

OFFICIAL TRANSCRIPT

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COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

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## EXECUTIVE SESSION

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TUESDAY, NOVEMBER 18, 1980  
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United States Senate,  
Committee on Finance,  
Washington, D. C.

8 The committee met, pursuant to call, at 10:25 a.m., in  
9 room 2221, Dirksen Senate Office Building, The Hon. Russell  
10 D. Long (chairman of the committee) presiding.

11 Present: Senators Long, Talmadge, Ribicoff, Byrd,  
12 Bentsen, Matsunaga, Moynihan, Baucus, Bradley, Dole,  
13 Danforth, and Heinz.

14 The Chairman. Let's get right to the superfund, if we  
15 may, gentlemen.

16 I am going to ask Mr. Shapiro to explain what the  
17 Senate bill is, and to explain to us what the House bills  
18 are. I believe there are two House bills.

19 Are they both at the desk, or just one of them, Mr.  
20 Shapiro?

21 Mr. Shapiro. One is at the desk. The other one has  
22 been referred to the Senate Committee. But they have both  
23 passed the House.

24 The Chairman. One is at the desk, and the other one  
25 has been referred to what committee, the Public Works?

1 Mr. Shapiro. Yes. The Committee on Environment and  
2 Public Works.

3 The Chairman. So the Senate has three superfund bills  
4 now. One that is here in the committee, one at the desk,  
5 and another one that is in the old Public Works Committee.

6 Mr. Shapiro. That is correct.

7 In a sense, the S.1480 is really one of the several  
8 superfund bills. In effect, what that does, it combines the  
9 two House bills into one. It expands the purposes and the  
10 provisions that are in the House bills, but in effect puts  
11 into one bill, the Senate bill, the various provisions that  
12 are incorporated in the two House passed bills.

13 Actually what you have before this committee here is  
14 one section of that bill, that is Section V, which deals  
15 with the financing provisions. Technically, the committee  
16 has only that one provision, and you have until November  
17 21st to report out your decision with respect to that one  
18 section.

19 However, there are two bills that passed the House.  
20 The first one is H.R. 85 and the second one is H.R. 7020.  
21 H.R. 85 has been referred to the Committee on Environment  
22 and Public Works, and H.R. 7020 has been placed on the  
23 Senate calendar.

24 The Chairman. Mr. Dole wants to ask a question.

25 Senator Dole. I just want to ask one question because

1 there has been, I think, misinformation. I have read  
2 reports that this committee has been holding up this bill  
3 since last Spring.

4 When did we receive the bill; was it on October 2nd?  
5 We don't have either House bill before the committee, isn't  
6 that correct?

7 Mr. Stern. The bill was not referred to the Finance  
8 Committee until just before the recess. In fact, the  
9 committee has only a total of less than 10 days by the time  
10 you have to report it out.

11 Hearings were held in the Finance Committee in early  
12 September, but the bill had not been referred to the Finance  
13 Committee at that time.

14 Senator Dole. I want the record to reflect that  
15 certainly this committee has not held the legislation. In  
16 fact, we had one day of hearings that most of us attended,  
17 and we don't have the House bills now. They are not before  
18 us.

19 There is, of course, a fourth bill now, that is the  
20 Stafford-Randolph compromise that he and Senator Randolph  
21 produced last night.

22 Senator Moynihan. Mr. Chairman, may I take this  
23 opportunity to confirm what Senator Dole said.

24 I am a member of the Committee on Environment and  
25 Public Works, and have been sort of shepherding these a

1 little bit back forth.

2 Senator Dole is absolutely right, the committee has not  
3 held up this matter at all. This committee has held  
4 hearings on this measure.

5 But I would like also to say that I have been dismayed  
6 in recent days to learn that the chemical industry has  
7 apparently withdrawn its support for toxic waste legislation  
8 this year.

9 I would like to say that I cannot imagine a greater  
10 calumny addressed to the incoming Administration of Governor  
11 Reagan than the whispered and not so whispered statements we  
12 are hearing from the representatives of the chemical  
13 industry that are saying, "Now that the Republicans are  
14 back, we don't care. We don't have to worry about poisoning  
15 the American people any more."

16 This is a shameful thing to be saying, and that, sir,  
17 is what they are saying. Because it is not true. I know  
18 that it is not true for the Senator from Kansas. I think  
19 that it would be a good opportunity right now at the start  
20 to teach them that the incoming Administration cares as much  
21 about these matters as the outgoing one, and nobody buys  
22 this Congress, and nobody buys any Administration.

23 I hope you feel as strongly as I do. I think it was a  
24 shameful thing to even suggest about the new Administration,  
25 and I am afraid, sir, that it has been suggested.

1           The Chairman. I think that it is very bad. But I  
2 think it is also bad for staff members up here on the Hill,  
3 as well as some people in the press, perhaps unwittingly, to  
4 seek to convey the impression that this committee is holding  
5 up a bill that it does not even have.

6           Let me make one thing clear, and Mr. Stern can help to  
7 refresh my memory on this. What we are talking about here  
8 is something that is clearly within the jurisdiction of the  
9 Senate Committee on Finance. The rules say that revenue  
10 bills will be referred to the Committee on Finance. They  
11 say, revenue bills generally will be referred to the  
12 Committee on Finance.

13           I find nothing in the rules to suggest that tax bills  
14 will be referred to any other committee. Is any one member  
15 of our staff aware of anything in the rules that would say  
16 that tax bills will be referred to any other committee?

17           Mr. Stern. No, sir.

18           The Chairman. So bills to raise revenue are within the  
19 jurisdiction of this committee, and not within the  
20 jurisdiction of any other committee.

21           The problem confronting this chairman of this committee  
22 with regard to that matter is that from time to time it  
23 would be suggested that some other committee would be  
24 interested in referring this measure to this committee,  
25 provided we would agree to a particular date on which to

1 report, and knew that that was an almost immediate date.

2 As far as the chairman of the committee was concerned,  
3 during that period of time I was busy running for office,  
4 trying to get myself reelected. If you don't get reelected,  
5 you cannot help anybody. So I was not in a position to say,  
6 "If you refer the bill here to the committee, we will report  
7 it out within a week," or something of that sort.

8 Finally, we agreed, in the spirit of compromise, that  
9 we would try to get this matter out promptly. But even so,  
10 it appears that certain staff members from this other  
11 committee, or committees, as the case may be, have been  
12 trying to hold meetings, and to brief certain members of the  
13 staff. Apparently, they did not pick out, it would seem,  
14 the persons familiar with taxes on the staff of the senators  
15 who serve on this committee.

16 Apparently, they would go pick out whoever was the  
17 environmentalist or the person most sympathetic to the  
18 environmental group on the staff, and seek to educate him on  
19 the subject, on the theory that somehow or other they could  
20 prevail by bypassing the senators on the committee and the  
21 appropriate staff members of those senators.

22 In any event, now we do have the bill, and I am sure  
23 that we can arrive at a reasonably prompt conclusion.

24 Go on ahead and tell us about these bills, Mr. Shapiro,  
25 what this bill is, and what the others are.

1           Mr. Shapiro. I think Senator Moynihan indicated that  
2 we do now have a fourth bill. I must say, however, the  
3 staff has only heard about this bill last night. So we have  
4 not seen it, and are not in a position to comment on it,  
5 although I have seen a very brief outline of it. It is  
6 available. It is called the Stafford-Randolph compromise.

7           What you have are two House passed bill, H.R. 85 and  
8 H.R. 7020, neither of which has been referred to this  
9 committee. As indicated, H.R. 7020 has been kept at the  
10 desk. H.R. 85 has been referred to the Public Works  
11 Committee.

12           Senator Moynihan. Mr. Chairman, may I interrupt Mr.  
13 Shapiro just for the purpose of saying that the text of the  
14 Stafford-Randolph compromise is available. It is here. It  
15 was done overnight.

16           Mr. Shapiro. We do not have it as of yet.

17           The Chairman. Talk about the bill with which you are  
18 familiar, and then we can talk about the other bill later  
19 on.

20           Mr. Shapiro. S.1480, Section V of that bill has  
21 technically been referred to this committee. You have asked  
22 me to go over the provisions of H.R. 85 and H.R. 7020.  
23 because they are all relevant with respect to the provisions  
24 that the House has actually passed, and then you will know  
25 what provisions the House has agreed to, so you can get an



1 indication of what the Senate is working with from a  
2 standpoint of the House provisions.

3       The first bill, H.R. 85, deals with both oil pollution  
4 and chemicals. It deals with the discharge of oil and  
5 hazardous chemicals into navigable waters. It is a very  
6 important limitation that the House bill has with respect to  
7 limiting it to navigable water. Whereas S.1480 has a  
8 broader coverage. It deals with ground transportation  
9 environments, and provides for damages in much broader  
10 categories than the House bill, which limits it to the  
11 discharge of oil and hazardous chemicals into the navigable  
12 waters.

13       H.R. 85 establishes two trust funds. The first one is  
14 a comprehensive oil pollution trust fund, and a second trust  
15 fund which is a hazardous substance pollution trust fund.  
16 Essentially, the revenues from the oil would go into the oil  
17 trust fund to be used for these oil spills. That deals both  
18 with the clean up of the navigable waters and also for any  
19 damages that come with regard to oil spills.

20       The hazardous chemicals, likewise, there is a separate  
21 trust fund which provides the clean up with regard to any  
22 chemical spills, and also any damages as a result.

23       So the two trust fund have close to the same types of  
24 purposes, except that one deals with oil, and the other with  
25 these hazardous chemicals.

1 H.R. 85 provides an excise tax on three categories of  
2 items. The first one is crude oil. The second is specified  
3 petrochemical feedstocks. The third is specified inorganic  
4 substances. The House bill, under H.R. 85 raises  
5 approximately \$75 million a year from oil, \$50 million a  
6 year from petrochemical feedstocks, and \$25 million a year  
7 from inorganic chemicals.

8 There are various excise tax rates. The way the House  
9 approached it is that they determined the approximate amount  
10 of money that they need to cover, and then they provided  
11 formulas in order to raise that amount of money in the three  
12 categories.

13 They provided a formula for a share from oil. They  
14 provided a formula for a share from the petrochemical  
15 feedstocks, and then the inorganic substances. The amount  
16 of the taxes was set by formulas to determine how much money  
17 needed to be raised.

18 The trust fund, in a sense, will replace the other  
19 funds, meaning that you have a series of funds in present  
20 law, such as the offshore oil pollution fund, the  
21 Trans-Alaska pipeline liability fund, and several others,  
22 which these funds will replace to cover some of these  
23 purposes.

24 In addition to the clean up, which is the basic purpose  
25 as to the interest of these bills, H.R. 85 also provides

1 that the trust fund could pay three other major categories.  
2 The first one is claims for property damage. The second is  
3 claims for loss of property or impairment of earning  
4 capacity. The third is claims for destruction of natural  
5 resources.

6 These are the claims that are recovered by individuals  
7 as opposed to the other claims which generally go to clean  
8 up. H.R. 85 provides for these claims for damages.

9 The trust funds have certain requirements. They can  
10 borrow from the United States Treasury under certain  
11 circumstances to accomplish the purposes of the fund, and  
12 there is a reserve in the trust funds of at least \$30  
13 million which has to be maintained for clean up. This is  
14 basic purpose of these trust fund, although the funds can be  
15 used for damages for individual individuals, they do have a  
16 reserve required for the clean up.

17 The House bill has an effective date of October 1,  
18 1980. Clearly that has passed. When the House was working  
19 on the bill, it was done quite a few months ago, but by the  
20 time it passed the House and was sent over to the Senate  
21 this date has passed.

22 You will probably need to adjust that date sometime  
23 possibly in the early part of next year. The date I have  
24 heard is possibly somewhere around April 1, but that is a  
25 decision the committee may want to make.

1 H.R. 85 has two trust funds. It covers oil pollution  
2 in one fund, the hazardous chemicals in a second fund. Each  
3 of those trust fund covers two purposes. One is to provide  
4 for clean up and, second, to provide for damages.

5 The second House bill is H.R. 7020. This only covers  
6 the hazardous waste containment, meaning that this only  
7 waste site clean up. H.R. 7020 does not provide for  
8 damages. The only damages that individuals can recover are  
9 under H.R. 85.

10 Essentially, there is a trust fund under this bill H.R.  
11 7020. It deals with the release of hazardous waste from  
12 inactive waste sites for either land, air, or groundwater.  
13 There is a trust fund that is set up. It is funded by an  
14 amount of approximately \$900 million from excise taxes, and  
15 approximately \$300 million of appropriations.

16 So the fund is approximately \$1.2 billion over a five  
17 year period, which is made up of three-quarters taxes and  
18 one-quarter from appropriations. This program and this  
19 trust fund also have an effective date of October 1, and  
20 that also will have to be changed.

21 The Senate bill S.1480 combines these two programs that  
22 the House has passed. It expands the purposes and  
23 categories to cover certain personal injury losses, medical  
24 expenses, the types and category of releases. For example,  
25 it covers items other than just navigable waters as far as

1 the clean up is concerned, and as far as the damages are  
2 concerned. The taxes are significantly higher because the  
3 coverage is significantly broader.

4 The provision that has been referred to this committee  
5 is just the financing mechanism. However, as you may know,  
6 you have a series of trust fund, the jurisdiction of which  
7 has been divided, where the other committees spend the  
8 funds, and this committee provides the taxes and the trust  
9 funds.

10 In order to maintain some control over the amount of  
11 taxes and the structure of the programs that you have, the  
12 Airway Trust Fund, the Highway Trust Fund, the other  
13 programs that you have, the Finance Committee, as well as  
14 the Ways and Means Committee, has always looked into the  
15 purposes that the trust fund monies are spent.

16 You have to raise the revenues, and you want to provide  
17 some relationship between the amount of money that has to be  
18 raised, and the purposes for which the trust fund are used.  
19 This has always worked out very well in the past with  
20 respect to the other committees.

21 The only section that has been referred to this  
22 committee, Section V, is the financing mechanism, and one of  
23 the questions that you may have is whether or not you are  
24 going to review the purposes for which the funds are used.

25 For example, a concern that this committee has had, in

1 the past in the earlier years when you had other trust  
2 funds, is that if you provide taxes to raise so much  
3 revenue, and the other committee that spends the money adds  
4 a number of items in future years, or expands the purposes,  
5 that would require you to come back and raise taxes.

6 As a result this committee has always put some  
7 limitations by saying the purposes for which the trust funds  
8 can be used are limited to the purposes that are determined  
9 as of the date of enactment. Also you provide those  
10 limitations with your jurisdiction in the creation of the  
11 trust fund to provide some cap. That is a decision that you  
12 have to make as to whether or not you want to do that with  
13 this bill as well.

14 We have provided for you a comparison, which is a long  
15 comparison on a legal sheet. You will see the relevant  
16 bills that are before you, that is S.1480, and H.R. 85 and  
17 H.R. 7020. In the right-hand column we also have the  
18 Administration proposal. This was done on October 29. This  
19 provided all of your staff an opportunity to review a  
20 comparison of the House bills, as well as the provisions of  
21 the Senate bill which they had agreed to. We put the  
22 Administration proposal in the far right-hand corner to show  
23 you what they initially proposed.

24 Last night the Stafford-Randolph compromise was made  
25 available. We have not had an opportunity to crank that in,

1 although I have seen, or their staff has provided a  
2 comparison and put the summary of their bill in. It was  
3 provided to me last night, and as far as I know that has not  
4 necessarily been made available to the members.

5 I don't know what you want to work from. Since I have  
6 a copy of the Stafford-Randolph compromise from their staff,  
7 and I am just reading what their staff has provided. In  
8 each of the categories, I can outline for you what the  
9 relevant differences are.

10 Senator Byrd. You have not mentioned any numbers.

11 Mr. Shapiro. In the overall, I have not broken it  
12 down. I said that it was \$1.2 billion in S.1480 over a five  
13 year period, which is \$900 million of taxes and \$300 million  
14 of appropriations. H.R. 85 is a total of \$750 million over  
15 a five year period. The total combined is approximately  
16 \$1.6 billion of taxes plus \$300 million of appropriations.  
17 That is in the two House passed bills.

18 The S.1480, you will see, in the first column on the  
19 spread, the total revenue over a six-year period is \$4.1  
20 billion. That is approximately two-and-a-half times as much  
21 revenue as the House passed bills. The reason for that is  
22 that the purposes for the use of the funds is much broader.

23 The Stafford-Randolph compromise is \$2.7 billion, just  
24 shy of twice as much revenue. Where the two House bills  
25 together would raise approximately \$1.6 billion, the

1 Stafford-Randolph compromise is approximately \$2.7 billion  
2 over the five-year period.

3 What they have done in their compromise is cut down  
4 some of the purposes and, therefore, the revenues have been  
5 reduced.

6 Senator Byrd. The Senate bill is roughly three times  
7 the cost of the House bill or the Administration bill.

8 Mr. Shapiro. Almost three times, that is correct. It  
9 is almost that amount. That is the bill that has been  
10 reported by the Public Works Committee and referred to this  
11 committee.

12 The bill that is technically before your committee is  
13 almost three times the cost. The compromise that has been  
14 worked out by the members of that committee, Senators  
15 Randolph and Stafford, as well as other senators who have  
16 been interested, has cut back on that Senate reported bill.  
17 Instead of \$4.1 billion, they have cut it back to \$2.7  
18 billion over a five-year period.

19 Senator Byrd. What comes to my mind is a justification  
20 for multiplying by three the costs of the House bills, and  
21 the Administration bill. This is the three times the costs,  
22 as I understand it.

23 Mr. Shapiro. That is true, Senator, and the basic  
24 purpose for that is the fact that the Senate bill expanded  
25 the use of the funds and purposes, whereas the House bills



1 essentially made the funds available to the navigable  
2 waters, in other words, oil spills or chemical spills in  
3 navigable waters. The Senate bill made it available to any  
4 of the spills on land, air, or non-navigable surface  
5 waters.

6 The Chairman. Let me bring up one more point while we  
7 are on this subject, too.

8 As I understand it, the Senate bill, different from the  
9 House bill, attempts to provide money to care for personal  
10 injuries. Is that correct?

11 Mr. Shapiro. That is correct.

12 The Chairman. Mr. Stern, you are familiar with this  
13 because you have looked at it. Is that House bill very  
14 general in just what it would cover?

15 Mr. Stern. The House bill does not cover personal  
16 injury.

17 The Chairman. The Senate bill does not?

18 Mr. Stern. The Senate bill does, but neither House  
19 bill does. That is the major difference between the two.

20 The Chairman. What definition does that bill contain  
21 as to what personal injuries it would cover?

22 Mr. Stern. The Senate bill is very broad, and it  
23 establishes a liability of the fund for "any loss of income  
24 or profits, or impairment of earning capacity resulting from  
25 personal injury." So it could be partial disability, or

1 almost no disability. An individual would simply have to  
2 show some kind of impairment of earning capacity resulting  
3 from personal injury.

4 The Chairman. What scares me about this, it sounds to  
5 me like this could be the beginning of another Black Lung  
6 bill, or another disability bill. You start out by looking  
7 at something that is not supposed to cost so much, and by  
8 the time you get through it costs four, five, eight, ten,  
9 fifty times what you estimated.

10 How much is the Black Lung Program above the estimates  
11 that we looked at when we were talking about a tax for black  
12 lung?

13 Mr. Stern. I believe you set the tax at levels that  
14 were supposed to cover about the cost of the program, but  
15 now it is running about three to four times the income.

16 The Chairman. It is running three to four times the  
17 income, and it was supposed to be within the income. We  
18 thought that that was very generous.

19 How many years has it had to grow?

20 Mr. Stern. I believe that program was enacted in 1977,  
21 not the original black lung, but the funding part that was  
22 supposed to cover the cost.

23 The Chairman. We thought it was costing too much money  
24 with what we agreed to, but it has already outgrown the  
25 estimate by four to one, and it has only had four years to

1 grow. And that one did not start out small.

2 When you get into one of these things, and you leave it  
3 kind of vague and general as to what you are going to pay  
4 for, you might find out that you cannot dream of all you are  
5 going to wind up paying for before you get through,  
6 especially when you get some kind of injury that is  
7 applicable to a large number of people in an area.

8 On a somewhat different subject, I recall one of the  
9 executive of an insurance company trying to explain how they  
10 had their policy carefully drawn as to what they would have  
11 with regard to what they would protect for water damage, and  
12 what they would protect for storm damage.

13 When Hurricane Camille hit down there in Mississippi,  
14 and they had to try those cases in Mississippi, there is no  
15 way on earth that they could expect a court, where you had a  
16 jury hearing this thing, a jury of the local people who all  
17 had one thing in common which was to find that these poor  
18 souls were covered.

19 They had been wiped out, totally wiped out. There  
20 wasn't any doubt about the injury. But the point was that  
21 from the point of view of the insurance company, about half  
22 of that was not covered by the policy, but the company had  
23 no hope, because any jury that saw that all had one thing in  
24 common, they shared the disaster themselves, and they had  
25 sympathy for their neighbors. The result was that the

1 company had no hope of limiting that liability to the  
2 policy.

3         These injuries can be expected to involve situations  
4 where an injury might be widespread in an area. Isn't that  
5 right?

6         Mr. Stern. Yes, sir.

7         In the disability program that you have today, there  
8 are two major differences. First of all, you have a very  
9 specific definition of inability to engage in substantial  
10 gainful activity. So it is a tough definition of  
11 disability, and it means total disability. This could be  
12 any degree of disability.

13         Second of all, there is no attempt to try to gauge what  
14 the actual loss in earning capacity is. Once a person is  
15 found to be disabled under the social security program, his  
16 benefits flow from a particular benefit formula, and it is  
17 not an attempt to arrive at what his actual loss of earning  
18 capacity is.

19         These are two very new areas here. I don't think  
20 anyone has any idea what the degree of partial disability is  
21 in the United States today. A person who gets sick for a  
22 few days can have his earning capacity reduced for that  
23 amount of time. I don't believe we have any sort of program  
24 to deal with that sort of situation.

25         The Chairman. The being here is that it is difficult

1 to see how anybody could come up with any estimate that they  
2 could hope to defend as to what the personal liability cost  
3 will be even over a relatively short period of time. It is  
4 rather open-ended, isn't it; it could be almost anything.

5 Mr. Stern. Yes, sir.

6 The Chairman. Thank you.

7 Senator Ribicoff. We have two respected members of  
8 this committee who are on the Public Works Committee. Did  
9 Senator Bentsen and Senator Moynihan vote S.1480 out  
10 favorably? Were they for S.1480?

11 Senator Bentsen. I would comment on that that I voted  
12 for it to be reported out, but I also filed dissenting views  
13 along with Senator Baker and Senator Domenici concerning the  
14 liability provisions under S.1480 because, frankly, I think  
15 they rewrite the tort law for the last couple of hundred  
16 years, and go beyond what they should do in changing the  
17 tort law.

18 Senator Ribicoff. I wonder whether both you and  
19 Senator Moynihan are supporting the Stafford-Randolph  
20 compromise, I am just curious.

21 Senator Bentsen. I will have to say that I have not  
22 had a chance to see that at all. It is my understanding,  
23 though, that they addressed themselves to some of the  
24 concerns that Senator Baker and I had expressed. How far  
25 they have covered those concerns on the liability

1 provisions, I don't know.

2 I think we are all agreed that we need a bill. The  
3 question is, I think, these concerns over the liability and  
4 the size, and how much we are covering, as the chairman has  
5 talked about.

6 Senator Bradley. Mr. Chairman, does the  
7 Stafford-Randolph compromise talk on the point of the  
8 liability differences, and personal injury differences?

9 Mr. Shapiro. Senator Bradley, just before you came in  
10 I commented that we only saw a summary of it last night. I  
11 personally did not see it until after five o'clock. What I  
12 have been furnished, however, their staff took the  
13 comparison that we have distributed that you have in front  
14 of you, and they put a side by side comparison of the way  
15 they see the differences in the bill.

16 With regard to the damages, the two points that were  
17 discussed earlier as to the loss of income or profits  
18 resulting from personal injury or illness, they included it  
19 in S.1480, and the Stafford-Randolph compromise does not  
20 include it. The House bill does not include it either.

21 The second item, which is the out-of-pocket medical  
22 expenses, where the House bill does not include it, and the  
23 S.1480, which was reported out of the committee, does cover a  
24 certain portion of it, the Stafford-Randolph compromise has  
25 a cut back in it, which provides for the out-of-pocket

1 medical expenses to be included, for the first six years of  
2 illness there would be a \$300 deductible and a \$30,000  
3 maximum for each individual.

4 So they have cut back on two of those items, and they  
5 have made some other modifications in the damages. But I  
6 will say that I am reading only from the summary sheet that  
7 I was furnished, not having seen the bill. I only received  
8 this last night.

9 Senator Moynihan commented that he had a copy of the  
10 bill which was made available this morning.

11 Senator Bradley. I have not seen a copy of the bill.  
12 I have the same sheet that you have as of this morning.

13 Does Mr. Davis know any more about it?

14 Mr. Davis. I have some of the same disadvantages. I  
15 could add a few comments, I believe, on the liability  
16 provisions which Senator Bentsen has had some concerns  
17 about. I will separate it in two parts. One is the strict  
18 liability requirements, and the second part being the joint  
19 and several liability.

20 One point I would make, as a comparison with the House  
21 bills, under the Stafford-Randolph compromise it is a single  
22 liability regime covering all events that are addressed by  
23 the bill. Whereas the two House bills, because they are  
24 separate, have slightly different liability regimes. So  
25 there is potential for some confusion between the two.

1           In the case of strict liability, the Stafford-Randolph  
2 compromise essentially takes from the House bill, from H.R.  
3 7020. It has strict liability. It applies to generators,  
4 carriers of waste, and whatever. It has defenses to strict  
5 liability that are almost the same as the defenses in H.R.  
6 7020.

7           On joint and several liability, which is a point about  
8 which there has been quite a bit of controversy between all  
9 the bills, the Stafford-Randolph compromise, if I might  
10 editorialize, I think is a very wise and sane solution. It  
11 simply eliminates the controversy by dropping the  
12 requirements of joint and several liability, and leaving  
13 that question to the common law, which is what everyone has  
14 argued about one way or the other, saying that common law is  
15 either too lax or too stringent compared to these bills.

16           The Stafford-Randolph compromise simply says, we will  
17 find out what the common law is, and leave it out of this  
18 legislation at this point in time.

19           Senator Bentsen. If I might comment, Mr. Chairman.

20           I think the Stafford-Randolph compromise was probably  
21 just introduced yesterday, and maybe late yesterday  
22 afternoon. As it having been something that has been  
23 reviewed by members of the committee, to my knowledge that  
24 has not been done. At least this member has not had a  
25 chance to review it. I really have not had an opportunity



1 to study it.

2 I do understand, from what has been stated, that much  
3 of my concern about liabilities and the changing of the tort  
4 law has been accommodated or taken care of. But I have not  
5 had an opportunity to study it.

6 Senator Ribicoff. Perhaps Senator Moynihan, or  
7 yourself, or the staff could explain. If this committee  
8 acted either on S.1480, or the House bills, then would it be  
9 the intention of Randolph and Stafford to offer their bill  
10 as a substitute?

11 Senator Moynihan. Yes.

12 Senator Ribicoff. Then whatever we did would not have  
13 much meaning. You would have to start changing the tax  
14 formulas, and the revenue formulas as well as the  
15 substantive formulas.

16 Senator Moynihan. If I may speak to that, sir. I  
17 believe it is the hope and expectation of Senators Stafford  
18 and Randolph that we will address ourselves to the question  
19 of taxes that would have to be imposed to provide for their  
20 bill, which is a smaller tax than the one in the existing  
21 committee bill.

22 It is made quite explicit that this is a tax. There  
23 was some question, I think, previously whether we had  
24 reported out a fee or a tax. This is now explicitly a tax.  
25 The jurisdiction of this committee is not questioned, but

1 rather asserted.

2 The Chairman. I am glad the Senator made that point.

3 But let me make this point also.

4 It seems that some of these people on some other  
5 committees have the idea that they have jurisdiction and we  
6 do not if they can raise revenue without calling it a tax.  
7 I would like to refer them to what the Constitution says,  
8 and what the Senate rules say. In both cases they do not  
9 refer to tax bills. They refer to bills to raise revenue.

10 So it does not make any difference as far as  
11 jurisdiction is concerned whether you are talking about a  
12 fee, or whether you are talking about a tax. In any event,  
13 it is a measure to raise revenue, and that falls within the  
14 jurisdiction of this committee.

15 So when we talk about committee jurisdiction on revenue  
16 bills, it does not say anything about taxes in the  
17 Constitution or in the rules, or in the statutes. They talk  
18 about revenue bills, or bills to raise revenue. In any  
19 event, we do have jurisdiction there, which then we have to  
20 assert ourselves for people to recognize that we are here,  
21 that we are part of the Senate. We have a responsibility to  
22 discharge, and we will discharge it if we can.

23 Mr. Stern. Mr. Chairman, here is a copy of the  
24 amendment, they do have just a blank page, which says Title  
25 II, preserve for Finance Committee action on fund

1 establishment and tax structure, etc." So they do assume  
2 that the Finance Committee would take that title.

3 The Chairman. That is very generous of them. I  
4 appreciate it.

5 Mr. Shapiro. Continuing on with the comparison, what I  
6 will do is show you what we have, and read in what the  
7 Stafford-Randolph compromise has done.

8 I have gone over, on the spreadsheet, item A which is  
9 the overall revenues for the five-year period.

10 Item B is the share of the fees, or the taxes. What  
11 this means is how much of the total that goes into the trust  
12 funds is made up of taxes, and how much of it is made up of  
13 an appropriation.

14 On S.1480, of the 100 percent that goes into the trust  
15 fund, 87.5 percent comes from taxes, and 12.5 percent comes  
16 from an appropriation. Essentially, the appropriation is  
17 approximately \$500 million over that six-year period. There  
18 is \$400 million of appropriation over the five-year period.

19 The difference here is that S.1480 is a six-year bill.  
20 The Stafford-Randolph compromise is five years as are the  
21 House bills.

22 Where you see 81 percent under H.R. 85, the reason for  
23 the 81 percent is that it means 19 percent is appropriation  
24 because you are talking about a smaller amount of revenue.  
25 You have \$300 million, which is an appropriation that goes

1 to the trust fund under H.R. 7020. S.1480 actually is a  
2 larger appropriation, \$500 million versus \$300 million.  
3 However, you are talking about a difference of \$1.6 billion  
4 as a total amount of revenue as opposed to \$4.1 billion in  
5 S.1480, so the percentage is a lot smaller.

6 The relationships will show you general revenue to the  
7 total taxes. However, as far as what actually comes out of  
8 the general revenue, it is \$300 million under the House bill  
9 and \$500 million or \$400 million out of the S.1480.

10 The item C, the amount of fees or taxes that are  
11 actually imposed, you will see that under S.1480 it is just  
12 shy of \$600 million a year, that is the average. The first  
13 year it starts out at \$250 million, and by the sixth year it  
14 gets up to the approximate range of \$750 million. But the  
15 overall average is approximately \$600 million a year in  
16 taxes under S.1480.

17 The two House bills, the approximate amount is \$250  
18 million or \$255 million. It shows you once again the  
19 average of the difference in the taxes that are imposed.

20 The next item D, there is a question of the link  
21 between appropriations into the fund and spending, and they  
22 have some limitation on the amount that can be spent from  
23 the general appropriation with regard to the fund. There is  
24 no provision in S.1480. In the House passed provisions  
25 there is a limitation in H.R. 7020, not in H.R. 85. In H.R.

1 7020 that limitation says that they cannot spend more than  
2 10 times the amount that is appropriated into the fund in  
3 that year.

4 The next item E on the first page is the fund  
5 structure. The S.1480 provides for one trust fund for all  
6 of the purposes. The House passed bills there are separate  
7 trust funds for each of the purposes. I should point out  
8 that this is not a major difference, because you could  
9 always have one fund and put separate accounts in it.  
10 However, the way the House approached it, for each of the  
11 separate purposes they have actually a separate trust fund.

12 Senator Danforth. Is there any overlap between those?

13 Mr. Shapiro. There could be. It is not intended, but  
14 there could be, and we are going to review that and try to  
15 tighten up. In some cases, there clearly could be.

16 On page 2, we go to the scope of the releases that are  
17 covered. Once again I should point out to the committee  
18 that this is technically not referred to this committee.  
19 This is in the bill S.1480, but it is not part of the  
20 financing provision that has been referred to this  
21 committee.

22 However, item 2 and the item right below it, item 3,  
23 the items for which the funds may be used, are relevant to  
24 this committee because you are raising taxes to cover these  
25 purposes. The broader the purposes, the more taxes you have

1 to raise. Traditionally, the tax writing committees have  
2 reviewed the scope and the items for which the funds may be  
3 used in order to put some limitation with regard to the  
4 amount of taxes. So you have traditionally reviewed it,  
5 although technically that has not been referred to this  
6 committee.

7 In the case of item 2, on the top of the page, the  
8 S.1480 has a broader coverage. It covers generally the  
9 releases of hazardous substances. That may be from a  
10 vessel, or a facility in either the environment, which may  
11 include air, land, groundwater, and surface water. They  
12 have limitations on four items that it would not include,  
13 but it covers broad categories as to the scope of the  
14 releases.

15 The House passed bills are much more limited. First.  
16 H.R. 7020 covers the releases of designed hazardous waste  
17 from inactive waste sites. So it is rather specific. H.R.  
18 85, releases of designated hazardous substances into the  
19 navigable waters. That is the basic distinction in the  
20 Senate and House bills.

21 Where H.R. 85 limits it to releases into the navigable  
22 waters. You will see that H.R. 7020 not only covers  
23 navigable waters, but covers the environment generally,  
24 which includes air, land, groundwater, as well as the  
25 navigable waters.

1           Senator Bradley. Could you stop there, Mr. Shapiro,  
2 just for a quick question.

3           Does that mean that in the two House bills that if a  
4 truck transporting the hazardous waste on the Schuylkill  
5 Expressway, for example, broke down, that there would or  
6 would not be revenues to clean it up?

7           Mr. Shapiro. It would not be covered in the House  
8 passed bills, unless the spill actually goes into the river,  
9 or threatens to go into navigable water. That is one of the  
10 major distinctions as far as coverage and scope, and as far  
11 as the revenues that are raised to cover that.

12          Senator Bradley. Thank you.

13          Mr. Shapiro. As far as oil is concerned, also under  
14 the scope, the Senate generally does not apply to oil  
15 pollution as such, and the House bill does not as well.  
16 Essentially it is the same under H.R. 85.

17          What we have subsequently in our comparison at the end  
18 is a separate treatment with regard to oil that is covered  
19 in the House bill.

20          III is your main item of focus. This is the use of the  
21 funds. This is what requires increased revenues because to  
22 the extend that you expand the coverage of the purpose of  
23 the trust funds for which the revenues can be used, you have  
24 to raise the funds to cover it.

25          The major item, of course, A, is the removal and clean

1 up, and remedial action. That is the major focus of  
2 attention, which is the clean up and remedial action. The  
3 Senate bill provides for government expenditures and  
4 reimbursement of expenditures that may be incurred by states  
5 as well as private individuals under the National  
6 Contingency Plan.

7 In other words, it covers the scope of the items that I  
8 mentioned, that are referred to in category II above. It is  
9 very broadly covered.

10 In the House passed bills, first with H.R. 7020, that  
11 is the inactive waste sites, it is generally the same as  
12 S.1480, except that it only covers actions that are taken or  
13 ordered by the Administrator. It does not cover long-term  
14 maintenance of sites, or permanent relocation of  
15 individuals. Also it does not cover expenses incurred in  
16 connection with a site owned or operated by the United  
17 States.

18 Essentially, it is very close in the two bills, the  
19 Senate bill and the House passed bill, with regard to  
20 inactive waste site. That is H.R. 7020 passed by the  
21 House.

22 In the case of spills, the House passed bill is  
23 essentially the same as the Senate. These are the clean up  
24 items. Essentially, there is not that significant a  
25 difference. The major difference in the two bills comes on



1 page 3, which is the second major feature of the Senate  
2 provisions, and the bills in general, and that covers the  
3 third party damages that result from releases.

4 First, we are focusing on two items. First, the clean  
5 up as a result of the releases, and that is referred to in  
6 item A. The second, which we are going to now, is the  
7 damages that result from the spills. This is where there  
8 are significant differences between the House passed bills  
9 and the Senate bill.

10 First let me point point out that one of the House  
11 passed bill, H.R. 7020 which deals with inactive waste  
12 sites, there are no provisions for personal damages. There  
13 is only clean up. So right now what we will be comparing is  
14 S.1480 with the House passed bill H.R. 85, and that is  
15 spills in navigable waters.

16 To put it into perspective again, we are saying that  
17 the Senate bill covers environment generally, which is the  
18 air, land, groundwater and surface water, and we are now  
19 talking about the damages of releases into all of those  
20 areas.

21 With respect to the House bill, we are covering damages  
22 to third parties, but only with respect to spills into  
23 navigable waters. That is the reason for the major  
24 difference in revenue, and you will see some of the coverage  
25 as well.

1           The first item is injury to or destruction of  
2 government controlled natural resources, essentially both  
3 bills cover those. They are both included.

4           As I go on, let me fill in by talking about the  
5 Stafford-Randolph compromise. The item number two, the loss  
6 of income or profits resulting from destruction of property  
7 or natural resources, the Senate bill includes it.  
8 Agricultural and fishery losses, essentially, are covered  
9 without limitation. However, other losses, other  
10 agricultural and fishery losses.

11           There are limitations under S.1480. The limitations  
12 are to 100 percent of the lost income in the first year. In  
13 the second year, it is 80 percent of the losses.

14           In the House passed bill, that is H.R. 85, it also  
15 covers these losses, and there is a limitation which is  
16 different from the Senate bill, that limitation is  
17 across-the-board. In other words, there is no special  
18 treatment for agricultural or fisheries.

19           The limitation is that individuals who derive more than  
20 25 percent of their gross income from the activities which  
21 used the property or natural resources, they will have all  
22 of their losses covered for the first two years.

23           In other words, there is a threshold. You must have 25  
24 percent --

25           Senator Talmadge. If the gentleman would yield at that

1 point.

2 How are you going to determine a fishery loss? Isn't  
3 rather intangible at the very outset.

4 Mr. Shapiro. What they will probably do is make a  
5 determination, and then they will look at their income for  
6 the previous year. You are absolutely correct, Senator,  
7 that you can look at the previous year, but you will have to  
8 make estimates on case by case basis.

9 Senator Talmadge. Our shrimpers in Georgia right now  
10 are having a terrible year. They say that one of the things  
11 is that we have not had any cold weather down there this  
12 year to stir up the shrimp and get them out into the sea  
13 where they can catch them.

14 It seems to me to be so intangible that I don't know  
15 how you could ever determine the damages.

16 Senator Danforth. Mr. Chairman, it is my  
17 understanding, and maybe I am wrong on this, that this is  
18 designed to accommodate the problems of more inland fish  
19 farming than of offshore fish farming. Is that correct or  
20 incorrect?

21 Mr. Shapiro. It covers both, Senator.

22 Under the Stafford-Randolph compromise, in this  
23 particular category, and once again this is category II, I  
24 am reading from their summary -- I have not personally  
25 reviewed the bill, and it is their committee staff who have

1 prepared this.

2 They say they cover fisheries and agricultural losses  
3 only for the first two years after the loss begins, provided  
4 that the gross income from fishing or agricultural are  
5 greater than 25 percent of the gross income, and that is  
6 using an average from all sources during the preceding three  
7 years.

8 They also state that they exclude claims that are  
9 attributable to ambient air pollution, stagnant air which  
10 may include acid rain and so forth. So they do exclude  
11 coverage for ambient air pollution, and they do limit their  
12 coverage to the first two years with regard to fishing and  
13 agricultural losses.

14 The Chairman. Here is a problem that occurs to me  
15 because it happened in the New Orleans area.

16 There is an accident, and there is a spill. Then the  
17 Coast Guard people, the various Federal authorities and the  
18 State authorities, they close off a huge amount of fishing  
19 area. Obviously that is a wise thing to do. They do that  
20 out of an over-abundance of caution. They close off a  
21 tremendous area, so obviously there is a very large loss of  
22 income. Then after a while, they think they can safely  
23 begin to restrict the area.

24 Do I take it that all the loss that would be occasioned  
25 by all of that area being closed off would be subject to

1 being paid for out of this fund, even though the area that  
2 they closed off might be far beyond the area which might  
3 have been polluted?

4 Mr. Shapiro. Our impression is that you are correct,  
5 any loss that is attributable to any destruction there, or  
6 any of the spills, would be covered. In other words, you  
7 would have to determine whether the loss was related to the  
8 spill. If it is related, it would be covered. That would  
9 include the processors as well.

10 Senator Bradley. Did you say on this exclusion of  
11 claims attributable to ambient air pollution that someone  
12 cannot claim that the air pollution from a source is the  
13 cause of their claim?

14 Mr. Shapiro. I am assuming that that is the case. I  
15 have not reviewed the statute. I only know what is written  
16 here, and my assumption is that that would be correct.

17 The Chairman. Go ahead and cover the rest of it, if  
18 you can.

19 Mr. Shapiro. The next item that we have is item III,  
20 which is a loss of income or profit resulting from personal  
21 injury or illness.

22 Let me start off by saying that the House bills do not  
23 provide coverage of this item. The Senate bill originally  
24 does include it. It limits it, however, to 100 percent of  
25 the lost income in the first year after the accident, 80

1 percent in the second year.

2 The Stafford-Randolph compromise in this area, however,  
3 is the same as the House bill. That is, it would not  
4 include it. So that cuts back on the original S.1480. It  
5 is the same as the House bill.

6 Item IV is the out-of-pocket medical expenses. The  
7 House bill does not include this item. The original Senate  
8 bill provides that all expenses would be included for the  
9 first six years of illness if the total is over \$300,  
10 otherwise it includes only the diagnostic expenditures.

11 The Stafford-Randolph compromise does provide a cut  
12 back from the original bill in this category. It does  
13 include it, however, it provides for all expenses included  
14 for the first six years of illness, and it provides the \$300  
15 deductible, and they add a \$30,000 maximum per individual  
16 limitation as well, which was not in the original bill.

17 They also state that occupational diseases would be  
18 excluded. They say that diseases due to multiple sources of  
19 air pollutants are also excluded. They also say that claims  
20 may be limited to only those within the designated areas.  
21 Whereas they provide for the out-of-pocket expenses, the  
22 Stafford-Randolph compromise intends to cut back to some  
23 extent, and they do provide a \$30,000 per individual.

24 I understand that the \$30,000 is indexed. I do not  
25 have it here, but I understand that a reading of the statute

1 provides that the \$30,000 is indexed, but not the \$300.

2 The next item, the third party damages, they include  
3 property losses. In this case, S.1480 provides that the  
4 losses property value include only agricultural and fishery  
5 contamination losses.

6 The House bill is a little broader than that. It  
7 includes losses resulting from to or destruction of any real  
8 or personal property. In the Stafford-Randolph compromise  
9 it is the same as in S.1480.

10 Item VI, which provides a limit on payments, the House  
11 bill provides that the claims are payable only to the extent  
12 the fund has an assets in excess of a \$30 million clean up  
13 reserve. In other words, they want to make sure that there  
14 is a clean up reserve, and then the funds are available to  
15 the excess of that amount.

16 The S.1480 provides that no more than one-third of the  
17 income of the fund in any year may be used for third party  
18 claims. So they are providing a different formula to  
19 actually setting aside money for clean up. Whereas the  
20 House bill has a dollar amount of \$30 million, the Senate  
21 has a formula which sets a one-third limitation.

22 They also provide under S.1480 that if the money is not  
23 available, claims may be deferred or prorated, and that  
24 would be determined by the Administrator.

25 The Stafford-Randolph compromise is the same as S.1480,

1 which I just summarized.

2 We are going now to page 4. We are continuing with the  
3 third party damages, these are individual damages that may  
4 be recovered, and we are talking about the category of  
5 retroactive damages. This is before the date of enactment.

6 The House bill does not provide for any retroactivity.  
7 It would all be prospective. The S.1480 provides that there  
8 are no retroactive damages except for the three areas that  
9 they have specified.

10 The first one is for agricultural losses, which would  
11 be covered for releases after January 1, 1974. In the case  
12 of fishery losses, they would be covered for releases after  
13 January 1, 1978. Thirdly, personal injury or illness would  
14 be covered for releases after January 1, 1977, or injury or  
15 illness discovered after that date.

16 The Stafford-Randolph compromise is the same as the  
17 S.1480. They provide for retroactivity in these three  
18 categories, whereas the House bill has no retroactivity.

19 Senator Heinz. Mr. Chairman, may I ask why those  
20 particular dates were chosen?

21 Mr. Shapiro. I don't know. That was in the other  
22 committee's bill. We understand that it may be that some of  
23 these are certain incidents. For example, a personal injury  
24 could be specified to the Love Canal situation. It may be  
25 that the others are specified to other incidents that our



1 staff is not familiar with because we did not work on their  
2 bill. We will try to get that for you, because I think that  
3 it may be relevant.

4       Going next to item C, this deals essentially with  
5 studies. The House bill provides that the diagnostic  
6 expenses and the health effects studies for victim  
7 registrants are not included under spills, which is H.R.  
8 85. However, in H.R. 7020, the House passed bill which  
9 deals with inactive waste sites, it does provide for health  
10 effect studies.

11       In S.1480, the item of diagnostic expenses as well as  
12 the studies are included. The Stafford-Randolph compromise  
13 includes them also.

14       The next item, which is research on clean up  
15 technologies and damage assessment, H.R. 85 does not include  
16 this category. However, the inactive waste site does  
17 include it. In S.1480 it includes the entire research on  
18 clean up. The Stafford-Randolph compromise does not include  
19 the research on clean up technology and damage assessment.  
20 So this is a difference between the Stafford-Randolph  
21 compromise and the introduced bill.

22       The next item E, which is the administrative and  
23 personnel costs, essentially this means that they come out  
24 of the trust fund or they come out of the general revenues.  
25 H.R. 85 does not include the administrative and personnel

1 costs, essentially this means that those costs have to come  
2 out of general revenues. H.R. 7020, inactive waste sites,  
3 partially includes those.

4 In the case of the Senate bill, S.1480, it does include  
5 the administrative and personnel costs out of the trust  
6 fund. The Stafford-Randolph compromise includes it as  
7 well.

8 The last item covering the items from the trust fund  
9 would be the expert witnesses for claimants that may be  
10 authorized by the court. The House bill does not include  
11 this. So there are not funds that would be available out of  
12 the trust fund with respect to expert witnesses for  
13 claimants that may be authorized by the court.

14 In S.1480 it would be covered. The trust fund would  
15 provide the cost for the expert witnesses. The  
16 Stafford-Randolph compromise includes it, however it  
17 provides a maximum of \$10 million annually, which can only  
18 be used at the request of the court.

19 Next we will go other issues that are affecting the  
20 fund. This is the last page of the Stafford-Randolph  
21 compromise.

22 The first issue is the borrowing authority. The House  
23 bill, H.R. 7020 provides for no borrowing authority for any  
24 inactive waste sites. It has to be in the funds. They are  
25 not permitted to borrow.

1 H.R. 85 which provides for clean up as well as for  
2 damages, there is a provision for borrowing up to \$75  
3 million during the first year of operation. The reason for  
4 this is that the fund may not have generated enough revenues  
5 in the first year, and the House wanted to provide some  
6 money so they could get started in the first year.

7 In the Senate bill S.1480, they provide for authority  
8 to borrow each year up to the amount of fees and  
9 appropriations that are expected in the next fiscal year.  
10 In effect, you are borrowing one year in advance, but you  
11 cannot borrow more than that.

12 In the Stafford-Randolph compromise, they provide for  
13 authority to borrow up to one-third of the revenues that are  
14 anticipated in the next fiscal year to pay damage claims.  
15 The authority is essentially the same to borrow as in  
16 S.1480, but there provide for that one-third limitation.

17 The next category is the termination of spending  
18 authority. The House passed bill that deals with spills,  
19 H.R. 85, has no termination to spend. Essentially what they  
20 are saying is that as long as you have the funds, and there  
21 has been some damage, you can continue to spend even after  
22 the tax may terminate.

23 The provision that provides for the clean up of  
24 inactive waste sites, H.R. 7020, they terminate the spending  
25 authority on September 30, 1985.

1           The Senate bill, S.1480, provides that the authority to  
2 obligate funds expires as of October 1, 1986, which means  
3 that even though you may have had a spill, they cannot spend  
4 the funds, even if the funds are there, until there has been  
5 subsequent legislation.

6           The Stafford-Randolph compromise says that the  
7 authority to collect taxes expires on October 1, 1985. I  
8 can detect from this whether or not that also limits the  
9 authority to spend, or they picked that up. But they do  
10 provide a sunset for the tax as of October 1, 1985.

11           The next issue is the fee, or tax issue, the method of  
12 raising the revenue. The House bills provide for taxes.  
13 The Senate bill provides for fees. The Stafford-Randolph  
14 compromise does provide for taxes. They do switch from  
15 their original position of making it a fee, to a tax, which  
16 means that it is clearly within the jurisdiction of this  
17 committee.

18           The next item is a limit on the rates of each  
19 substance. The House passed bills provide specific rates  
20 that are set by statute. As I indicated earlier, what the  
21 House determined was how much revenue was needed, and then  
22 they provided formulas to allocate the revenues by way of  
23 the categories, so much for oil, so much for petrochemical  
24 feedstocks, and so much for inorganic substances. Then,  
25 having set those allocations, they specify the amounts that

1 are needed by each of the categories.

2 In S.1480, since it was a fee and not a tax, they  
3 provided caps in certain provisions such as you see listed  
4 here, which is 2 percent of the selling price, and so much  
5 per barrel, and so much per ton.

6 Essentially, in the Stafford-Randolph compromise, it  
7 appears that they have used somewhat their same formula,  
8 which is a cap with a 2 percent of the selling price, and  
9 certain limitations per tons. Apparently they also used the  
10 specified rates that are set by the statute in the House  
11 bill.

12 As I understand what they are doing from reading this,  
13 they are using the House bill by providing rates. However,  
14 they set a cap using their formula in S.1480, essentially to  
15 provide cap on how much money is needed for the fund.

16 The next item there is the taxable substances. There  
17 is a list that is provided in the House bills. The two  
18 items that have special treatment are copper and zinc. the  
19 House does not tax copper and zinc. The Senate taxes the  
20 copper compounds, and it taxes zinc.

21 Senator Moynihan. May I ask, Mr. Shapiro, would I be  
22 correct in thinking that the purpose there is to tax those  
23 uses of copper and zinc which can make their way into toxic  
24 substances?

25 Mr. Shapiro. Yes.

1           Senator Moynihan. You don't tax all copper produced,  
2 but rather that portion of the copper produced that ends  
3 up.

4           Mr. Shapiro. As we understand it, that is generally  
5 the purpose for it. You are correct.

6           The next item there is item D, which is the exemptions  
7 for taxable substances. All we have listed here are the  
8 ones that do provide for exemptions.

9           The first one is where it is used for fertilizer.  
10 Under the House passed bills, it is taxed under H.R. 85,  
11 that means where you are talking about the pollution or the  
12 spills. However, under H.R. 7020, that is inactive waste  
13 sites, they exempt the tax for any of those funds that will  
14 go to the trust fund in active waste sites.

15           S.1480 provides a complete exemption for the taxable  
16 substances that are used for fertilizer for the first three  
17 years. The Stafford-Randolph compromise continues that  
18 exemption for fertilizer.

19           The second category is the taxable substances that are  
20 used as fuel. The House bill exempt the substances if the  
21 principal use of the substance is for a fuel. S.1480  
22 provides an exemption by regulation only. They don't  
23 provide a specific exemption, but they authorize the  
24 regulations to provide an exemption if it is deemed  
25 appropriate.

1           The Stafford-Randolph compromise exempts a substance  
2 that is used as a fuel if the principal use of the substance  
3 is for the fuel. Essentially that is the same as the House  
4 bill.

5           The next category is a taxable substance that is used  
6 to make a fuel. The House bill provides no exemption. It  
7 taxes it. The S.1480 gives the regulatory authority to  
8 exempt it. It does not do it specifically, it gives the  
9 authority. In the Stafford-Randolph compromise, they  
10 apparently take away that authority, and tax it.

11           The next category is the recycled materials. The House  
12 bill provides no exemption for recycled materials. The  
13 provision in S.1480, once again, allows it by regulatory  
14 authority. The Stafford-Randolph compromise taxes it like  
15 the House bill, except that if it is a recycled substance  
16 primarily from waste, then it provides an exemption.

17           The next category is products of pollution control  
18 facilities. The House bill taxes those products. S.1480  
19 exempts them by regulatory authority. The Stafford-Randolph  
20 compromise taxes it. Apparently it takes away that  
21 regulatory authority to exempt it.

22           The last category of special treatment is substances  
23 that are derived from coal. The House bill taxes it. In  
24 other words, it provides no special exemption. What we  
25 understand is that S.1480 intended to exempt it, but there

1 is a question as to whether the statute literally does not.  
2 But from the committee report, and in talking to their  
3 staff, they intended to exempt. The Stafford-Randolph  
4 compromise eliminates that intention, and apparently makes  
5 it clear that it would be taxable.

6 The next item is the termination. The House passed  
7 bill terminates the program on October 1, 1985, which means  
8 that it is a five-year program. Under S.1480 it would be a  
9 six-year program, where it would be September 30, 1986. The  
10 Stafford-Randolph compromise goes to the House bill to make  
11 it a five-year program, and terminates the taxes as of  
12 September 30, 1985.

13 The next item is the post-closure liability fund. The  
14 House bill has no provision for post-closure. This is where  
15 you maintain an area after the period of time to provides  
16 some insurance. Essentially, it is insurance for coverage  
17 after the site has been closed.

18 In S.1480, it provides a separate \$200 million fund  
19 that will be financed by a fee on generation of hazardous  
20 waste. The Stafford-Randolph compromise does include the  
21 same provision as in S.1480. I would assume that since they  
22 have switched everything else from a fee to a tax, that  
23 although their write-up does not indicate that, they would  
24 probably switch it to a tax to make it consistent.

25 That, essentially, is the comparison of the bills.



1           Senator Byrd.   Could I ask a question.

2           The Chairman.   Senator Byrd.

3           Senator Byrd.   Has a hearing been held on that  
4 substitute?

5           Mr. Shapiro.   Senator, the substitute was, as I  
6 understand it, introduced last night, so there were no  
7 hearings on the substitute as such.  There were hearings in  
8 both the Finance Committee and the Public Works Committee  
9 with regard to the superfund legislation.  On the  
10 Stafford-Randolph compromise, I personally have not seen  
11 anything more than the summary that I outlined to you this  
12 morning.

13          Senator Moynihan.  May I make a point, if I can, to  
14 Senator Byrd.

15          While there were no hearings, no new concepts have been  
16 introduced, but rather an attempt to merge the House and  
17 Senate bills on which there have been extensive hearings.  
18 So there is no item in here on which you will not find  
19 testimony some place.

20          Senator Byrd.  Thank you.

21          Senator Danforth.  Mr. Chairman.

22          The Chairman.  Senator Danforth.

23          Senator Danforth.  Let me educate myself on what the  
24 issues are here.

25          It seems to me that there are two basic areas that are

1 designed to be covered in these various bills. One is clean  
2 up, and the other is compensation for damages. Is that a  
3 fair statement?

4 Mr. Shapiro. That is correct.

5 Senator Danforth. There are some differences between  
6 the various bills as to what is covered in the clean up.

7 It would be my guess, I don't happen to be on the  
8 committee that has jurisdiction over that, that the  
9 differences on what is covered in the clean up portion of  
10 the bill, those differences are not nearly as substantial or  
11 far reaching as the differences as to the compensation for  
12 damages.

13 Mr. Shapiro. As we understand it, it does appear to be  
14 the case. You are correct.

15 Senator Danforth. With respect to the clean up, do you  
16 have any estimate as to the portion of the various bills  
17 that is assigned to clean up? The difference in cost of the  
18 various bills?

19 Mr. Shapiro. Mr. Davis from the EPA has those figures,  
20 and maybe just as easy for him to read those to you.

21 Mr. Davis. Senator Danforth, I can give you some  
22 figures for both S.1480, the two House bills combined, and  
23 I also have some rough figures for the Stafford-Randolph  
24 compromise.

25 For S.1480 as a starting point, the total fund -- I

1 have put all of this on a five-year basis. The Senate bill  
2 is six years, and I have take it all to a five-year. On a  
3 five-year basis, the total funds in the Senate bill are  
4 about \$3.3 billion.

5 Senator Danforth. That is total.

6 Senator Bradley. Which Senate bill?

7 Mr. Davis. S.1480, the original bill.

8 The Stafford-Randolph compromise bill total is \$2.7.  
9 As you have heard, the total for the two House bills is  
10 \$1.6.

11 I will give you the funds reserved or estimated  
12 allocations to respond and clean up. Starting with S.1480,  
13 \$1.7 of the \$3.3, approximately half. The Stafford-Randolph  
14 compromise bill, \$1.4 of the \$2.7, or again approximately  
15 half. Of the House bills, \$1.5, which is close to 90  
16 percent probably of the total.

17 So you can see that the difference is primarily in the  
18 claims. The House bill has only about \$100 million from the  
19 total of \$1.6 for claims and other miscellaneous uses. The  
20 Senate bill, the original S.1480, has approximately \$1.1  
21 billion. These are estimates, but they are constrained by  
22 the internal caps and so on. The Stafford-Randolph  
23 compromise is about \$.9.

24 Senator Danforth. The Senate bill's clean up cost  
25 would be \$1.7. The House bills' clean up costs would be

1 \$1.5. The Stafford-Randolph compromise would be \$1.4.

2 Mr. Davis. That is correct.

3 Senator Danforth. So the House bill would be spending  
4 more for clean up of waste disposal sites than the  
5 compromise would be.

6 Mr. Davis. By rounding. The actual number for the  
7 House bill is \$1.75, and the Stafford-Randolph compromise is  
8 \$1.43. So there is about a 2 percent difference.

9 Senator Danforth. But there is slightly more in the  
10 House bill for actually cleaning up the abandoned sites. Is  
11 that right?

12 Mr. Davis. Yes.

13 Senator Danforth. I would like to ask for the theory  
14 of the compensation for damages, and how that works. Let's  
15 suppose a spill, where the identity of the party is known,  
16 and the potential defendant is financially responsible.  
17 How would that compensation for damages work?

18 Mr. Davis. Are you asking me?

19 Senator Danforth. Anybody who knows.

20 Mr. Davis. Basically, the procedure is similar under  
21 all of the bills. The words are different, but the theory,  
22 I think, is the same. The claimant is expected to make an  
23 attempt to be compensated, or to seek relief from the  
24 responsible party.

25 The theory beyond the compensation provision of the

1 bill is where that is not possible, either because the  
2 defendant is insolvent or cannot be found, or where the  
3 principal party simply refuses to pay and would only pay  
4 after extended litigation, the Act is a fall back source of  
5 relief for the victim.

6 Senator Danforth. Is it a fair characterization of the  
7 issue that is before us, the extent to which we want to  
8 provide a tax for the purpose of creating a fund for  
9 compensation for damages?

10 Mr. Davis. That is clearly one of the major  
11 differences between the three choices you have here.

12 Senator Danforth. With respect to the question of  
13 clean up, and whether or not we are going to have the funds  
14 available for cleaning up hazardous waste disposal sites,  
15 and spills sites, there is very little difference.

16 Mr. Davis. Not exactly. I would clarify what was said  
17 earlier.

18 The types of action that can be taken in response to a  
19 given incident are essentially the same in all three bills.  
20 The ability to go on scene to clean up, to evacuate if you  
21 have to, whatever actions are necessary. But the authority  
22 to respond in all cases is not the same in all the bills.

23 Both of the Senate bills cover all media, and they  
24 cover both spills and waste sites. The two House bills, as  
25 was stated in the very beginning this morning, H.R. 7020 is

1 only a sites bill and only on land, groundwater, or air. It  
2 cannot cover a dump site that only impacts navigable  
3 waters. H.R. 85, conversely, is a spills bill for those  
4 events impacting navigable waters.

5 So a dump site that is, let us say, in a marsh  
6 somewhere, or a wet area or water, would not be covered by  
7 either House bills. A spills that occurs on the turnpike  
8 that doesn't threaten a water body of some kind is not  
9 covered.

10 Senator Danforth. Exactly what the coverage is, and  
11 what kinds of spill sites would be covered, would be more  
12 within the jurisdiction of the Committee on Public Works and  
13 the Environment.

14 The real question before us is whether we want to raise  
15 somewhere in the neighborhood of \$1.5, or whatever dollars,  
16 substantially for the purpose of cleaning something up, or  
17 in addition to that do we want a very substantial add-on for  
18 an insurance program. Is that right?

19 Mr. Davis. I am not sure I am the best person to  
20 answer that, but I think from the point of view of your tax  
21 questions on this committee, if I understand your  
22 jurisdiction correctly, you are right on that point.

23 The real issue here is whether you pay just for clean  
24 up, or whether you pay for clean up plus some degree of  
25 compensation for damages.

1           Senator Danforth. If so, how much do we want to load  
2 into the bill.

3           Mr. Davis. How much, and what type of damages.

4           Senator Dole. We also have the jurisdiction to limit  
5 the use of the funds, don't we?

6           Mr. Shapiro. Yes, and that is what Senator Danforth  
7 was getting to. We are all talking about the same thing, I  
8 think.

9           You can determine how much revenue you want to raise,  
10 and what you want those revenues to be used for. If you do  
11 not those revenues to be used for any damages, you just say  
12 that the trust fund can only be used for this certain  
13 specified purpose, which is clean up.

14           This would mean that if there are damages, it would  
15 require an appropriation. It would be general revenues  
16 rather than taxes that are raised for the trust fund. If  
17 you want to limit the scope of the money to be used for  
18 damages, you can put caps on it to limit the purposes. But  
19 you have that determination in this committee.

20           What you have previously done is to limit by the use of  
21 the funds in that trust fund the purposes which would  
22 determine how much revenue you have to raise for those  
23 purposes.

24           Senator Danforth. Could I ask one other question. As  
25 I understand this, we are really estimating what the total

1 cost is going to be. We are imposing a tax to raise a  
2 certain amount of revenues, but we are estimating what the  
3 costs are going to be of clean up. Then there is a second  
4 estimate as to the cost of some damage compensation  
5 program.

6 Senator Moynihan. Could I respond to that, Senator  
7 Danforth?

8 The answer is, yes, this is an estimate. But I think  
9 it is important to be clear that here we are dealing with a  
10 one-time problem, which is that we have these sites, dump  
11 sites around the country. It would be illegal to do most of  
12 that any longer. You could not create those sites.

13 The job of going out and cleaning them up is, to a  
14 degree, a one time problem. The estimates are from EPA, and  
15 they are fantastically vague because they don't know. They  
16 know more than most of us, but they don't know everything.  
17 About two-thirds of this money, \$2.7, would go to clean up  
18 places you know about.

19 In the meantime there is an on-going discharge of  
20 waste, train wrecks and factories go bluey, but that is a  
21 much smaller problem and ought to be a manageable one.

22 You can talk of a five-year program here. In five  
23 years you should have got rid of most of those places tha  
24 would be now illegal.

25 Senator Danforth. Here is my point. It would seem to



1 me that, first of all, we should get on with the business of  
2 cleaning up these waste sites, and not have any Valleys of  
3 the Drum lying around the country. The objective that we  
4 should be pursuing is to get on with that as expeditiously  
5 as possible.

6       What concerns me is that in a time when inflation is  
7 the number one problem, should we, in addition to that, be  
8 creating a very substantial damage compensation program. If  
9 so, how substantial should it be, and how far reaching  
10 should it be.

11       It seems to me that the most reasonable approach would  
12 be to put most of the revenues in the clean up aspect,  
13 rather than in the insurance.

14       Senator Moynihan. May I say, without being an  
15 advocate, that the Stafford-Randolph compromise responds  
16 just to your concern with respect to the original Senate  
17 bill that came out of the Environment and Public Works  
18 Committee, which had a very large and necessarily  
19 indeterminate level of personal liability.

20       Senator Danforth. It is my understanding that the  
21 House bills combined are slightly more for the clean up  
22 functions than the Stafford-Randolph compromise. The total  
23 cost of the Stafford-Randolph compromise is \$1.1 billion  
24 more than the House bills.

25       Senator Moynihan. Because there is personal liability

1 to a degree.

2 Senator Bradley. There is also another difference, and  
3 that is the one that we covered in the hearing that we had  
4 in the Finance Committee on this bill. It is that the House  
5 bills are somewhat limited in the coverage for clean up.  
6 They don't cover clean up of spill en route.

7 Also we heard testimony that day from the chemical  
8 industry on the cost of clean up of particular sites that  
9 were far, far less than the cost of actual clean up of sites  
10 in the State of New Jersey.

11 Therefore, I think, to argue that the \$1.6 billion in  
12 the House bills, really has \$1.5 billion for clean up, and  
13 that is really more than the \$1.4 billion in the Senate, in  
14 the strict sense it is, but I think that it ignores the  
15 broader needs for clean up.

16 Senator Danforth. What if we were to say, look, we are  
17 not in this committee going to define what sorts of things  
18 are going to be cleaned up or where. The basic point is,  
19 roughly how much is going to be spent for clean up.

20 Senator Bradley. It is pretty hard to decide how much  
21 is spent for clean up until you have made an estimate of how  
22 many sites there are, what is the estimated cost for clean  
23 up.

24 Senator Danforth. But we are creating trust funds for  
25 the purpose of clean up. The issue that is before this

1 committee is that approximately \$1.4 or \$1.5, or \$1.7  
2 billion be used for clean up. They are all very close to  
3 each other.

4 Senator Bradley. Let me correct you there, because it  
5 was not \$1.7 in S.1480. It was \$2.7 for clean up. I think  
6 Mr. Davis is in error.

7 The original S.1480 had \$2.7 billion for clean up, and  
8 roughly \$1.4 billion or \$1.5 billion for the liability  
9 portion. To come down from \$2.7 to \$1.4 is a considerable  
10 reduction.

11 Mr. Davis. I need to clarify two things that I may  
12 have been responsible for confusion on.

13 First of all, both of the Senate bills have a number of  
14 items which are related to clean up and in support of clean  
15 up operations, which are not included in the House bills.  
16 The figures I gave you did not include those figures.

17 If you took things like some of the R&D effort to  
18 support clean up operations to advance some of the  
19 technologies involved, some of the expert witnesses, or some  
20 of the assessment cost, which in the field are part of your  
21 whole clean up response, those add about another \$300 or  
22 \$400 million to each of the Senate bills on a five-year  
23 basis. Those are not included in any way in the House  
24 bills. So on that basis, the total clean up funds in the  
25 Senate bill, in a broader sense, are in fact larger than the

1 House bills.

2 The other clarification is that while the amount given  
3 for claims in both of the Senate bills are very close, the  
4 \$1.1 versus the \$.9 on a five-year basis, it is important to  
5 point out that those, in fact, are driven by limitations in  
6 the bill. The bill says, a total of one-third maximum for  
7 claims. Those figures come from that one-third.

8 The uncertainty, however, is much different between the  
9 two figures. The Stafford-Randolph compromise is much  
10 tighter in the types of claims that could be covered. So  
11 the potential, as was discussed earlier, for the real number  
12 being three times, five times, or ten times greater than  
13 this is much less with the Stafford-Randolph compromise  
14 bill.

15 The Chairman. I think that what Senator Danforth has  
16 said is 100 percent relevant. Every concern he has raised  
17 and every suggestion he has made makes good sense.

18 This is what I am concerned about. This is really not  
19 a usual situation for the Finance Committee. We have one  
20 bill in the committee, which would be unconstitutional if we  
21 passed it for the simple reason that it would be a revenue  
22 bill that was initiated by the Senate. So it has to be  
23 added as an amendment to a House passed bill if the Senate  
24 is to consider it at all.

25 Furthermore, there are three other bills. One of them

1 is at the calendar. The other is in the Public Works  
2 Committee. The other is the so-called Stafford-Randolph  
3 compromise. None of these have been referred to us, and we  
4 don't have them. Even what we do have over here, that was  
5 referred to us under some kind of agreement that we would  
6 only act on certain parts of it.

7 Mr. Stern. The actual language reads that it was  
8 referred for consideration of the Finance Committee of  
9 Section V, which is the tax section.

10 The Chairman. Here is what I am thinking. The Public  
11 Works committee has been working on this. Has any other  
12 committee, besides the Public Works Committee, been working  
13 on this?

14 Mr. Stern. I understand that the Commerce Committee  
15 was interested in it, but I don't believe that there has  
16 been any referral.

17 The Chairman. The Committee on Public Works and the  
18 Environment has been working on this. Apparently, the staff  
19 over there, if not the Senators, have been very, very  
20 anxious, and they have gone to great pains to try to see to  
21 it that this committee would not make any suggestions,  
22 except with regard to the tax. It prefers that we not even  
23 make a recommendation on that, as I understand it.

24 My reaction is to accommodate them. Why don't we  
25 report the bill out the way they sent it to us, or else just

1 strike out the tax and say that the bill will have to be for  
2 a House passed bill anyhow, and that there are two House  
3 passed bills out there, either one of which can be  
4 substituted for, which do contain a tax.

5 When they get ready to call it up, we will be ready to  
6 participate on whatever basis our Senators want to  
7 participate. If the bill is being considered out there on  
8 the floor, we could suggest amendments if we want to. In  
9 that case, we would have a privilege we don't have here, and  
10 that is to propose to amend the bill, that is something  
11 besides the tax part of it.

12 If this thing is to become law at all, there are going  
13 to have to be compromises made. I don't believe that we  
14 have the potential within this committee to make the  
15 compromises that will have to be made in order to pass that  
16 bill. We can't compromise with Mr. Randolph and Mr.  
17 Stafford because they are not on this committee, for  
18 example.

19 Senator Moynihan. Mr. Chairman, Senator Bentsen is  
20 here, and I am here, we are from that committee. We are  
21 more than happy to tell you what this new proposal is.

22 Mr. Chairman, the Stafford-Randolph compromise can pass  
23 the Senate. It only remains for us to fill in the blank on  
24 page 62, Title II, reserved for Finance Committee action on  
25 fund establishment and tax structure, and so forth. I think

1 we are capable of doing that this week, and I would hope.  
2 that we would try.

3 I think for us to just send the bill out without any  
4 tax provision would be to indicate that we don't want to  
5 participate.

6 The Chairman. It is all right with me to send it out  
7 either way. It is all right with me to send it out just the  
8 way they sent it to us. It is all right with me to send it  
9 out without the tax in it. We can do it either way.

10 I don't want to get involved in the Stafford-Randolph  
11 compromise beyond that point, because those people have gone  
12 to great pains, and have spent a year insisting that we not  
13 vote on that. I would like to accommodate them. So we just  
14 don't vote on any of that. We can vote as Senators out  
15 there on the floor on it.

16 They have gone to such great pains and worked so hard  
17 to try to keep us from voting on anything other than the tax  
18 that I suggest inside the committee that we not vote on  
19 anything than the tax.

20 Isn't that the basis of the referral?

21 Mr. Stern. Yes, sir. The referral refers to Section  
22 V. Although that section includes a few other things  
23 besides the tax, basically it is only the tax, and the  
24 funding. It does not include the liability sections, or  
25 some of these other things that you have been discussing.

1           The Chairman. Here is what I am concerned about. I  
2 would like to see whatever superfund bill the Senate can  
3 agree to, agreed to. Whatever can be agreed to by the  
4 Senate, I would like to see it passed in the Senate.

5           The clock is running, and frankly there is enough  
6 complexity in this bill that one person who is not  
7 interested in passing the bill could probably defeat it just  
8 by insisting on people explaining everything that is in the  
9 bill, and offer some amendments that make good sense to the  
10 bill.

11          I don't want that to happen. I would like to see the  
12 bill pass. It seems to me that if we want to help pass the  
13 bill, the best thing we can do is to report and get the bill  
14 out of the committee.

15          Senator Moynihan. Mr. Chairman, in hearing you say  
16 that you want to see a bill, it seems to me that if we  
17 report a bill, it has to be done by November 21.

18          Mr. Stern. That is correct.

19          Senator Moynihan. I think that it is a good idea.

20          The Chairman. Does it sound okay to you, Senator  
21 Danforth?

22          Senator Danforth. It shuts off any consideration -- I  
23 mean, for example, we are not going to consider what is  
24 taxed, or the amount of the tax?

25          The Chairman. We can, if you want to. If you want to,



1 we can definitely get into all that.

2 I would hope, though, that in view of the fact that  
3 these people have gone to great pains to try to prevent us  
4 from voting on anything else except this Section V, I hope  
5 that we would accommodate them on that.

6 Senator Danforth. Mr. Chairman, that is fine with me.  
7 I certainly agree with that, but we still have the question  
8 of how big a tax we are going to report out, and exactly  
9 what it covers. That goes to exactly the same substantive  
10 questions that are going to be raised.

11 The Chairman. Let me just submit the problem that  
12 occurs with regard to that.

13 In view of the fact that those people have confined us  
14 to only voting on the tax, we have no basis whatever to  
15 question whether all that is necessary. That being the  
16 case, if we are not going to vote on whether all this other  
17 stuff is necessary --

18 It seems to me that if you try to do everything that  
19 this bill proposes, it cannot possibly pass because it is  
20 too ambitious and it has so many things in it that people  
21 object to. This late in the Congress, it just could not  
22 pass. But we are not in a position to challenge that. We  
23 are not in a position to exercise any judgment on it,  
24 because they have taken pains to see to it that we can't.

25 That being the case, I don't see that we can do

1 anything but just recommend a tax, or report the bill  
2 without recommendation, or recommend no tax.

3       Senator Dole. It seems to me that we have about 11  
4 legislative days. We can consume tomorrow and all day  
5 Thursday, and that will shrink it two more days. If we are  
6 going to have a bill this year, it is going to be ironed  
7 out, I assume, the Majority Leader's office, with members of  
8 this committee, and members of the Public Works Committee.  
9 On that basis, it seems to me that we are not going to  
10 accomplish much in the next few days.

11       I you make the motion to report it out with a  
12 recommendaton, I would certainly support that motion. Then  
13 we can get it to the floor, and start getting into our  
14 little huddles, and see if we can't work out something the  
15 House will take.

16       The Chairman. I think the Senator is right.

17       It seems to me as though there is going to have to be  
18 some kind of a compromise worked out. I don't now whether  
19 it will be the Stafford-Randolph compromise, or whatever  
20 compromise. But somebody is going to have to work out a  
21 compromise if we are going to pass the bill.

22       Senator Bradley. Mr. Chairman, I think we are making  
23 rapid progress here. I think that it is an excellent idea  
24 to report out the bill that was referred to us by the  
25 Environment and Public Works Committee, S.1480 and all of

1 its provisions, and report it out. Then the question of  
2 compromise lies on the floor of the Senate, and among  
3 senators.

4 I think the Finance Committee will have fulfilled its  
5 responsibility. I think in the remaining three or four  
6 days, we could argue, or at least Senator Danforth and I  
7 could argue the whole three or four days on one or two  
8 provisions.

9 The Chairman. Let's understand this. If we do this,  
10 and the bill begins to move, and it looks like it might  
11 become law, I would still be happy to call the committee  
12 together, and talk about whether we should make some  
13 exceptions to these things that are being taxed, and suggest  
14 some amendments to the tax, either on the upside or the  
15 downside.

16 Unless somebody can get together with some kind of  
17 agreement, which we are powerless to do in this committee,  
18 because we have been foreclosed. It seems to me that unless  
19 that can be done, the bill is not going to become law, and  
20 the best cooperation that we can show is to get the bill out  
21 of here.

22 Senator Dole. We will not lose jurisdiction. The  
23 question of whether it is a tax or a fee, it does not make  
24 any difference.

25 If we report it out with a recommendation, do we lose

1 jurisdiction?

2 Mr. Stern. One way you can assure that you would not  
3 have a problem along that line is if you simply struck  
4 Section V. That way, you would certainly make clear that  
5 you have jurisdiction, but you are not prepared to make a  
6 recommendation at this time on what the tax structure should  
7 be.

8 Since the bill as reported by the Public Works  
9 Committee does use the word "fee," and it does not use the  
10 word "taxes," it might make the situation a little clearer  
11 if you struck that title out.

12 Senator Bradley. But if you report the bill out  
13 without Section V, I think you have reported a negative on  
14 S.1480. The intent is not to make a judgment on S.1480. It  
15 is to give the Senate an opportunity to make that judgment  
16 in due time.

17 Due time is pressing in, and any senator who does not  
18 believe that due time is pressing in ought to read this  
19 book, which lists all the toxic waste sites in every state  
20 in this Union, which is not a pleasant thing. I don't think  
21 that anyone wants to postpone this.

22 The Chairman. Time is also pressing with regard to the  
23 number of days left in this session. I would think that if  
24 we just report the bill, and let them go ahead and see what  
25 they can do to work out a compromise. If we think the tax

1 is too big, we can meet while the bill is out there on the  
2 floor. We have done it before.

3 Senator Dole. Make the motion, and I will second.

4 The Chairman. I propose that we just report the bill  
5 without a recommendation.

6 Senator Dole. I second the motion.

7 Mr. Stern. Mr. Chairman, may we say in the committee  
8 report, for some reference to jurisdiction, that  
9 nevertheless the committee does feel that it is a tax  
10 structure and not a fee structure.

11 Senator Bradley. Mr. Chairman, why don't we change in  
12 Section V, everywhere it says fee, put tax.

13 Mr. Stern. Then you are really approving a tax.

14 Senator Moynihan. Mr. Chairman, when this bill comes  
15 up, I am confident that Senators Stafford and Randolph will  
16 move to substitute their bill. So we will be there.

17 Senator Dole. If they don't, we will not move the  
18 bill.

19 The Chairman. I don't believe we are going to have any  
20 difficulty about whether or not we have jurisdiction over  
21 the tax bill, or a revenue.

22 Mr. Stern. Mr. Chairman, at the moment there is no tax  
23 section in the Stafford-Randolph compromise. The draft that  
24 I was given simply has a blank page at that section.

25 Senator Moynihan. There will just to be an amendment,

1 and Senators Dole and Long will offer it.

2 The Chairman. If they can get the bill in such shape  
3 that it will have the prospect of passing the Senate, there  
4 will have to be some compromises made, and there will have  
5 to be some agreement between the majority side and the  
6 minority side. I would think that both the Majority Leader  
7 and the Minority Leader would get involved to bring that  
8 about.

9 If they can work something out that looks like it has a  
10 chance of passing, we can look at it. I am sure that we  
11 will be consulted. We have the right to insist on being  
12 consulted. I am sure both sides will consult us on that.  
13 If we want to suggest modifying the tax then, we can.

14 Otherwise, it seems to me that we are just left in the  
15 position of talking about drafting a tax, and we don't know  
16 where you are going to need a tax of \$4 billion or \$1  
17 billion.

18 Senator Bentsen. Mr. Chairman, I am a member of that  
19 other committee, and I have expressed my very deep concerns  
20 over the liability provisions, and the way they were  
21 drafted. But because, also, I share the view of Bill  
22 Bradley and others that we have to take some action, and  
23 that we do have a very pressing danger out there, I voted to  
24 report it out.

25 But at some point, these concerns of mine, and some of

1 the other members, are going to have to be addressed. In  
2 the meantime, I will have a chance to study what Stafford  
3 and Randolph have proposed, and we will meet that situation  
4 on the floor. Perhaps they have taken care of the problem.

5 But I do share each of your concern that we do take  
6 some action, and that we allow this committee not to be the  
7 one that blocks the legislation. But that we move on and  
8 try then to accommodate a compromise that will resolve these  
9 concerns.

10 I will vote with you to report it out.

11 Mr. Stern. Mr. Chairman, would it be all right if the  
12 report simply has the obligatory paragraph about not making  
13 any recommendation in ordering the reported, and not have  
14 the usual description and everything.

15 The Chairman. Another thought occurs to me. The  
16 minute we put a committee report out there, that is subject  
17 to the three day rule, isn't it?

18 Mr. Stern. Yes, sir.

19 The Chairman. So anybody can object to it coming out  
20 during the next three days, any single senator. But if we  
21 don't file a committee report, they can't do that.

22 Mr. Stern. If you want, you can simply let the time  
23 run out, and the committee will be discharged at the end of  
24 Friday.

25 The Chairman. I would rather report. At least, we

1 will save them a couple of days if we just report the bill  
2 out.

3 Mr. Stern. Certainly.

4 Senator Bentsen. Mr. Chairman, I just want to be on  
5 record that if it is S.1480 in its present form, I will be  
6 opposing it on the floor. But I hope that we can arrive at  
7 an appropriate compromise.

8 The Chairman. I would suggest that we just report the  
9 bill, and that we issue a statement on behalf of the  
10 committee, not a report, just issue a statement, that if this  
11 bill is to become law there will have to be compromises  
12 made, and that we don't have the power to compromise inside this  
13 committee.

14 When those compromises are made, and the bill is before  
15 the Senate, then we can have some indicate as to how much  
16 money will be necessary, we will then consider suggesting an  
17 amendment to finance it with a tax. But until that time, we  
18 don't know how much tax we are going to need.

19 Let them work out their compromise.

20 Senator Moynihan. Can this committee suggest its  
21 support for this legislation.

22 The Chairman. I think we should issue a statement  
23 saying that this committee agrees that the subject matter of  
24 this legislation should be decided by this Congress and by  
25 this Senate. We would hope that the Senate can act on it



1 during the days remaining. That we were limited by the  
2 terms of the referral, so that we could not suggest how big  
3 or how little the scope of the bill should be.

4 That being the case, we are in no position to know how  
5 much tax will be needed, or how much tax will not be  
6 needed. Under those circumstances, we just report the bill,  
7 and when we have a better indication of how much tax will be  
8 needed, we reserve the right to make a recommendation.

9 That way, if you make it as a statement, not a  
10 committee report, but just a statement to the press through  
11 a press release, or however.

12 We just report it out, and they can go ahead and do  
13 whatever they want with it, but they are going to have to  
14 make some compromises.

15 Senator Bradley. The official action is reporting the  
16 bill without recommendation.

17 The Chairman. Yes.

18 Senator Dole. We have not voted on that yet.

19 Senator Bradley. Reporting the bill without a  
20 recommendation, and then a statement.

21 Mr. Stern. That is correct.

22 Senator Bradley. So it is reporting the bill without  
23 recommending, and not attaching a long statement of  
24 intentions along with it.

25 The Chairman. No. I support the bill.

1 All in favor say aye.  
2 (Chorus of ayes.)  
3 The Chairman. Opposed no.  
4 The ayes have it.  
5 Senator Dole. Mr. Chairman, we are going to meet  
6 tomorrow to discuss some non-controversial bills that we  
7 ought to take care of this session?  
8 The Chairman. We are planning to, aren't we.  
9 Mr. Shapiro. Yes. We were planning to bring back  
10 those, and you also had bankruptcy which was left open as  
11 well.  
12 Senator Dole. That will be tomorrow?  
13 Mr. Shapiro. Yes, sir.  
14 The Chairman. Good.  
15 Thank you, gentlemen.  
16 (Whereupon, at 12:05 p.m., the committee adjourned, to  
17 reconvene at 10:00 a.m., Wednesday, November 19, 1980.)  
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