Mr. Grassley?  
7 Senator Grassley. No.  
8 The Clerk. Mr. Long?  
9 Senator Long. Aye.  
10 The Clerk. Mr. Bentsen?  
11 Senator Bentsen. (No response)  
12 The Clerk. Mr. Matsunaga?  
13 Senator Matsunaga. (No response)  
14 The Clerk. Mr. Moynihan?  
15 Senator Moynihan. Aye.  
16 The Clerk. Mr. Baucus?  
17 Senator Baucus. No.  
18 The Clerk. Mr. Boren?  
19 Senator Boren. No.  
20 The Clerk. Mr. Bradley?  
21 Senator Bradley. Aye.  
22 The Clerk. Mr. Mitchell?  
23 Senator Mitchell. No.  
24 The Clerk. Mr. Pryor?  
25 Senator Pryor. (No response)

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 The Clerk. The vote is six yeas, nine nays.

4 The Chairman. The amendment is defeated.

5 We will move on to Senator Moynihan.

6 Senator Moynihan. Mr. Chairman, I took the liberty  
7 yesterday of making the case, if you will, for this  
8 proposal; and I don't think I have to go further in detail.

9 The facts are as follows.

10 The Chairman. Yes, wait just a minute, Pat.

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1 (Pause)

2 The Chairman. Okay. Go ahead.

3 Senator Moynihan. Some 20,000 children each year are  
4 discharged from or leave foster care without families to  
5 return to. These, without significant exception, are children  
6 who "age out" of the system. They reach 18, and they are no  
7 longer eligible, and they are simply on their own. And  
8 typically, some are in small towns, and people know who they  
9 are, and they are looked after. Most of them are in large  
10 cities, and no one knows who they are, and they are not  
11 looked after.

12 A fairly carefully study -- I read it with great  
13 attention -- done in New York City of a sample of children  
14 who aged out found that one-third of them were back on  
15 welfare within 18 months. Most of these were females, and  
16 they were back with children.

17 A rather startling study in California found that  
18 two-thirds of the inmates in the state prison system had been  
19 foster-care children. And obviously, it is a responsible  
20 study.

21 What the amendment proposes is that, for a two year  
22 period, we appropriate \$50 million each year to be given to  
23 the states, according to a formula, which will allow them to  
24 experiment with transitional arrangements, of how do you find  
25 a job, find a house, find a neighborhood, find a place to

1 live when you no longer have any?

2 I don't think, having been through a lot of social  
3 experiments in my time -- we don't guarantee anything,  
4 excepting that the people involved, as the number of foster  
5 care children, the people responsible say it is just ghastly:  
6 you take care of a child until they are 18, as it were, and  
7 suddenly you see them go out into the darkness, and you won't  
8 see them again until they are back in jail or on welfare, or  
9 what you will.

10 There is a problem, Mr. Chairman. Senator Bentsen, who  
11 cannot be here, is very much in favor of this measure; but  
12 he noted that under the formula -- a very plain one where each  
13 state will get as large a portion of these moneys as it has  
14 of foster children -- that Texas gets a very small amount,  
15 because Texas has been very restrictive in the number of  
16 foster care children that they have supported, and he has  
17 resisted that, but with only limited success.

18 I would like to suggest that we could work out a formula  
19 which took some of the money off the top states like New York  
20 and California, and put some of the money into the lower  
21 states. I am sure that can be worked out by staff, so that  
22 everybody has enough money to give it a try, if they are  
23 disposed. And I accordingly offer the amendment.

24 The Chairman. Could I ask if the Administration has an  
25 opinion? We have Assistant Secretary Hardy with us.

1 Ms. Hardy. Thank you, Mr. Chairman. The Administration  
2 is opposed to the amendment, but I would like to comment a  
3 little bit on what we have done and on our continued  
4 commitment in terms of reducing the number of children in  
5 foster care.

6 Independent living, as we see it, is just one aspect of  
7 all of the efforts that need to go on to reduce our numbers.  
8 I have testified before that the numbers have come down,  
9 from about 500,000 in 1978 to about 260,000 today. That is  
10 progress, but it is not perfect yet.

11 But we are saying that the independent living kinds of  
12 experiments and demonstrations that we are already carrying  
13 on are good and are things that we are continuing to be  
14 supportive of, and we do not feel that we need a new  
15 categorical program.

16 We have set aside dollars for next year, in terms of  
17 discretionary funds, and states will certainly be encouraged  
18 to come to us and to come up with some good ideas. But  
19 the independent living, the whole situation it seems to me,  
20 should start a lot earlier, that we should be working --  
21 and we have been working -- with the states and with foster  
22 parents to have children in foster care at age 12 and 13,  
23 getting the kind of attention that we would give any of our  
24 children, in terms of getting them independent at the age of  
25 18.

1           Senator Moynihan. Mr. Chairman, could I ask Secretary  
2 Hardy -- yesterday a representative, and associate of yours,  
3 from HHS said that the average outlay on foster care children  
4 under the program you are describing is about \$120 a year.

5           Ms. Hardy. In the projects that we are doing, we are  
6 currently undertaking in terms of independent living, that  
7 is true. And that is just one area where we are working  
8 with trying to get kids emancipated and trying to get them  
9 to having --

10          Senator Moynihan. Oh. For \$120 a year you pull that  
11 off in Chicago, do you?

12          Ms. Hardy. In the current projects that we are funding,  
13 one of which is Nassau County Youth Board.

14          Senator Bradley. Nassau County? They have a lot of  
15 foster care problems in Nassau County?

16          Ms. Hardy.-- Nassau County, Arizona. I have a list of  
17 numerous grants that we are currently funding that are  
18 giving us very good programs for independent living for our  
19 foster care children.

20          Senator Moynihan. Mr. Chairman, I don't want to prolong  
21 the matter, if there are members who would like to speak.

22           I think we owe these kids something, I really do, and I  
23 think that if you looked at it in terms of what happens when  
24 you don't, the most fiscally conservative person would want  
25 to do something, because it is so very clear that these

1 children come back to us in no time as wards of the state,  
2 only as adult wards.

3 The Chairman. Further comments?

4 Senator Bradley?

5 Senator Bradley. Mr. Chairman, I know that this kind of  
6 runs counter to what the committee is doing in this markup and  
7 generally, but I think this is modest enough, and we actually  
8 might find a way to pick up some additional revenue in the  
9 course of the next several hours that this would also be  
10 affordable, so it wouldn't break the budget.

11 It seems to me that when we are thinking of whether we  
12 are going to try to address a problem of kids 16, 17 years  
13 old, who are going to come back later into the system at an  
14 increased cost to the government, or address it now, that  
15 it would be prudent as well as humane to address it now.

16 I wouldn't-vote No on this simply because you think it is  
17 going to bust the budget, because I know we will have a  
18 number of proposals in the next few minutes that could very  
19 well make up this \$100 million.

20 The Chairman. We are under a peculiar situation,  
21 however. We are reconciled on both spending and revenues in  
22 separate reconciliation orders, and we cannot offset one  
23 against the other. We can raise \$100 billion in taxes if we  
24 wnat, but it doesn't count against our total of the cuts.

25 The Ways and Means Committee operates under a different



1 basis; they have a fungible order, and they can count  
2 revenues.

3 But at the moment, unless I miss my guess on my estimates  
4 on savings we are \$66 million over our total of the  
5 \$22.166 billion. And if we adopt this we will be slightly  
6 under it on the savings, and we cannot make it up with  
7 revenues.

8 Senator Bradley. Unless the Senate decides that is what  
9 it wants to do.

10 The Chairman. Oh, that's true. Anything goes on the  
11 floor with 51 votes; but at the moment, if we do not meet  
12 the reconciliation totals we are now given in the fashion we  
13 are given them -- I don't mean the subject matters but the  
14 totals on revenues and the totals on spending -- then the  
15 budget committee can write them for us as they want. Now,  
16 whether or not they could get their 51 votes on the floor  
17 is another matter, but they could rewrite them for us.

18 Senator Moynihan. Mr. Chairman, if we could accept this,  
19 if in the end it cannot be fitted into our limits we have  
20 imposed on us, then we can trim it. But what do you say we  
21 have a vote in terms of we think it is a good idea?

22 The Chairman. Further comments?

23 Senator Bradley. If we have already cut \$66 million  
24 more, as Senator Moynihan is saying, make it a \$66 million  
25 program.

1           The Chairman. I understand what he is saying, to make  
2 it come out right on the button, at zero.

3           I am going to present, on behalf of Senator Heinz  
4 afterwards, his ventilator amendment. He cannot be here for  
5 it and asked me to bring it up, which is a \$51 million cost.

6           Senator Moynihan. Yes.

7           The Chairman. It is taking care of people at home that  
8 need respirators, rather than the hospitals.

9           Senator Danforth. Mr. Chairman, I think it is important  
10 to note that there will be other suggestions. For example,  
11 some people might suggest we do something on Trade  
12 Adjustment Assistance.

13           The Chairman. Is there further discussion on the  
14 motion of Senator Moynihan?

15           (No Response)

16           The Chairman. Do you want a rollcall, Pat?

17           Senator Moynihan. Could the Clerk call the roll?

18           Senator Armstrong. Could I just make one observation?

19           Senator Moynihan and I conducted an extensive hearing on this  
20 matter, and I personally think that the problem that  
21 Senator Moynihan identifies is a very real one and needs to be  
22 addressed. Now, I am not sure this is the way to do it, but  
23 it appears to me that since we are dealing with a  
24 reconciliation bill at this point, Mr. Chairman -- Mr. Chairman  
25 I was making the point that the problem is a real one, and I

1 think we ought to at least consider doing something about it.

2 But since the bill that we are marking up, as I understand  
3 it, is a reconciliation bill, there may be some Senators who  
4 will choose to vote against this amendment now and take it up  
5 at another time.

6 And I am going to put myself in that group, Pat. I  
7 might support this or something along these lines sometime,  
8 but I am reluctant to start a new departure under the guise  
9 of reconciliation, because it is just the wrong vehicle.

10 But we will have another train rolling through here in a  
11 few days, or sometime soon, and I would like to at least  
12 revisit the issue if the amendment is not passed today.

13 The Chairman. The Clerk will call the roll.

14 Senator Heinz. Mr. Chairman? One word.

15 I apologize. I am sorry that we have to vote on this  
16 amendment under these circumstances. We don't have the money  
17 to afford it.

18 I might note that, had we been able to get the mandatory  
19 second opinion adopted, we would have been able to afford it.

20 (Laughter)

21 Senator Heinz. And one of the reasons that I specifically  
22 did offer that amendment first was that there was this issue  
23 and the Katie Beckett issue, and they are both important.

24 I heard some people laugh a moment ago about that, and  
25 to my mind it really isn't a joking matter, because we are

1 making trade-offs -- we are making trade-offs. If we want to  
2 pay for unnecessary surgery, we will not be able to do  
3 counseling for foster care people without increasing the  
4 deficit. If we want to do unnecessary surgery, we will keep  
5 the Katie Becketts in the hospitals at \$100-200,000 a year  
6 and at some great heartbreak to the people involved. Those  
7 are the trade-offs this committee should be making. We are  
8 not making them.

9 I, frankly, am disappointed at that. I don't say that  
10 to be critical of any member, because I know we everybody is  
11 voting what they think on each issue is the right answer.  
12 But, nonetheless, those are the trade-offs we are making.

13 I will simply associate myself with Senator Armstrong.  
14 I don't think our budget numbers permit us to adopt  
15 Senator Moynihan's amendment. If they did, I would certainly  
16 vote for it.

17 The Chairman. The Clerk will call the roll on  
18 Senator Moynihan's amendment.

19 The Clerk. Mr. Dole?

20 (No response)

21 The Clerk. Mr. Roth?

22 Senator Roth. No

23 The Clerk. Mr. Danforth?

24 Senator Danforth. No.

25 The Clerk. Mr. Chafee?

1 Senator Chafee. Aye.

2 The Clerk. Mr. Heinz?

3 (No response)

4 The Clerk. Mr. Wallop?

5 Senator Wallop. No.

6 The Clerk. Mr. Durenberger?

7 Senator Durenberger. No.

8 The Clerk. Mr. Armstrong?

9 Senator Armstrong. No.

10 The Clerk. Mr. Symms?

11 (No response)

12 The Clerk. Mr. Grassley?

13 Senator Grassley. No.

14 The Clerk. Mr. Long?

15 Senator Long. Aye.

16 The Clerk. Mr. Bentsen?

17 Senator Moynihan. Mr. Chairman, I am going to vote what  
18 I understand to be Senator Bentsen's proxy, Aye, but with the  
19 understanding that he might want to change it in the absence  
20 of any specific change in our proposed formula, even though  
21 I would anticipate there would be one. Aye, with that  
22 understanding.

23 The Clerk. Mr. Matsunaga?

24 Senator Matsunaga. Aye.

25 The Clerk. Mr. Moynihan?

1 Senator Moynihan. Aye.

2 The Clerk. Mr. Baucus?

3 Senator Baucus. Aye.

4 The Clerk. Mr. Boren?

5 Senator Moynihan. Aye, by proxy.

6 The Clerk. Mr. Bradley?

7 Senator Bradley. Aye.

8 The Clerk. Mr. Mitchell?

9 Senator Mitchell. Aye.

10 The Clerk. Mr. Pryor?

11 Senator Moynihan. Excuse me: Mr. Pryor, Aye, by proxy.

12 The Clerk. Mr. Chairman?

13 The Chairman. No. And Senator Symms and Senator Dole,  
14 No, by proxy.

15 Senator Symms. Mr. Chairman, I would like to be  
16 registered as voting No.

17 The Clerk. That is nine Yeas and nine Nays.

18 The Chairman. The amendment fails.

19 Senator Bradley. Well, is it open until the end of the  
20 day? Is that the general policy?

21 The Chairman. No, it is not open if it changes the vote.  
22 That is a rule I have followed to my disadvantage, on  
23 occasion.

24 Senator Heinz, ventilators?

25 Senator Heinz. Yes, Mr. Chairman.

1           The issue where we left it last time is how can we  
2 avoid I guess the fact that intuitively, as we were  
3 discussing, this amendment ought to save money? CBO says it  
4 costs money. And I guess I would like to know how  
5 something that gets people out of hospitals for the cost,--  
6 at least in the case of Katie Beckett, we are now saving  
7 \$200,000 a year by not having her hospitalized. I honestly  
8 don't understand the CBO numbers that have us having a  
9 \$51 million three-year cost to this amendment. I don't  
10 understand that. And until I get a clear explanation of  
11 that, I'm somewhat reluctant to press forward with the  
12 amendment.

13           The Chairman. Can anyone answer Senator Heinz's  
14 question as to why this costs money?

15           Dr. Muse. Senator, I will give two generic answers, and  
16 then offer to get CBO to the table.

17           (Laughter)

18           The Chairman. That was a good move, Senator Bradley.

19           (Laughter)

20           Senator Bradley. As you were saying?

21           (Laughter)

22           Senator Heinz. Mr. Chairman, I missed Senator Bradley's  
23 move. Could he do it again?

24           (Laughter)

25           The Chairman. Do you want to answer, Mr. Muse?

1 Dr. Muse. I will give two generic answers to the  
2 question.

3 The Chairman. All right.

4 Dr. Muse. And this applies not only to the ventilator  
5 costing but to many of the costings that come up when we  
6 attempt to pull people out of institutional settings and  
7 put them in home settings.

8 One is, conceptually, if you could just limit it to  
9 pulling people out of institutions and putting them in the  
10 home, that is obviously, most of the time, a winner. You  
11 save money.

12 The problem is that, given the complex eligibility  
13 rules that we have, and the fact that basically when you  
14 get down to the bottom line it is "a doctor says this  
15 person would be in an institution," that that gives you  
16 woodwork effects. Some doctors in fact say, "Yes, this  
17 person needs a ventilator" or "would be in an institution"  
18 when in fact they wouldn't.

19 So, factor-one is a woodwork effect.

20 Senator Long. Don't you mean by "woodwork" a woodworm?

21 Dr. Muse. I'm sorry. People come out of the woodwork  
22 to take up the benefit that were not in the institution,  
23 that you get additional eligibles coming "out of the  
24 woodwork."

25 The second thing that happens is: Let us suppose that



1 you could magically limit it to only people in, say, a  
2 nursing home setting, and that you pull 10 elderly, frail  
3 persons out of the nursing home setting and put them in  
4 their home. And you say maybe \$30 a day, and you add all  
5 that up, and that's \$3000 a month you are saving.

6 Unfortunately, one of the elderly women, because there  
7 are no railings in her home, or because she has a loose  
8 whatever on the floor, falls and breaks her hip. You not  
9 only would wipe out the savings that you got by pulling them  
10 out of the nursing home setting, you wind up driving up  
11 costs.

12 In my semi-current job in the Office of the Actuary  
13 in HCFA, when we get these costings, that is why you  
14 generically in this area do not get the savings that you  
15 intuitively believe.

16 Having those two generalizations out of the way, I will  
17 turn it over to my colleague from CBO to explain this  
18 particular estimate.

19 The Chairman. I might add just a note about Mr. Muse  
20 and our staff. He is one of those that is loaned by the  
21 Administration for a brief period of time. And they loaned  
22 him for the brief period of time for our consideration of  
23 the budget. And he has been here since January. I don't  
24 know how much longer he is going to be with us.

25 (Laughter )

1 Mr. Seagrave. I am Charles Seagrave from the  
2 Congressional Budget Office.

3 We did an estimate of this provision actually last  
4 year for Senator Packwood. We looked at it very carefully,  
5 and we spent a great deal of time on it. It was a very  
6 difficult estimate for us to do, and there are clearly two  
7 effects: there are costs and there are potential savings  
8 associated with it.

9 When we looked at the estimate, our best judgment was  
10 that in the Medicaid program this would probably, on net,  
11 save money.

12 So, if you read our estimate carefully, you will find  
13 savings in the Medicaid program from this provision.

14 In Medicare, we found that there would be costs  
15 associated with it, and we found those costs primarily for  
16 two reasons:

17 First of all, there are people today at home on these  
18 ventilators who would become covered under this provision,  
19 and they would be a cost.

20 The Chairman. Do you mean currently at home, not being  
21 covered?

22 Mr. Seagrave. They are currently home on ventilators.  
23 They are not being covered under Medicare. And our belief  
24 is that under this legislation they would become covered.

25 Senator Heinz. Mr. Seagrave, let me ask you this

1 question: If we wrote our provision so that it only covered  
2 those people who are currently hospitalized on ventilators  
3 and new people who are not now on ventilators and are in the  
4 home, then would it be at least budget-neutral?

5 Mr. Muse. It is very close. I think, on the basis of  
6 our estimate, that it has very small costs under those  
7 assumptions.

8 Senator Heinz. Mr. Chairman, I would like to amend  
9 my amendment to have it apply only to those people who are  
10 now hospitalized -- I would like to have it, actually apply  
11 across the board to Medicaid, because he says that will  
12 actually save some money if we apply it to Medicaid, as it  
13 is written. But with respect to Medicare, the amendment  
14 would only apply to those people who are now hospitalized  
15 on ventilators, and on new admissions or whatever the right  
16 term is for people who would have the problem.

17 The Chairman. And for new admissions who what?

18 Senator Heinz. And for new admissions. That is to say,  
19 people who are not now currently on ventilators in the home.

20 The Chairman. I want to make sure I understand where  
21 you are coming on it. Does that mean that if the doctor  
22 says, "Well, you can't be covered at home, because you  
23 haven't been institutionalized," but if they were  
24 institutionalized they could then go on the ventilators at  
25 home?

1           Senator Heinz. Yes, as long as they were not now on a  
2 ventilator.

3           The Chairman. No. If they are on the ventilator now  
4 in the hospital, they can go home, and they can be taken  
5 care of.

6           Senator Heinz. That's right.

7           The Chairman. But if they are not now on a ventilator  
8 at all, at home or in the hospital, but if they go to a  
9 hospital and are put on one, they can go home and be  
10 covered?

11          Senator Heinz. Right.

12          The Chairman. So that, the only people under your  
13 amendment as amended that would not be covered would be  
14 those who a doctor would try to directly put on the  
15 ventilator at home?

16          Senator Heinz. That is correct.

17          Senator Danforth?

18          Senator Danforth. Let us suppose that somebody is now  
19 at home on a ventilator, and therefore this would not apply  
20 to him. Would he be sent to a hospital for a day on a  
21 ventilator in order to qualify for this? Is this just an  
22 invitation to send people to the hospital who are not now in  
23 the hospital?

24          Mr. Mihalski. Yes, sir; it may very well induce doctors  
25 to admit patients to hospitals in order to get the coverage.

1 That is a possibility.

2 Senator Danforth. But don't you then want to say that  
3 people who are not in the hospital on September the 18th?

4 Senator Heinz. To answer the question, the legislation  
5 specifically says that somebody must have been on a ventilator  
6 in a hospital for 30 consecutive days. You cannot run the  
7 hospital as a clearinghouse.

8 Senator Danforth. But under this provision, as you  
9 have explained it, if somebody is now at home, wouldn't  
10 the doctor say, "All right, I am going to admit you to the  
11 hospital for 30 days so you can get your ventilator paid  
12 for"?

13 Senator Heinz. I think that is theoretically possible,  
14 in view of the fact that a day in a hospital is \$500 and --

15 Senator Danforth. But this is Medicare we are talking  
16 about.

17 Senator Heinz. This is Medicare.

18 Senator Danforth. The \$500 is not the --

19 Senator Heinz. What is the DRG for something like  
20 this?

21 The Chairman. I wonder if I might make a suggestion?

22 Senator Heinz. I think, Jack that what we have got is  
23 something that is unlikely to be abused because of that  
24 30 day requirement, and which we think is revenue-neutral.

25 Yes, Mr. Chairman?

1           The Chairman. Could I suggest that we adopt this with  
2 the proviso that we work out the language, as it applies to  
3 Medicare and Medicaid, at no net cost, and that that language  
4 will be agreed upon by both CBO and us. And having worked  
5 that out, that we add it to the bill.

6           Senator Heinz. Very well. That is fine with me,  
7 Mr. Chairman.

8           The Chairman. That is just my suggestion as to how to  
9 work it out.

10          Senator Heinz. I accept your suggestion.

11          The Chairman. Further comments? Is there objection  
12 to adopting the amendment in that form?

13          (No response)

14          The Chairman. Let's move on to revenues. I don't  
15 think we have anything left in this area.

16          Senator Heinz. Thank you.

17          The Chairman. Okay. Revenues.

18          Mr. Colvin. Mr. Chairman, this morning we have  
19 distributed a staff proposal to meet the Congressional  
20 Budget revenue requirement.

21          The Chairman. Wait a minute. What have you distributed  
22 this morning?

23          Mr. Colvin. It is a two-page piece of paper that looks  
24 like this.

25          The Chairman. What does it say at the top of it?

1 "Staff Proposals to Meet Congressional Budget Revenues"?

2 Mr. Colvin. Yes.

3 The Chairman. Okay. Dated September 17th.

4 I wonder if I might bring up one item at the start that  
5 I have talked with some others about, and that relates to  
6 the Superfund? And I would like to start with the Superfund.  
7 I would like to put it in our reconciliation package, for  
8 this reason, with one caveat that several members have talked  
9 about.

10 This of course is funded by a Bentsen-Wallop Gross  
11 Receipts Tax on manufacturers of over \$5 million, and some  
12 concern has been asked about what happens if we have the tax  
13 but no program. And add to it a caveat that the tax will  
14 not go into effect if there is no Superfund Program, and  
15 that is a very distinct possibility because the Administration  
16 may veto the program.

17 Senator Wallop. Mr. chairman, I have no objection to  
18 doing that if that cap relates directly to the amount of  
19 funding that we ultimately settle on.

20 The Chairman. Yes.

21 Senator Wallop. So that, however we put it in, would  
22 be affected by the Superfund funding that Congress ultimately  
23 decides upon.

24 The Chairman. Absolutely.

25 Senator Wallop. And if they don't do it at all, they

1 don't do it at all. If they do do it at a figure somewhat  
2 less than the \$7 billion we have, it would be capped at  
3 that figure.

4 The Chairman. Exactly.

5 Senator Bradley. Could we have some order, Mr.  
6 Chairman?

7 The Chairman. Can we have those who are leaving leave  
8 as quickly as possible, and let others in if there is room,  
9 so that we can have order?

10 Excuse me, Senator.

11 Senator Bradley. Does that also mean that if it is  
12 funded at more than the 7.5 that we funded it at, that it  
13 would go up?

14 The Chairman. No, it would not, at the moment. That  
15 would have to be added on the floor.

16 Senator Bradley. Okay.

17 The Chairman. But I did want to make sure that we  
18 didn't get into a situation like we got into with the  
19 Airport Development Fund, where we had revenues in a trust  
20 fund that were not being spent; indeed, we had promised the  
21 people upon whom we were going to levy the tax that it would  
22 be spent for a certain purpose, and it wasn't being spent for  
23 any purpose.

24 So I would move to put, just as we passed it, with the  
25 caveat that Senator Wallop has indicated, the Superfund



1 package that this committee sent out in the reconciliation  
2 package.

3 Is there objection?

4 Senator Armstrong. Objection.

5 The Chairman. That's a fair enough objection, because  
6 you voted against the program altogether to begin with, as  
7 I recall.

8 Senator Armstrong. Mr. Chairman, it passed before on a  
9 vote of 16 to 2, and I am authorized to report that the two  
10 stand firm.

11 The Chairman. Thank you.

12 (Laughter)

13 The Chairman. With the exception of those two, it is  
14 adopted.

15 Let us move on to cigarettes, if we might.

16 Senator Chafee. I see on the list we are taking,  
17 Mr. Chairman, one is Medicare --

18 The Chairman. Those are only listed in that order,  
19 John, because, as your know, of the declining amount.

20 Senator Chafee. All right.

21 The Chairman. I asked the staff to list them in terms  
22 of declining amounts, because often we get into short  
23 arguments over large funds and large arguments over small  
24 funds.

25 Senator Chafee. Sure. Okay. You are on the

1 cigarettes?

2 The Chairman. On the cigarette tax, I am going to at  
3 least lay before us the provision to make the cigarette  
4 tax permanent at 16-cents a pack, what is now, temporarily  
5 and then open it up for discussion.

6 Senator Bradley. Mr. Chairman, I think there can be  
7 little doubt that cigarettes are adverse to our health.  
8 We had, in testimony before the committee, that the costs  
9 in direct medical expenses are about \$14 billion a year, and  
10 \$25 billion in lost earnings due to premature morbidity.

11 The point also should be made that, with the cigarette  
12 tax at 16 cents a pack, it represents about 20 percent of the  
13 price of a pack of cigarettes. In 1951 the tax was 37  
14 percent of a pack of cigarettes, and in real terms it  
15 represents only about one-third of what it was in 1951.

16 The third-point is that there is strong public support  
17 for taxing cigarettes, largely because, I think, of their  
18 adverse effect on the health of people across the country  
19 and that are readily seen in many of our families.

20 Next, if you tax cigarettes at a sizeable amount,  
21 according to one of the witnesses that came before the  
22 committee, it would, if it were at 32 cents a pack, result  
23 in over half a million kids -- and that's the age at which  
24 people begin smoking and stay hooked -- not beginning to  
25 smoke.

1           Now, I think those facts -- the price, the packs in  
2 relation to price now versus what it was in 1951, the  
3 overwhelming health facts involved, as well as the  
4 deterrent factor -- would argue for a strong cigarette tax.

5           As you know, it was 16 cents. It dropped back two years  
6 ago, and it was supposed to come back up this year. I think,  
7 frankly, that 32 cents would not be too much to tax  
8 cigarettes. I am not going to propose to do that. The  
9 committee is looking at a mark that has a 16-cent-a-pack  
10 tax. I would propose to raise that to 20 cents a pack.

11           The Chairman. There is discussion on the amendment to  
12 raise it from 16 to 20 cents a pack.

13           Senator Chafee. Mr. Chairman, before Senator Bradley  
14 starts with that, I would like to go with the 32 cents a  
15 pack.

16           The Chairman. Does anybody want to go for 64?

17           (Laughter)

18           Senator Chafee. Well, maybe somebody will. But we have  
19 had hearings on this. The outstanding man in this field,  
20 or certainly one of the leaders, is Dr. Kenneth Warner from  
21 the University of Michigan, the School of Public Health.  
22 And no one will argue that the relationship between smoking  
23 and certain diseases, illnesses, whether it be cancer or  
24 cardiovascular diseases or emphysema -- you name it. Not  
25 only is smoking a direct cause of many of those, but it has

1 a synergistic effect with those who are overweight or have  
2 other problems. And smoking is just truly bad for your  
3 health.

4 Now, the estimates are that if we went to 32 cents a  
5 pack, where it would have its most direct effect -- that is,  
6 price and less consumption -- is amongst the teen smokers.  
7 And Dr. Warner in his studies comes up with an estimate that  
8 the number of teen smokers that would be reduced would be  
9 17 percent, or 820,000 teenage smokers a year.

10 Now, it is costly to all of us to have smokers. The  
11 National Center of Health Statistics has said smoking-related  
12 diseases cost Medicare and Medicaid nearly \$4 billion a  
13 year, plus \$25 billion a year in lost wages, lost days,  
14 illnesses, and so forth.

15 So, Mr. Chairman, I think there is a tremendous  
16 argument that can be made for going to the 32 cents a pack.  
17 The revenues would be welcome by our Treasury, and I make that  
18 proposal.

19 The Chairman. Let me tell you where we are at the  
20 moment. My amendment at 16 cents, amended to 10, amended to  
21 32.

22 Senator Wallop. Mr. Chairman, I would resist that and  
23 go with the recommendation of the committee, for a couple of  
24 reasons: One, I don't think reconciliation is a social  
25 program process. But, two, the states are counting on a

1 level of revenue out of this which we will simply co-opt.  
2 And I don't think that by doubling it you are going to get  
3 yourself to \$10 billion. Indeed, if the program works the  
4 way those who are espousing it say it will work, revenues  
5 will probably remain about the same.

6 But I do think that one of the careful jobs of this  
7 committee is not to co-opt all of the states' revenuemaking  
8 ability, and most of them are intending to keep what they  
9 had anticipated we might drop. You will, in essence, have  
10 about the same tax in total, anyway.

11 Senator Durenberger. Mr. Chairman, I intend to oppose  
12 the tax as well. I have never supported a tax on tobacco or  
13 alcohol, or anything else at this level, believing it is  
14 the province of the state. And the higher you get, the  
15 tougher it gets. Particularly if all of this money is just  
16 going into deficit-reduction, it is kind of pointless;  
17 because the higher you get the federal tax up, the more  
18 impossible it is for the states to have any access to this  
19 tax system.

20 Suppose the states wanted to use the cigarette tax to  
21 educate young people that they shouldn't smoke? To educate  
22 poor mothers on the problems that come with pregnancy? They  
23 can't do it, because the federal government has glommed onto  
24 whatever economic advantage might be left to some people in  
25 the cigarette area.

1           So, if we were voting on something else other than just  
2 raising a tax because we have a deficit and we want it to  
3 have a deterrent effect, I would even question to some  
4 degree the deterrent effect, although I have to admit all  
5 of the evidence is that there is some deterrent, but it is  
6 a very regressive deterrent. Yes, it discourages the young,  
7 but it doesn't discourage the poor. So, I would even  
8 question that.

9           But I think the main point is that the higher you get  
10 with this thing, the more impossible you make it for the  
11 states to use excise taxes.

12           We ought to stick to the income tax and some of the  
13 things we know, or should know, how to do well, and leave  
14 this to the states.

15           Senator Chafee. Well, Mr. Chairman, to suggest that we  
16 ought to stay away from excise taxes and stick to the income  
17 tax is going down a new path for this committee, because we  
18 are hip-deep in excise taxes. We are into them with liquor,  
19 we are into them with wine, beer, you name it. All kinds of  
20 excise taxes exist.

21           We just voted to have a little excise tax on humans  
22 crossing the border. So, I don't think that this is new  
23 territory that we ought to approach so gingerly that we are  
24 afraid to do anything.

25           It is said that the poor are going to be affected. Well,

1 sure they are, but so is it with every sales tax that you  
2 put on. And the argument, "Let the states affect the poor,  
3 but not the federal government" is an interesting one.

4 So, Mr. Chairman, here we are. There is no argument  
5 that this is bad for you, that cigarettes are. I don't  
6 think anyone will argue that. And I think we ought to mix  
7 the metaphors and bite the bullet and do something about  
8 it.

9 The Chairman. Senator Bradley?

10 Senator Bradley.. Mr. Chairman, if I could, just two  
11 points: It seems to me that the "excise tax reserve for the  
12 states" argument might make a little more sense if it wasn't  
13 the federal government with a \$200 billion budget deficit  
14 and most of the states in surplus. I mean, the fact of the  
15 matter is, we need to close the federal deficit.

16 The proposal that Senator Chafee has made would raise  
17 nearly \$10 billion. And from my perspective, that is well  
18 worth voting for.

19 The Chairman. Well, I think we are going to have  
20 numerous votes on this issue.

21 John, I wonder if you might be ready to vote on 32 cents?

22 Senator Chafee. Sure, I'm ready.

23 The Chairman. Do you want a rollcall?

24 Senator Durenberger. What is the alternative?

25 Senator Chafee. Yes, what is the alternative?

1 The Chairman. Here is the alternative: All those in  
2 favor of 32 cents --

3 Senator Chafee. Let's have a rollcall.

4 (Laughter)

5 The Chairman. The Clerk will call the roll on 32 cents  
6 a pack.

7 The Clerk. Mr. Dole?

8 Senator Dole. No.

9 The Clerk. Mr. Roth?

10 Senator Roth. Aye.

11 The Clerk. Mr. Danforth?

12 Senator Danforth. Aye.

13 The Clerk. Mr. Chafee?

14 Senator Chafee. Aye.

15 The Clerk. Mr. Heinz?

16 Senator Heinz. Aye.

17 The Clerk. Mr. Wallop?

18 Senator Wallop. No.

19 The Clerk. Mr. Durenberger?

20 Seantor Durenberger. No.

21 The Clerk. Mr. Armstrong?

22 Senator Armstrong. Aye.

23 The Clerk. Mr. Symms?

24 The Chairman. Senator Symms, No.

25 The Clerk. Mr. Grassley?



1 Senator Grassley. No.

2 The Clerk. Mr. Long?

3 Senator Long. No.

4 The Clerk. Mr. Bentsen?

5 Senator Long. Mr. Bentsen, No.

6 The Clerk. Mr. Matsunaga?

7 (No response)

8 The Clerk. Mr. Moynihan?

9 Senator Moynihan. Aye.

10 The Clerk. Mr. Baucus?

11 Senator Baucus. No.

12 The Clerk. Mr. Boren?

13 (No response)

14 The Clerk. Mr. Bradley?

15 Senator Bradley. Aye.

16 The Clerk. Mr. Mitchell?

17 Senator Mitchell. No.

18 The Clerk. Mr. Pryor?

19 (No response)

20 The Clerk. Mr. Chairman?

21 The Chairman. No.

22 Hold the count just a moment: No, Senator Pryor, by  
23 proxy.

24 The Clerk. The vote is 8 Ayes, 10 Nays.

25 The Chairman. The motion is defeated. We are back to

1 Senator Bradley's 20 cents a pack.

2 Senator Bradley. The 20 cents a pack, Mr. chairman,  
3 would raise \$7.3 billion.

4 The Chairman. Comments on 20 cents a pack?

5 (No response)

6 The Chairman. Shall we vote on 20 cents a pack?

7 Senator Bradley. Right.

8 Senator Moynihan. Mr. Chairman, not to comment  
9 extensively, but there is an elemental case of maintaining  
10 the proportionate tax on a public health menace, and if we  
11 can't do that -- we sure have found that we couldn't find  
12 money to look after foster children abandoned into the  
13 great cities of this country earlier on. Perhaps if we did  
14 this, we would be able to find something for those foster  
15 children, because there is a majority in this committee for  
16 them.

17 The Chairman. Further discussion? Senator Dole?

18 Senator Dole. Mr. Chairman, it seems to me that  
19 obviously there is going to be some action in this area.

20 I have been visiting with a number of the tobacco state  
21 senators, and they happen to be Democrats as well as  
22 Republicans. And if they are not on this committee I think  
23 we should at least let them have a chance to express their  
24 views.

25 What I would propose would be to extend the present

1 16 cents per pack, thereby repealing the so-called sunset  
2 provision which was adopted on the Senate floor in 1982.  
3 That would mean about -- what does that bring in? -- about  
4 \$5 billion, in the Finance Committee reconciliation  
5 instructions.

6 And then, if it was satisfactory to the committee, we  
7 could include in that that the Finance Committee include in  
8 its package S. 1418, which is the Helms, Ford, McConnell  
9 Tobacco Program Improvement Act. If we can pick up  
10 \$4.9 billion, the S. 1418 will save an additional  
11 \$239 million over three years.

12 The Chairman. Five hundred and twenty-three over five  
13 years.

14 Senator Dole. Yes, 523 over five years.

15 So, I would rather take that approach; in other words,  
16 extend the tax. We need to do something before the end of  
17 this month. The revenue would go direct to the Treasury,  
18 not some dedicated tax or earmarked tax that we have seen  
19 in the past. I would offer that as a substitute.

20 Senator Bradley. Mr. Chairman, a substitute? What was  
21 the parliamentary situation? We had three amendments lined  
22 up.

23 The Chairman. But one was defeated. So his is a  
24 second-degree amendment now in replacement of Senator  
25 Chafee's amendment which lost.

1           As I understand it, S. 1418 is a one-year program. I  
2 mean, that's it, and that's the end of it.

3           Senator Dole. That's it.

4           The Chairman. And in exchange for the support of those  
5 who are interested in that subject, and the Administration  
6 I hope -- now, that is not a promise, but the  
7 Administration -- because the President has indicated a  
8 certain view on the cigarette tax, we would get a permanent  
9 16-cent cigarette tax and a change in the agricultural  
10 support program that picks up another half-billion dollars  
11 over five years.

12          Senator Bradley. Mr. Chairman, this committee doesn't  
13 vote on that, though. Right?

14          The Chairman. We can offer it. We have a letter from  
15 the Chairman of the Agricultural Committee asking that we  
16 include 1418 as part of our reconciliation. We have the  
17 power to do so upon request of the chairman of another  
18 committee, and we can do it. And the Chairman has indicated  
19 that in exchange for that, he would support the 16 cents.

20          Senator Mitchell. Mr. Chairman, I am not on the  
21 Agriculture Committee, and I don't know what S. 1418 does.  
22 And if this committee is now going to be called upon,  
23 suddenly, being handed a letter right at the instant before  
24 we vote, which refers to a bill by name that is not within  
25 this committee's jurisdiction and which I at least know

1 nothing about, I think we should have a pause and permit  
2 a full explanation to the members of the committee of what  
3 that bill is, what its implications are, and give us the  
4 opportunity to consider it and deliberate on it in the manner  
5 in which legislation should be considered and deliberated.

6 Senator Moynihan. Mr. Chairman, may I suggest that if  
7 Senator Helms wants to tell us about the tobacco farmers,  
8 why doesn't he come and talk to us?

9 The Chairman. I believe we have the General Counsel of  
10 the Agriculture Committee here who can explain what 1418 is.

11 Senator Dole. I might add that I have had a meeting  
12 not with just Senator Helms but with Senators from tobacco  
13 states -- I think there are about seven or eight of them.  
14 But the letter is from Senator Helms.

15 Senator Bradley. I am sure that there are Republicans  
16 and Democrats who are from tobacco states. This is a  
17 question of whether we really want to conduct business in the  
18 Finance Committee this way. I mean, this is not our  
19 jurisdiction.

20 The Chairman. I wonder if the General Counsel of the  
21 Agriculture Committee would like to come forward and  
22 identify himself?

23 Mr. Franks. Yes, sir, Mr. Chairman. My name is  
24 Bob Franks. I am the General Counsel of the Agriculture  
25 Committee.

1 The Chairman. Bob Franks?

2 Mr. Franks. Yes.

3 The Chairman. Good.

4 Mr. Franks. As I understand it, you would like a short  
5 explanation of the proposal.

6 Senator Bradley. Why don't you begin with the program,  
7 the whole tobacco program, and explain that?

8 (Laughter)

9 Senator Dole. Do you mean present law, current law?

10 Senator Bradley. Current law, what the proposed  
11 changes are, and what the results have been in Agriculture  
12 Committee votes on the subject.

13 Mr. Franks. Well, let me just start by saying:  
14 Currently the program provides a price support mechanism for  
15 tobacco. The government makes loans to producer cooperatives  
16 that are organized by the producers, and they in turn make  
17 make price-support advances, make loans to producers. That  
18 would not be changed by this proposal at all. That system  
19 would continue.

20 What this proposal does is, basically, I would say it  
21 has about five major components to it.

22 Number one, it does lower the price support level for  
23 the major kinds of tobacco, particularly flue-cured  
24 tobacco and burley tobacco. Basically, it is a 30-cent drop  
25 in the price-support level, which amounts to about a

1 16-percent reduction in price supports.

2 Senator Bradley. Drop from what to what?

3 Mr. Franks. Well, for example, the current flue-cured  
4 level. The current level for 1984 was \$1.70, approximately  
5 \$1.70.

6 Now, administratively, the Administration has already  
7 set the 1985 level and has dropped it so that the effective  
8 rate, if a program to purchase tobacco triggers are met,  
9 that would drop it to about \$1.40 a pound.

10 The proposal would drop the burley price from \$1.75 to  
11 \$1.45. So again, it is basically a 30-cent drop.

12 Now, in addition to that it establishes the formula for  
13 future years based on a more market-oriented system, which  
14 would take into consideration the difference between a  
15 five-year moving average price, so that it sets the price  
16 support level based on market principles.

17 Senator Bradley. And how does it do that?

18 Mr. Franks. Well, it does that by establishing the  
19 levels for flue-cured and burley based on the difference  
20 between two five-year moving averages of the average market  
21 price for tobacco. It basically sets a formula for two-thirds  
22 of the weight would be based on this market average.  
23 One-third weight would be given to any increase or decrease  
24 in the cost of production, basically, is what that would  
25 amount to.

1           It would also give the Secretary, though, authority to  
2 only make a 65-percent increase. In other words, if the  
3 increase called for 100 percent, the Secretary could  
4 basically set it at 65 rather than 100 percent of what that  
5 formula would call for.

6           This basically is designed to make the tobacco more  
7 competitive, to get the formula on a more market-oriented  
8 basis.

9           Now, there are several other major provisions. It would  
10 establish a new method of determining the marketing quota  
11 that would basically tie it more closely to the demand and  
12 would require the manufacturers to submit their purchase  
13 intentions. And then the quota would be set on the basis of  
14 the purchase intentions submitted, the average exports for  
15 the preceding three years, and another factor that the  
16 Secretary would take into consideration to set the carryover  
17 where he felt it should be.

18           It would require the companies, the manufacturers, to  
19 purchase at least 90 percent of the amounts that the  
20 companies stated that they intended to purchase in terms of  
21 determining the quotas, or those companies then would be  
22 subjected to a marketing penalty.

23           Senator Bradley. Mr. Chairman, before he goes on, can  
24 we see a copy of the amendment? I would like to see a copy  
25 of the amendment.



1 The Chairman. It is coming right in now.

2 Mr. Franks. Two final points:

3 It would also establish an assessment on the part of  
4 purchasers. In other words, currently the tobacco program  
5 is operated on a no-net-cost basis. Producers pay an  
6 assessment to cover the cost of that program. This would  
7 establish for the first time now an assessment on the  
8 purchasers, also.

9 The final point would be that it would provide for  
10 basically purchase agreements for the companies to buy out  
11 the existing inventories of tobacco.

12 The current problem is the tremendous oversupply of  
13 tobacco held by the associations, and this is a package  
14 that is designed (1) to eliminate that oversupply, to  
15 reduce the price-support level, to make us more competitive,  
16 and then to go forward in the future and have the quotas  
17 set more closely attuned to the market situation.

18 Now, that is basically the general overview.

19 Senator Bradley. I would like a copy of the amendment.  
20 I haven't seen a copy of the amendment.

21 Senator Moynihan. Mr. Chairman, while we are reading  
22 the amendment, does anybody here ever recall the Finance  
23 Committee passing an agricultural bill?

24 Senator Bradley. This explanation -- I am sure that if  
25 I asked any member of the committee any question about the

1 tobacco program, it would quickly indicate that we don't  
2 know what the tobacco program is. We don't have any  
3 jurisdiction over the tobacco program. And I personally  
4 think it is outrageous that we are asked to vote on something.  
5 We might as well pull in MX Missiles. Let's get a vote  
6 from --

7 Senator Bentsen. No, Senator. This may have a point.  
8 I've got one on milo and another one on beef that maybe I  
9 want to try to bring up.

10 (Laughter)

11 Senator Moynihan. Acid rain?

12 (Laughter)

13 Senator Moynihan. We just had a visit from  
14 Premier LaVesque, and it would be very thoughtful of us to  
15 do that acid rain amendment right here in honor of the visit  
16 of the former Premier of Quebec.

17 Senator Bradley. Mr. Chairman, I would also like to know  
18 if this is divisible. If it is divisible, we'll get  
19 separate votes, possibly. Is it divisible?

20 The Chairman. It is divisible. You could vote on the  
21 separate parts of the package. But I wonder if I might  
22 suggest this: Obviously the second part is controversial;  
23 whether or not it is 16 or 20 or 24 is controversial. You  
24 have got smokeless tobacco.

25 I am just going to exercise for the moment the

1 prerogative of the Chairman and take this issue off our  
2 consideration right now, so that everybody has a chance to  
3 know what we are talking about, and we will come back to it.

4 We are going to go on now to other items. I don't think  
5 we will come back this afternoon; but if we don't finish  
6 today, we will come back tomorrow morning and finish up  
7 tomorrow morning.

8 So, for the moment let's take this item down from the  
9 agenda, and let's move on to the noncontroversial issue of  
10 Medicare coverage of state and local employees.

11 (Laughter)

12 Senator Bradley. Mr. Chairman, what about smokeless?

13 The Chairman. We will take the whole issue of tobacco  
14 and smoking off right now.

15 Senator Bradley. Oh.

16 The Chairman. Let's go on to extending Medicare -- not  
17 Social Security but Medicare coverage to state and local  
18 employees.

19 There is a provision in the staff package before you to  
20 make it effective September 30, 1986, Medicare coverage for  
21 both state and local employees. And that is both current  
22 and new employees, both. Correct?

23 Mr. Colvin. Yes, Senator.

24 Senator Long. Mr. Chairman?

25 The Chairman. Yes. We are on your issue.

1 Senator Long.

2 Senator Long. Mr. Chairman, I am very strongly opposed  
3 to the idea of taxing the state governments at all. I really  
4 think it unconstitutional, but I don't think that we have to  
5 raise that issue.

6 It seems to me that, if you want to do it, you have a  
7 right to tax the employee; you could tax him just as you  
8 did -- I think the precedent we had with charitable groups  
9 could be used. Maybe Mike Stern recalls how we did that  
10 about the charitable group. I believe it would raise the  
11 same revenue.

12 Mike, could you explain how we did it with the  
13 charitable groups?

14 Mr. Stern. What you did, you taxed the employees at  
15 self-employed rate.

16 Senator Long. And so, it would bring in the same  
17 amount of money we would have brought in if we had taxed  
18 the charity as the employer. Isn't that right?

19 Mr. Stern. Roughly. I think that is not quite the  
20 same, but it is close.

21 The Chairman. You wouldn't bring in quite as much if  
22 you tax them at the self-employed rate.

23 Mr. Stern. For the time being, there is a temporary  
24 credit which will expire. Ultimately, the self-employed tax  
25 will be the same as both the employer and employed combined.

1           The Chairman. I see.

2           Senator Long. It seems to me, though, if you tax the  
3 employee at the self-employed rate, you would avoid this  
4 problem of taxing a state government. And hopefully this  
5 date you have in here would give them enough time so that  
6 the state employees could go to the state legislature and  
7 say, "Look, they put an additional tax on us, so we are  
8 entitled to a pay raise to offset it."

9           The Chairman. I want to come back Mike, if I might,  
10 the law again, because I had forgotten this. We are going  
11 under Social Security to a tax basis where self-employed  
12 will pay the full, same amount as an employee?

13          Mr. Stern. That is correct.

14          The Chairman. And when is that?

15          Mr. Stern. It looks like 1990.

16          The Chairman. So, in 1990 the self-employed will be  
17 paying about what? Fourteen percent of their income?

18          Mr. Stern. At that time the employer and employee will  
19 each be paying 7.65 percent and the self-employed will be  
20 paying 15.3 percent, which is twice that.

21          The Chairman. That is a whale of an amount.

22          Senator Long. It doesn't bother me, Mr. Chairman, if  
23 you want to tax state employees at the full rate that both  
24 the employer and the employee was paid. I just am  
25 strenuously opposed to taxing the state government. I think

1 under the Doctrine of Reciprocal Immunity it was never  
2 intended that the states could solve their problem by  
3 taxing the federal government, and it was never intended that  
4 the federal government would solve its problems by taxing  
5 the state governments, and we don't have to do that. So I  
6 think we ought to just tax the employees, if you are going  
7 to do it.

8 The Chairman. Further discussion?

9 Senator Mitchell. Mr. Chairman?

10 The Chairman. Senator Mitchell.

11 Senator Mitchell. I understand from what you said and  
12 from what this statement reads that this is limited to  
13 Medicare coverage.

14 The Chairman. That is correct.

15 Senator Mitchell. Does that mean that we will not then  
16 consider the additional proposal that was at least mentioned  
17 regarding the other Social Security trust funds?

18 The Chairman. Later on you will find it as an option  
19 that I simply put there if we didn't reach our totals with  
20 the others that we had. That is an option that you can  
21 consider. I am not suggesting it now, and if we don't need  
22 it we won't do it.

23 Senator Mitchell. Well, my state is one of seven which  
24 would be affected, and most severely. The Governor and  
25 other top officials in the state have made clear that this

1 would have an adverse effect upon their system. They were  
2 particularly concerned about the immediately-effective date.  
3 I note that that has been changed somewhat.

4 I would inquire whether or not that could be extended  
5 further to January 1, 1987, to provide the maximum amount of  
6 time possible for those states that are affected to  
7 accommodate to this.

8 The Chairman. What would we be talking about, John,  
9 five or six hundred million dollars for that quarter?

10 Mr. Colvin. Perhaps somewhat more than that.

11 The Chairman. Randy?

12 Mr. Weiss. About \$500 million, I believe.

13 The Chairman. For a three-month delay?

14 Mr. Weiss. Well, maybe a little more -- five to six  
15 hundred. Something like that.

16 The Chairman. Yes, that is a possibility.

17 Senator Mitchell. Well, I would like to raise it,  
18 because you have to understand what we are doing now. We  
19 are here holding the line against any new taxes. And that  
20 is the slogan, that is the ideology, that is the position of  
21 the President, and we are hemmed in by that. That is at the  
22 federal level.

23 Now we are taking an action here that will compel every  
24 municipality in my state to raise property taxes, and the  
25 state government to raise some level of state taxes. And I

1 think it is, at the very least, inconsistent -- one could  
2 use stronger words -- for us to engage in all of this  
3 rhetoric about not increasing taxes, so that we as federal  
4 officials can go back and say to people, "We didn't increase  
5 any taxes," and at the same time take an action which will  
6 compel a tax increase in every municipality and in each  
7 state affected by it. And that is exactly what we are  
8 doing, because they have no other way to deal with it.

9 The Chairman. I don't think we ought to fool  
10 ourselves; this is a tax increase, no question about it.

11 Senator Mitchell. Sure.

12 The Chairman. We might as well address it as that and  
13 ask do we want to do it, and do we want to bring state and  
14 local employees under Medicare. We can argue about the  
15 date, but there is no question that it is a tax increase.

16 Senator Mitchell. Yes. And my point is: Not only are  
17 we raising the taxes directly; the point I am making is that  
18 for the employers' portion --

19 The Chairman. Assuming it is constitutional.

20 Senator Mitchell -- assuming it is constitutional, we  
21 are compelling those municipalities and states to raise their  
22 taxes to meet the employer's portion. And I hope the  
23 committee members will consider that in light of all that has  
24 been said about tax increases.

25 The Chairman. Senator Durenberger, then Senator Wallop.



1           Senator Durenberger. Mr. Chairman, I had initially  
2 recommended the January 1, 1987, timeline, too. But I don't  
3 think it makes a lot of difference which it is. Practially  
4 all state governments and I think the vast majority of local  
5 governments are budgeting on a July 1 to June 30th year;  
6 so that the legislative decisions that need to be taken at  
7 each level will be taken some time during the first six  
8 months of next year.

9           The original proposal was bad, because they wouldn't have  
10 had time to do it; but I think those decisions will all have  
11 been taken by July 1, and then there is three months to  
12 implement it.

13           So I think the committee proposal is a compromise, and  
14 it is appropriate.

15           The Chairman. The Budget Committee, as I recall, was  
16 January 1 of next year, wasn't it?

17           Mr. Colvin. January 1st of 1986.

18           The Chairman. And it included Social Security.

19           Mr. Colvin. Yes, sir. Those revenues are reflected in  
20 page 2 of this item.

21           The Chairman. Page 2 of this item?

22           Mr. Colvin. On page 2 of the two-page handout on  
23 revenues.

24           The Chairman. I am confused as to what you are talking  
25 about. What does it say at the top?

1 Mr. Colvin. "Staff Proposal to Meet Congressional  
2 Budget Revenue Requirement."

3 Senator Wallop. Under "Other Possible Revenue Items."

4 The Chairman. I've got the wrong page. I'm sorry.

5 Okay.

6 Mr. Colvin. That is correct, Senator Wallop.

7 The Chairman. Yes.

8 Senator Wallop?

9 Senator Wallop. Mr. Chairman, I don't quarrel with  
10 what Senator Long said, and that was my quarrel with  
11 including the "mandatorily the state and local employees  
12 under Social Security."

13 But here, I think the situation is different enough to  
14 warrant this action and to feel quite comfortable in doing it,  
15 because every one of these employees is eligible for  
16 Medicare and will not have contributed at all to the burden  
17 that the government shoulders in their behalf at such time  
18 as their eligibility becomes real.

19 Senator Mitchell. Is it correct that they are eligible  
20 for Medicare without having participated in paying Social  
21 Security taxes?

22 Senator Wallop. That is correct.

23 The Chairman. Well, they may have paid some, because in  
24 some cases they may be covered derivatively from their  
25 spouse; in some cases they may have had nonpublic employment

1 at some stage in their career and apid something into the  
2 Social Security Fund. In no case have they paid as much in  
3 as anybody else who works full-time in private employment all  
4 of their life.

5 Senator Wallop. They will not have paid any as a result  
6 of their state and local employment. So, should it be that  
7 you have a career state or local employee --

8 Senator Dole. About four states are already covered;  
9 16 will be between 90 and 99 percent, 10 states between  
10 80 and 89, six states between 70 and 80. Less than  
11 50-percent covered includes Alaska, California, Illinois,  
12 Louisiana, Colorado, Maine, and Nevada. There is no  
13 coverage in all the rest.

14 The Chairman. Further discussion on the philosophy of  
15 whether or not we want to cover this. We will get to the  
16 date in a minute.

17 Senator Moynihan. I wish there were officials in the  
18 Social Security Administration. There used to be, years ago.

19 (Laughter)

20 Senator Moynihan. We dealt with this when we were  
21 dealing with the President's Commission on Social Security  
22 Reform. I don't have the number, but it is a very high  
23 proportion of persons whose careers are in state and local  
24 government, upwards of 80 percent, who do in fact acquire  
25 Social Security coverage by outside employment.

1           Senator Heinz, do you remember the number? It is a very  
2 high number.

3           Senator Heinz. It is a high number. They entitle  
4 themselves to Medicare benefits.

5           Senator Moynihan. It is about 75. And I mean, in all  
6 truth, they get the same benefits as persons who work 40  
7 years and maintain the fund. A case can be made that these  
8 contributions to the -- if they get the benefits, they ought  
9 to make the contribution.

10          Senator Mitchell. Senator, may I respond to that?

11          The Chairman. Senator Mitchell?

12          Senator Mitchell. Anybody who works and contributes  
13 to the Social Security System for the requisite minimum  
14 number of quarters thereby becomes eligible for Medicare.  
15 There is absolutely no evidence to suggest that, of all of  
16 the current Social Security beneficiaries, they all worked  
17 40 years or 50 years or any other number. There are a large  
18 number of beneficiaries other than former public employees  
19 who worked minimum numbers of years in the private sector  
20 and are eligible.

21          So all you are saying is that these people, like every  
22 other American, if they work the requisite number of  
23 quarters and contribute into the system, are eligible for  
24 Medicare.

25          The Chairman. But here is what you've got. Separate

1 Social Security from Medicare. Most states have a retirement  
2 program, and they had it before Social Security came along.  
3 And you can perhaps make a case by saying, "Well, we  
4 shouldn't compel them to be under Social Security; they have  
5 their own retirement program." Very few local governments,  
6 very few employers, have their own health retirement  
7 program.

8 We designed the Medicare system on the full assumption  
9 that some people would never pay into it and would be  
10 entitled to full benefits. Take a man and a woman, one  
11 working full time in the marketplace forever and the other  
12 never working in the marketplace. The one who never works  
13 in the marketplace gets full Medicare benefits, even though  
14 they never paid anything into it, because we say that's a  
15 good social policy, that you ought to be covered.

16 And yet, if the same man and woman both work -- one  
17 works for the bank and one works for the power company all  
18 of their life, and let's say it is the woman who works for  
19 the power company, she pays into Medicare all of her working  
20 career and gets no more benefits than if she paid nothing  
21 into it.

22 The unique category of people who can work all of their  
23 life and pay nothing into it and get full benefits are those  
24 who work for state and local governments. And the  
25 presumption was that some people who work are going to pay

1 more into it than they will get back, so that we can cover  
2 any number of people who don't but, as a social policy, we  
3 say they should be covered.

4 And of course, we brought federal employees into this  
5 system not too long ago.

6 Senator Moynihan. I wonder if I could make a further  
7 point, Mr. Chairman? The coverage of state and local  
8 employees -- 75 percent; Senator Dole had the number, it  
9 was not 80 -- their retirement benefits are less than they  
10 would be had they paid in the system for let's say 40  
11 years, because the retirement benefits reflect the amount of  
12 moneys you have paid in. But their Medicare benefits are  
13 total. They are not in any way reflective of the amount  
14 contributed; they reflect the amount of medical care that  
15 you require. It is just that a very large sector of our  
16 economy is taking advantage of our arrangements.

17 The Chairman. Well, I think we might be ready to put  
18 the issue to a vote.

19 Senator Mitchell. Could I first offer an amendment to  
20 change the September 30, 1986 date to January 1, 1987, as  
21 a perfecting amendment, and then vote on that?

22 The Chairman. Yes. We will vote on the amendment first,  
23 moving it from September 30, 1986, to January 1, 1987.

24 Senator Chafee. Mr. Chairman, let me just briefly say  
25 on that, that the reason, as you recall, that the thrust was

1 to change the date from January 1, 1986, to some later date  
2 was to let the communities and states who are on different  
3 fiscal years get prepared. And I think, as Senator  
4 Durenberger said, nearly all communities and states are on  
5 the July 1st to June 30th fiscal year; but, just in case, an  
6 added three months were thrown in.

7 Now to just go to an additional three months, I don't  
8 get the rationale. At some point you've got to bite the  
9 bullet here and pay for it.

10 The decision apparently has been made, and I agree with  
11 it, that they should pay for it. Now, if we made that  
12 decision, I think let's get on with it, as long as the  
13 communities and states have an adequate time to prepare.  
14 And indeed they do under this proposal -- a year, or  
15 certainly nine months.

16 So, MR. Chairman, I would argue that \$500 million is  
17 something we need, and I would hope that we would proceed  
18 with the date that is proposed here, September 30th.

19 (CONTINUED ON NEXT PAGE)

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22  
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24  
25

1 Senator Mitchell. If I may respond, Mr. Chairman.

2 The Chairman. Yes.

3 Senator Mitchell. The original deadline was January 1,  
4 1986. I suggested extending it for one year. Instead of a  
5 year, they said, well, we will give you nine months. All  
6 I'm saying is let's go back to the one-year extension to  
7 give states and localities time to accommodate, plan and  
8 deal with this.

9 And just as you are saying the money is important from  
10 this side, so it's also equally important there. They are  
11 all going to have to pass tax increases, and we ought to  
12 give them the time to do it and the calm to do it. That's all  
13 I'm saying.

14 The Chairman. The vote is on moving the date from  
15 September 30, 1986 to January 1, 1987.

16 All those in favor, say aye.

17 (Chorus of ayes)

18 The Chairman. Opposed, no.

19 (Chorus of noes)

20 The Chairman. Let me see a show of hands. Those in  
21 favor, raise their hands.

22 (Showing of hands)

23 The Chairman. Those opposed, no.

24 (Showing of hands)

25 The Chairman. The noes have it. We will vote on Item 1,



1 as it is, extending Medicare coverage to state and local  
2 employees September 30, 1986.

3 Senator Long. Mr. Chairman, I would like to move that  
4 the tax be on the employees rather than on the state  
5 government.

6 Thus far, this committee has not recommended, at  
7 least the Congress has not seen fit, to support a provision  
8 that would tax the state government directly itself. It  
9 seems to me that that's completely contrary to the whole  
10 theory of federalism.

11 And we have another question here of whether we should  
12 tax the interest on state and municipal bonds. There is  
13 no doubt about it, the more appears the possibility that we  
14 might tax the interest on state and municipal bonds, the  
15 higher interest rate that those bonds will bear. And the  
16 Federal Government has zealously prevented the states from  
17 taxing the Federal Government except with his consent.

18 And I just think it's a very bad thing for us to get  
19 into this business of trying to solve a problem of the  
20 Federal Government by taxing the state governments,  
21 especially when it's not necessary.

22 I'm just proposing that you raise the same amount of  
23 money by taxing the employees and the states can raise their  
24 pay at the next legislature so as to make it possible for  
25 them to pay.

1           Now why would you want to make a breakthrough to  
2 solve our problems, the beggar they neighbor policy, to tax  
3 the states when it is not necessary. You have the right to  
4 tax the employees according to so rules, and why not stay  
5 with that?

6           I move that we just make a tax on the employee rather  
7 than a tax on the states' governments.

8           The Chairman. Senator Long moves to make the tax  
9 solely on the employee in the conformance of the schedule,  
10 as I understand it, of the self-employment tax.

11           Senator Long. I move to make -- whatever rate it takes  
12 to make the same \$75 million you are talking about here.

13           Senator Bentsen. Let me ask a question there, Senator.

14           Where you have a situation where the state and local  
15 government is now paying that part or the city, now what  
16 happens with that?

17           Senator Long. I have no objection -- if they would  
18 voluntarily pay it, I would have no objection to it.

19           The Chairman. You are raising the same thing I'm  
20 thinking about. What happens if the states therefore start  
21 to opt out of paying their --

22           Senator Bentsen. If they opt out, then you would have  
23 a substantially --

24           Mr. Colvin. Mr. Chairman, opting out was prohibited in  
25 the 1983 Social Security legislation.

1           The Chairman. So they cannot opt out. So we would  
2 have a situation of those who we bring in would be brought  
3 in under the employees paying it totally, and the other  
4 states that are now the employees that are now covered would  
5 be covered under the normal situation of employer-employee.

6           Mr. Colvin. Yes. As I understand Senator Long's  
7 proposal, the employee subject to this would pay the same  
8 tax as -- would pay a tax of 2.9 percent. So the revenue  
9 result would be identical to that proposed in the staff  
10 package.

11           The Chairman. Two point nine? I'm confused.

12           Mr. Colvin. Yes. That's the Medicare. The combined  
13 rate.

14           The Chairman. Oh.

15           Let me just clarify one thing with Senator Long. Did  
16 you mean new employees that would be brought in by this  
17 act, or do you mean all employees?

18           Senator Long. I'm going with the same employees that  
19 you are talking about in the bill.

20           The Chairman. All right.

21           Senator Long. I'm talking about the same amount of  
22 revenue. I just say that you have a right to tax the state  
23 employee.

24           The Chairman. Well, the employees that the bill --

25           Senator Long. And the courts have so ruled. They have

1 not ruled that you have got the right to tax the state  
2 governments. And we have respected that up to this point.  
3 I don't think we ought to change it. I think that we ought  
4 to respect the fact that we are not going to try to solve  
5 our problems with a beggar thy neighbor policy of taxing  
6 the state governments.

7 And we have consistently taken that point of view up  
8 to this point. I think we ought to continue to do that.  
9 And if you are going to change it, you shouldn't try to do  
10 it on a reconciliation bill where the limitation of debate  
11 is built into it and no time to discuss it.

12 Now we don't have to do that to this system of  
13 federalism. I don't see why you would want to do that when  
14 it's not necessary. You can raise the money by taxing the  
15 employees, and the states can pay the employees.

16 The Chairman. I think the motion of Senator Long is  
17 clear. Those in favor --

18 Mr. Weiss. Mr. Chairman, I just wanted to mention that  
19 it is a possibility under the tax rates that John mentioned  
20 there would be a revenue loss because the money does not come  
21 in as quickly if the employees pay it with their income tax  
22 returns as it does with the --

23 The Chairman. I want to interpret Senator Long's motion.  
24 He said at whatever rate necessary to make the same amount  
25 come in as we now have estimated, which may be a slightly

1 higher percentage therefore.

2 Senator Chafee. As I understand it, Senator Long's  
3 proposal -- the states would make -- the local governments  
4 wouldn't make a contributory share, but the state employee  
5 would pay it all.

6 The Chairman. Like a self-employed person.

7 Senator Chafee. Like a self-employed. Although  
8 perhaps even more because this is 1.5 percent by both  
9 parties, making 3. And I don't think the self-employed would  
10 work out, unless you make it double. Obviously, it would  
11 have to be doubled to get the same revenue.

12 Senator Long. Well, they would go to the state  
13 legislature or go to a local governing body and say, well,  
14 you put this additional tax on us so you ought to pay us  
15 enough so we can pay the tax. That's at least some delay.  
16 Hopefully, by September 30, 1986, they would do that. So the  
17 state would pay them and they would pay the tax, the money,  
18 that they would pay them.

19 That's how it would work out. That's how it should work  
20 out. Of course, the states can't be made to do it, but  
21 at least that's what most of them would do, and I think all  
22 of them would like to do it.

23 The Chairman. Those in favor of Senator Long's amendment  
24 will say aye.

25 (Chorus of ayes)

1 The Chairman. Those opposed, no.

2 (Chorus of noes)

3 The Chairman. Let me see a show of hands again. Those  
4 in favor, raise their hands.

5 (Showing of hands)

6 The Chairman. Those opposed, no.

7 (Showing of hands)

8 The Chairman. The noes have it. We will vote on the  
9 amendment.

10 Those in favor of adopting the amendment will say aye.

11 (Chorus of ayes)

12 The Chairman. Those opposed, no.

13 (Chorus of noes)

14 The Chairman. The ayes have it.

15 Senator Long. I'd like to have a rollcall on that,

16 Mr. Chairman.

17 The Chairman. Certainly.

18 Senator Bradley. What are we on?

19 The Chairman. To extend Medicare coverage to state and  
20 local employees effective September 30, 1986. And we will  
21 have a rollcall.

22 Clerk, call the roll.

23 The Clerk. Mr. Dole.

24 Senator Danforth. Aye by proxy.

25 The Clerk. Mr. Roth.

1 Senator Roth. Aye.  
2 The Clerk. Mr. Danforth.  
3 Senator Danforth. Aye.  
4 The Clerk. Mr. Chafee.  
5 Senator Chafee. Aye.  
6 The Clerk. Mr. Heinz.  
7 Senator Heinz. Aye.  
8 The Clerk. Mr. Wallop.  
9 Senator Wallop. Aye.  
10 The Clerk. Mr. Durenberger.  
11 Senator Durenberger. Aye.  
12 The Clerk. Mr. Armstrong.  
13 Senator Armstrong. Aye.  
14 The Clerk. Mr. Symms.  
15 (No response)  
16 The Clerk. - Mr. Grassley.  
17 Senator Grassley. Aye.  
18 The Clerk. Mr. Long.  
19 Senator Long. No.  
20 The Clerk. Mr. Bentsen.  
21 Senator Bentsen. No.  
22 The Clerk. Mr. Matsunaga.  
23 Senator Matsunaga. No.  
24 The Clerk. Mr. Moynihan.  
25 Senator Moynihan. Aye.

1 The Clerk. Mr. Baucus.

2 Senator Baucus. Aye.

3 The Clerk. Mr. Boren.

4 Senator Boren. No.

5 The Clerk. Mr. Bradley.

6 Senator Bradley. Aye.

7 The Clerk. Mr. Mitchell.

8 Senator Mitchell. No.

9 The Clerk. Mr. Pryor.

10 (No response)

11 The Clerk. Mr. Chairman.

12 The Chairman. Aye.

13 The Clerk. The vote is 13 yeas, 5 nays.

14 The Chairman. Adopted. Let's move on to Item 3, which

15 is the IRS budget, its compliance in hiring additional--

16 Senator Bradley. Mr. Chairman, this last vote was a  
17 vote on Medicare.

18 The Chairman. Medicare.

19 Senator Bradley. Only?

20 The Chairman. Only.

21 Senator Bradley. What happened to number two?

22 The Chairman. We have put off the cigarette issue.

23 Senator Bradley. No, no, no. Social Security.

24 The Chairman. Oh, those are other possible revenue  
25 items. And, indeed, those are all subject to being offered



1 and added, if we need. And you can offer to add them now.  
2 I was going through a list where there had been more general  
3 acquiescence than there had been on some others. And I have  
4 left them there. And, indeed, if we need the money, they  
5 can be offered. Or even if we don't need the money, they  
6 can be offered as a substitute. And I don't intend to  
7 preclude that.

8 Let's move on to Item 3, which is increasing the IRS  
9 budget. This is the so-called compliance issue, which we  
10 have before us from time to time.

11 John.

12 Mr. Colvin. This proposal is derived from the  
13 Congressional budget assumption as to the level of IRS  
14 spending for fiscal year 1986. The \$2 billion revenue  
15 increase is achieved without a legislative proposal from the  
16 Finance Committee.

17 The Chairman. Questions?

18 (No response)

19 The Chairman. All those in favor --

20 Senator Danforth. I want to ask one question. Do you  
21 believe this?

22 (Laughter)

23 The Chairman. I know the answer to that is if we can  
24 get \$2 billion, why not \$10 billion. We will double it five  
25 times. And there isn't a law of diminishing returns on it,

1 obviously.

2 John doesn't have to answer that question.

3 Discussion?

4 (No response)

5 The Chairman. All those in favor of Item 3 will say  
6 aye.

7 (Chorus of ayes)

8 The Chairman. Opposed, no.

9 (No response)

10 The Chairman. Let's move on to Number 4, which is  
11 Customs' compliance.

12 Len.

13 Mr. Santos. Yes, Mr. Chairman. The committee approved  
14 a Customs ITC-USTR authorization in May. That did not  
15 include authorization for an additional 800 positions. This  
16 proposal would authorize those additional 800 Customs'  
17 commercial positions. And it is estimated that over three  
18 years those additional agents through additional Customs'  
19 compliance would produce additional revenues of \$1.219 billion.

20 The Chairman. This is something any number of committee  
21 members have asked me about before -- if we couldn't improve  
22 collections by Customs' compliance. And this is the reason  
23 this was added. It's in the Ways and Means proposal.

24 Questions?

25 (No response)

1 The Chairman. All those in favor of Item 4.

2 (Chorus of ayes)

3 The Chairman. Opposed, no.

4 (No response)

5 The Chairman. Let's move on to Item 6. We've done 5.

6 Item 6 was a --

7 Senator Moynihan. Mr. Chairman, if I could just ask  
8 by saying done 5 we have passed out the tax and we assume  
9 it's going to be enacted.

10 The Chairman. Yes.

11 Item 6 was a surprise to me. I never thought about it.  
12 Income averaging by students. You go to school for four  
13 years and get your master's degree at Harvard and you have  
14 made \$5,000.00 a year and suddenly you are making \$50,000.00  
15 a year. Or you go to law school or medical school and  
16 suddenly your income jumps immediately and you average.

17 Senator Moynihan. If you go to business school.

18 (Laughter)

19 The Chairman. I mean, clearly, for the bulk of this --  
20 Senator Chafee. Not for a master's degree.

21 The Chairman. For the bulk of the students, they  
22 probably don't. They go from making \$5,000.00 or \$6,000.00  
23 to \$12,000.00 or \$14,000.00 or \$16,000.00. But for those  
24 very few that happen to have an immense jump in income  
25 comparatively speaking from what they have been making, they

1 average. Lawyers would be a good example.

2 I had no concept that it was a \$1.2 billion item just  
3 for averaging of that group.

4 Discussion.

5 Senator Bradley. Mr. Chairman, I would just like to  
6 raise a question. What's the rationale for singling out  
7 students who have low income for a few years and then have  
8 high income versus anybody else in the society?

9 The Chairman. Because the averaging was designed for  
10 somebody who has a sudden increase in income and is not  
11 likely to have a consistent increase in income, and he or  
12 she can average. For the student, presumably, who comes out  
13 of graduate school or business or law school or medical  
14 school and goes from \$10,000.00 to \$50,000.00 the first  
15 year, they are going to continue to go from \$50,000.00 to  
16 \$60,000.00 to \$80,000.00 to \$100,000.00. It isn't going to  
17 be a one-shot spurt, a temporary increase in income.

18 Senator Bradley. Not to be a devil's advocate here,  
19 but let's assume that as it is that education is a continuing  
20 process in the country and will increasingly be such, and  
21 you might find the situation where somebody mid-career  
22 decides they want to go back to school, they want some time  
23 to themselves, so they drop out of the law firm or out of the  
24 business or out of the government position; the income  
25 drops dramatically. By analogy, if they were students during

1 this period, they would then be ineligible for income  
2 averaging when they came back into the work force.

3 The Chairman. John.

4 As I recall, the students are defined as what? Three  
5 previous years they had to have been in school.

6 Mr. Colvin. It would be a full-time student, Senator  
7 Bradley.

8 The Chairman. For how many years?

9 Mr. Colvin. During the year in --

10 The Chairman. I thought we had a three-year definition  
11 in there.

12 Mr. Colvin. The three years comes from the income  
13 averaging formula itself. If you -- under the proposal, if  
14 you were a student during one of the three years, that would  
15 prevent you from using income averaging. Under the way the  
16 formula works, that would so skew the result that it would --

17 Senator Bradley. So that the situation of the person  
18 that essentially decides to go back to school or to stay home  
19 with the family or whatever for a year and goes to school that  
20 year would be ineligible for income averaging when they went  
21 back into the work force?

22 Mr. Colvin. That's correct.

23 The Chairman. Further questions on income averaging?

24 (No response)

25 The Chairman. Those in favor, say aye.

1 (Chorus of ayes)

2 The Chairman. Opposed, no.

3 Senator Bradley. No.

4 The Chairman. I would just remind it, because several  
5 people had asked me on Customs' compliance also -- or if  
6 they have had problems with -- the Customs Service is one  
7 of the few areas where I have seen where the group that is  
8 affected by it doesn't want them to have a trust fund  
9 because they don't think they spend the money where the  
10 group they regulate would want them to spend it.

11 And several have asked if we were going to have a  
12 provision that directs the Customs Service to use their  
13 agents appropriately in the various Customs' districts of  
14 the country. And I have no objection to that, and I think  
15 we should.

16 Senator Moynihan. Would you say that again, Mr.  
17 Chairman?

18 The Chairman. Yes.

19 We've had complaints from people, two groups -- one  
20 from a number of members of the committee -- who say the  
21 Customs Service is trying to take Customs' officials from  
22 my district or they don't serve us as adequately. That's  
23 one.

24 The other is from the people whom the Customs Service  
25 supervise. I mean the commercial part. Forget the drug

1 traffic. They have such misgivings about the allocation  
2 of the Customs Service's revenues that they would rather  
3 not have a trust fund. They would rather take a  
4 chance -- this is if we were talking about commercial  
5 user fees -- they would rather have it go into the general  
6 fund and take their chances than have it go into a trust  
7 fund that the Customs Service got to administer. Which is  
8 an unusual reversal of role, normally.

9 So all I'm suggesting is that we add what several  
10 members had asked me about to this bill. A provision that  
11 in the allocation of personnel and offices, the Customs  
12 Service will allocate them -- I won't say roughly -- in  
13 proportion to business to maximize their return.

14 Senator Moynihan. I second that.

15 The Chairman. Now the coal excise tax. I know there  
16 is no controversy --

17 Senator Wallop. Mr. Chairman.

18 (Laughter)

19 Senator Wallop. There would be absolutely no  
20 controversy if we dropped it.

21 The Chairman. The coal excise tax is clearly very  
22 controversial. It is tied in with the problem of the black  
23 lung disease. And two issues: One, Western versus eastern  
24 coal. Western coal doesn't cause black lung diseases.  
25 It never has. And as I recall, it's taxed at half the

1 level, but it still doesn't cause any of the disease.

2 Two is the second issue about whether or not the  
3 whole program ought to be reformed in any event. That,  
4 this committee doesn't have jurisdiction of. And as  
5 opposed to the Agriculture Committee, nobody on the Labor  
6 Committee has asked us to reform it.

7 Senator Wallop.

8 Senator Wallop. Well, Mr. Chairman, let me suggest  
9 that I think that the figure that they cite is probably  
10 erroneous anyway.

11 The coal industry in America is a sick industry  
12 because of the drop in oil prices. Oil prices are the sort  
13 of gold standard of the BTU business. And the lower oil  
14 goes, the less competitive any of the alternative fuels,  
15 but particularly coal.

16 On top of it, these coals produced in this country are  
17 under increasing pressure from overseas competition from  
18 Columbia, from South Africa, from Poland, from a lot of  
19 places in the world.

20 And it's my feeling that this is a tax that is not  
21 beneficial right now and would be very detrimental to an  
22 industry that is really not healthy, as are most of the  
23 mineral industries not.

24 But I don't think the figure would meet it. I don't  
25 think the tax is warranted, particularly under the



1 circumstances that the Chairman just described.

2 And I believe that it would shut down some marginal  
3 mines, particularly in Appalachia where the coal industry  
4 is, again, not as healthy as we would like to see it.

5 The Chairman. Further discussion?

6 Senator Heinz. Mr. Chairman.

7 The Chairman. Senator Heinz and then Senator Danforth.

8 Senator Heinz. I would just like to associate myself  
9 with Senator Wallop's comments. On the one hand, there  
10 would be a tax increase of roughly \$.50 a ton on the  
11 deep mines. They are already hard pressed. That's the  
12 Appalachian coal to which Senator Wallop referred a moment  
13 ago.

14 There would be a \$.25 per ton tax on what we usually  
15 think of as western coal, strip mine coal. And I think it  
16 can be argued -- I've heard Senator Wallop certainly argue  
17 that strip mine coal doesn't contribute to the black lung  
18 problem. And the bottom line is that this is neither  
19 logical nor good economic policy. It will be a significant  
20 hardship.

21 We understand that you could, as he says -- some coal  
22 mines closing. We have already lost over half the mines in  
23 this country since 1977. Our number of coal mines operating  
24 has decreased from 7,000 mines to 3,000 mines. And, as  
25 everybody knows, our industry is sick; it's hanging on. And

1 foreign competition is ravenous. This will just allow  
2 them to swallow and digest what is left of our industry.

3 In case you are wondering, I oppose the tax, and I  
4 want to strike it.

5 The Chairman. Senator Danforth and then Senator  
6 Moynihan.

7 Senator Danforth. Just a point of information, Mr.  
8 Chairman. Assuming that we at least freeze the cigarette  
9 tax, we have already made our mark, haven't we?

10 The Chairman. If we were to freeze it at \$.16,  
11 yes, we would make our mark, even if we did not adopt  
12 Items 7, 8 and 9. We would make it by about \$400 million.

13 Senator Moynihan.

14 Senator Moynihan. Mr. Chairman, I have no illusions  
15 about what is going to happen here, but I think it would be  
16 fair to our staff that has put together this proposal to  
17 give them an opportunity to explain to us why they think  
18 it's a good idea.

19 Mr. Colvin. It's listed here because the Ways and  
20 Means Committee had included it in their reconciliation  
21 proposal. Its presence in the staff proposal does not  
22 connote an endorsement of it by staff. That's not our  
23 position.

24 Senator Moynihan. I'm sorry. I shouldn't have made  
25 that suggestion. But why was it thought to be a good idea

1 in Ways and Means?

2 Mr. Colvin. The rationale for it was the black lung  
3 program has now borrowed \$2-1/2 billion from general  
4 revenue. And if the program were not restrained, the  
5 borrowing needs would increase. And that this tax would  
6 be required to fund the current benefit structure and to  
7 stop the borrowing.

8 Senator Moynihan. The black lung program has borrowed  
9 \$2-1/2 billion?

10 Mr. Colvin. That's correct.

11 Senator Moynihan. From general revenue?

12 Mr. Colvin. Correct.

13 Senator Moynihan. And that pattern will continue  
14 unless there is an increase in this revenue?

15 Mr. Colvin. Or unless the design of the program is  
16 changed, Senator Moynihan.

17 Senator Wallop. Which is certainly a better discipline  
18 than simply throwing another bundle of dollars at it.

19 Senator Moynihan. Design of the program by which you  
20 means who's eligible, basically?

21 Senator Wallop. Yes.

22 Senator Matsunaga. Is that \$2-1/2 billion annual?

23 Mr. Colvin. No, sir. That's cumulative.

24 Senator Moynihan. Do you have any idea what their  
25 annual outflow is about? Black lung is about a 15 year old

1 program, if I recall.

2 Mr. Colvin. Yes, Senator Moynihan. It's running  
3 just over \$300 million a year at current level.

4 Senator Moynihan. So \$300 million a year is going out.  
5 How many beneficiaries?

6 Mr. Colvin. Excuse me, Senator Moynihan. It's  
7 between \$500 and \$600 million at current levels.

8 Senator Moynihan. Five and six hundred million  
9 dollars?

10 Mr. Colvin. Per year.

11 Senator Moynihan. Well, Mr. Chairman, I can appreciate  
12 the concerns of what Senators from coal-producing states  
13 think -- half the mines in the country have closed down.

14 Senator Heinz. Since 1977.

15 Senator Moynihan. Boy, we are really standing tall.  
16 But we have a situation here where \$500 to \$600 million a  
17 year is being paid out of general revenue to a health  
18 program that is obviously not maintaining itself. Are we  
19 just to ignore that?

20 Senator Wallop. Mr. Chairman, I think by doing this  
21 we are not. We are doing precisely the opposite of just  
22 ignoring it. We are forcing a discipline.

23 Senator Moynihan. I assert I don't understand what the  
24 redesigned proposal is.

25 The Chairman. We have none in this committee, no

1 redesigning of the black lung program.

2 Senator Moynihan. But Senator Wallop seems to think  
3 there is one in the offing.

4 The Chairman. I think what he may be thinking is  
5 if we don't increase the revenues for this program it will  
6 force them to reform it.

7 Senator Moynihan. Like it forced them in the last  
8 10 years?

9 Senator Wallop. The committee is, in large part,  
10 responsible for that figure because when we tightened up  
11 the program a few years back, we left all the eligibility  
12 requirements unreviewed for those who were on it. And  
13 there is --

14 Senator Moynihan. Which committee?

15 Senator Wallop. This committee.

16 Senator Moynihan. This committee on black lung.

17 Senator Wallop. We tightened up the eligibility  
18 requirements when we did some other things about it a few  
19 years back. But they were prospective and not -- made no  
20 review of those who were already on it. And there's a great  
21 abuse of the program still.

22 Senator Chafee. Mr. Chairman?

23 The Chairman. Senator Chafee.

24 Senator Chafee. Mr. Chairman, this is a scandalous  
25 program and I think we have all known that ever since it

1 passed. I think it really went on its binge in about  
2 1977 or 1978 -- I can't remember. But that's when we  
3 enlarged the eligibility to a tremendous degree. And now  
4 if you have seen a coal mine, you are eligible for black  
5 lung payments.

6 Now in 1981 we doubled the tax. Now it's suggesting  
7 we double it again. Obviously, something is wrong here.

8 As I understand it -- and you can correct me, Mr.  
9 Chairman, on this. As I understand it, this fund is set  
10 up, but the fund can borrow from the U.S. Treasury as long  
11 as the payments into the fund cover the interest on the  
12 borrowing. Is that correct?

13 The Chairman. I'd have to defer to staff.

14 Senator Wallop. I think that's correct.

15 Mr. Colvin. That's correct, Senator Chafee.

16 Senator Chafee. In other words, the tap is wide open,  
17 and that's why this massive debt has run up. So that  
18 now -- even now with the so-called -- I don't remember  
19 any tightening up in 1981 that Senator Wallop referred to,  
20 but even now the payments are not -- the income is not  
21 meeting the outgo. Is that correct? That's why we are in  
22 the problem.

23 Mr. Chairman, as you mentioned, this committee can't  
24 do anything about the eligibility or tightening up on it.  
25 What would you say to forcing the hand of the Labor Committee

1 to do something about this by saying something we do have  
2 jurisdiction of -- I assume that there can be no more  
3 borrowing from the federal Treasury by this fund. Would  
4 that get their attention?

5 The Chairman. Do we have jurisdiction of that, John?  
6 Mike?

7 Mr. Colvin. Yes, Senator Chafee, you could do that,  
8 but they would still have the opportunity to use general  
9 revenue financing outside the scope of the trust fund.

10 Senator Chafee. Yes, but they would have to get that  
11 passed every year, wouldn't they?

12 Mr. Colvin. That's correct.

13 Senator Chafee. In other words, the problem with this  
14 is the reason there is zero incentive for anybody to do  
15 anything about this is that they can just borrow unlimited  
16 from the general Treasury until the interest, till the  
17 income, fails to even pay the interest. Now that's a long  
18 way down the pike, isn't it?

19 The Chairman. What you are suggesting is a black lung  
20 debt ceiling.

21 Senator Chafee. That's right. And, you know, this  
22 thing is not good. What are we going to do? Eighty-one, we  
23 double the tax. They suggest we double it now. Somebody is  
24 saying, well, maybe we don't even have to do anything because  
25 if we keep the cigarette tax at \$.16, maybe we have met our

1 reconciliation requirement. But I don't think that's a  
2 proper way to do business. And the Labor Committee won't  
3 do anything.

4 The Chairman. Senator Moynihan.

5 Senator Moynihan. I think I would like to suggest  
6 that Senator Chafee make a proposal. Or maybe we would  
7 want to get a time to draft it. I think you are right. I  
8 mean there is a -- I think I know something of the origins  
9 of this program, and if we can't -- I mean you think about  
10 the things this committee has done to social benefits for  
11 people who really are in trouble. And we have, as Senator  
12 Chafee says, a situation costing us \$600 million a year for  
13 people who -- it's not like we don't have general health  
14 benefits in this country. They are just better benefits.  
15 And if you have seen a coal mine, you are eligible.

16 I think we should address this, Mr. Chairman. And I  
17 can see how our friends from the coal states wouldn't like  
18 to see us increase the tax. And given the rate of the  
19 exchange, I can see the Polish coals coming in and West  
20 Virginian coal is more expensive than Polish coal.

21 Senator Wallop. Mr. Chairman, that's a yard better  
22 than what I was suggesting, that simply that we not fund it.  
23 I would be for that.

24 The Chairman. Somebody making a motion to that effect?

25 Senator Chafee. Well, I don't know how to word it.



1           Senator Moynihan. Can we ask the staff to draft  
2 something for it?

3           The Chairman. Let me rephrase it so we are sure we  
4 are all on the same wave length. The suggestion of Senator  
5 Chafee and others is that the black lung -- is it a trust  
6 fund or not?

7           Mr. Colvin. It is a trust fund.

8           The Chairman. Be precluded from borrowing from the  
9 general funds. Period? General's funds, does that do it?

10          Senator Chafee. In some way. I'm not trying to shut  
11 down the thing overnight, but somehow we have got to change  
12 this. The present system is that if a coal miner dies from  
13 a beam falling on his head, his widow can collect black lung  
14 payments. Why? Because if he hadn't died from that beam  
15 falling on his head, he would have gotten black lung disease  
16 and, therefore, she's entitled to the payments. That's the  
17 law.

18          The Chairman. Discussion on the amendment? John,  
19 Mike, if I haven't worded it properly.

20          Senator Armstrong. What's the effective date?

21          Senator Chafee. Well, I've got to get some advice on  
22 that.

23          Senator Moynihan. Why don't we let our excellent staff  
24 look at this overnight.

25          The Chairman. Why don't we do this? It's 12:35 now.

1 We have got to go back to the cigarette tax tomorrow in  
2 any event. And we have got about 15 other items. They  
3 are major to each of the individual members, but they are  
4 not major revenue items.

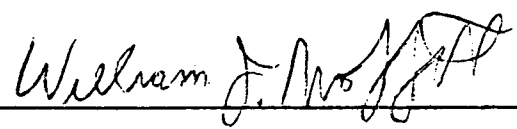
5 Why don't we adjourn today? Let the staff see what  
6 they can do on this amendment and come back at 9:30 in  
7 the morning. I think we can finish up in a couple of  
8 hours.

9 (Whereupon, at 12:33 p.m., the executive session was  
10 concluded.)

C E R T I F I C A T E

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This is to certify that the foregoing proceedings of a hearing before the United States Senate, Committee on Finance, in re, Executive Session, Wednesday, September 18, 1985, were held as herein appears and that this is the original transcript thereof.

  
WILLIAM J. MOFFITT  
Official Court Reporter

My Commission Expires April 14, 1989