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PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

HOUSE OF REPRESENTATIVES—*Thursday, February 27, 1986*

The House met at 11 a.m.

The Reverend C. Albert Henson, Zion Baptist Church, Compton, CA, offered the following prayer:

O God, our God, how excellent is Thy name in all the Earth. In a spirit of reverence and devotion, and in the morning tide of this day, we approach Your divine throne. We are grateful unto Thee that You have left an "open door" that we may seek strength for the daily tasks that are encumbered upon us.

We beseech Your divine blessings upon those who guide the governmental destiny of this Nation. Grant guidance to the President of our Nation, and those who serve within these hallowed walls. For the problems and perplexities of these days, given to our leaders the assurance of Your divine companionship.

For those who need physical blessings, may they have the consolation that You will supply all our needs according to Your riches in glory.

O Thou, the Maker and Lord of Life and Light, keep us as we pass from Earth's dull gleam, into the haven of our dreams. In the name of the Father, Son, and Holy Spirit we pray.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

THE REVEREND C. ALBERT HENSON

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DYMALLY. Mr. Speaker, I rise to thank Dr. C. Albert Henson for the humble and encouraging opening prayer he offered. I trust these words will serve us with guidance in our efforts to achieve peace throughout this land and this world.

Dr. Henson is the pastor of the Zion Baptist Church in Compton, CA. I am proud to say that he is the first guest minister to the House Chamber from the 31st Congressional District of California.

Dr. Henson has been serving his congregation for 23 years. This is an amazing record when compared to the years that most of us have served our own constituency. His educational and service record are similarly remarkable. He holds a doctor of laws and literature, doctor of divinity and a 17-year certificate in ministers institute, Bishop College, Dallas, TX. His pastoral mission traveled throughout the country and around the world. He is noted for his participation in the civil rights movement, and his perpetual contributions to the greater Los Angeles community.

Dr. Henson is joined in his visit to the Capitol by his wife Helen and daughter Helen Marie.

Mr. Speaker, I call on the Members of this body to join me in commending the achievements of Dr. Henson in his profession and leadership in our communities.

LIMITING THE PLANTING OF SPECIALTY CROPS

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, today I cosponsored legislation that I hope the Congress will act quickly on. H.R. 4079 would amend the recently passed farm bill to relieve a situation that is threatening the livelihood of the potato and vegetable farmer.

In the past, to qualify for Federal payments, farmers who grow such crops as wheat, corn, rice, or cotton had to agree to leave part of their land fallow. Through a loophole in the current farm bill, however, these farmers would be free to plant their "'idled" land with crops not covered under present commodity programs. Farmers of these unsubsidized crops like potatoes and vegetables rightly fear the flooding of their market.

Wisconsin ranks fifth nationally in the production of potatoes. In 1985, the State produced 24.5 million hundredweight from 63,500 acres—a record production. Some of the best potatoes in the world are produced in my own district, around Antigo, WI. These farmers have never come to the Government for assistance. Instead they have met the market need by keeping supply in line with demand. They are a shining example of what can be achieved in agriculture with no Government interference.

Now the farm bill drags them into the Government arena, however subtly, against their will. It encourages farmers who participate in Government programs to grow specialty crops on their retired acreage. The potato growers see a future of gluts and price wars, pitting nonprogram farmers against program farmers. Quite frankly, this loophole would ruin the specialty crop market and probably force large-scale Government intrusion into the industry.

I am pleased that the Agriculture Committee has recognized the need to take prompt action. H.R. 4079 would limit the planting of specialty crops. This bill has received swift attention by both the subcommittee and full committee. I urge passage by the House.

There's an old saying that, "If it ain't broke, don't fix it." The potato market has run without Government interference in the past. There is absolutely no reason to start interfering now.

DON'T PUNISH NEW ENGLAND WITH A NEW TAX ON IMPORTED OIL

(Mr. ST GERMAIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Speaker, during the era of the energy crisis, the State of Rhode Island and the entire

New England region carried an enormous and inordinate burden.

Family budgets were wrecked just to keep homes heated and all too many had to do without adequate heating. Our region paid an enormous price during the height of the crisis.

Now, we have some who are suggesting that a tax be placed on imported oil just as prices are coming down and we are beginning to get relief in New England. When Federal Reserve Chairman Paul Volcker was before the Banking Committee last week, I asked him about the issue and I am happy to report he was distinctly cool to the idea.

"As a revenue-raising measure, I don't think it's all that effective," Chairman Volcker told the committee.

Not only is it an ineffective means of raising revenue, but it would be patently unfair to the citizens of Rhode Island and New England.

As I told Chairman Volcker, "The people of Rhode Island have earned relief."

Mr. Speaker, I sincerely hope that the idea of a new tax on imported oil is quickly dropped. It's a bad idea whose time I hope will never come.

MILITARY REFORM AND DEFENSE REORGANIZATION

(Mr. COURTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COURTER. Mr. Speaker, all of us in Congress are concerned about military reform and defense reorganization, but most of the solutions to date have been addressed to small aspects of the problem, rather than to the true structural causes.

I have introduced two bills, H.R. 4068 and House Resolution 365, which represent an effort toward true structural reforms. H.R. 4068 eliminates the Defense Logistics Agency and the Defense Contract Audit Agency, two defense bureaucracies, headed by career personnel, which are not truly accountable to political control and are responsible for many of our defense procurement outrages. The functions of these two agencies would be returned to the military services, and the ranks of the Pentagon bureaucracy will be reduced by 50,000 personnel. The result should be a streamlined and fully accountable defense procurement apparatus.

House Resolution 365 is directed toward the Congress and its unfortunate tendency to micromanage the Defense Department. Too much oversight by the Congress can be undesirable, as strange as that may seem to many of us. Congress often reduces defense procurement programs to uneconomical production rates, stretches out certain programs, and generates hundreds of thousands of inquiries to the Pentagon. The Defense Department now reports to 40 committees and subcommittees in the Congress, and there is simply no need for this situation to continue and perhaps worsen. House Resolution 365 changes the House rules to restrict Pentagon oversight to the House Armed Services and Budget Committees, and attempts to speed up the defense appropriations process bymaking the Armed Services Committee responsible for both authorizations and appropriations for the Pentagon.

I realize that these are stern measures, but the times we live in demand that both the Pentagon and the Congress slim down and tighten up their operations in preparation for meeting the challenges of the next century.

DON'T SWALLOW REAGAN DEFENSE BUDGET HOOK, LINE AND TRIDENT

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I applaud my colleagues for resoundingly approving a resolution urging the President to resume negotiations with the Soviets on a comprehensive nuclear test ban treaty. On the same day, President Reagan appealed to the American people in one of his television sermons to embrace and rally behind his request for increased military spending, on the same day.

Even if one swallows hook, line, and Trident the Reagan sermon on the national security need for increased defense spending to meet the Soviet threat, the administration still ought to be able to reform, terminate, or cut those DOD activities least useful to defending America in order to provide more money for those programs most useful to defending America.

Yet, while President Reagan proposed 64 major policy initiatives to cut Federal spending, none of those were for the Department of Defense. One would have thought the OMB tightwads could have located at least one DOD program worthy of reform, termination, or cutting.

Even Peter Grace, leader of the effort, told my task force on the Grace Commission recommendations, that the Department of Defense has been the least cooperative of all the agencies where the commission made recommendations to cut waste, fraud, and abuse.

I would like to remind President Reagan that the central idea behind a budget is to list priorities and to institute discipline. This is a defense budget with no priorities and no discipline. It's like a child loose in a pastry shop, It's a Twinkie defense.

Representative RON DELLUMS and I will be introducing an alternative defense budget that set forth the priorities and discipline that our country needs for a safe and secure America.

□ 1235

THE SOVIETIZATION OF THE AMERICAN CURRENCY

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, the sovietization of the American currency, unless reversed soon, might pave the way to the sovietization of all American institutions, including pluralistic elections and the free press. To be sure, there were floating currencies even before Lenin's government appeared on the scene, but all of them were striving hard to qualify for the gold standard. The Paris Commune of 1871 took great pains to instruct the Bank of France to meet its gold obligations punctiliously. Lenin was the first man in history who boldly and without hesitation sovietized the currency—that is, vested the right of issue in the government, and abolished any prospect of future redemption. There was no doubt in Lenin's mind that the success for sovietizing other institutions such as the electoral process, the trade union movement, the universities, the press, and so forth, depended entirely on the prior sovietization of the currency.

It is a dubious distinction, to put it mildly, that our currency system today is patterned on Lenin's design, the Soviet ruble. We have come a long way, demonstrated by the fact that the fundamental method of Soviet statecraft, the irredeemable currency, is openly advocated in our press and at our universities, often unchallenged.

Mr. Speaker, let us remember the words of John Maynard Keynes:

> Lenin is said to have declared that the best way to destroy the capitalist system was to debauch the currency. By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens. By this method they not only confiscate, but they confiscate arbitrarily; and, while the process impoverishes many, it enriches some. The sight of this arbitrary arrangement of riches strikes not only at security, but at confidence in the equity of distribution of wealth.
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> Lenin was certainly right. There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose.
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> In the latter stages of the war, all other governments practised, from necessity or incompetence, what the Bolshevists have done from design. Even now, when the war is over, most of them continue out of weakness the same malpractice. (Economic Consequences of the Peace, New York 1920, pp. 235-236.)

THE EMERGENCY FARM BILL

(Mr. DASCHLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DASCHLE. Mr. Speaker, the situation in farm country gets progressively worse. The stories of the economic and personal woe are all too familiar and all too numerous now. The unanimous plea by farmers across this land, especially in the upper Midwest is, simply, they have to have a better price.

Unfortunately, I am convinced more than ever that the current farm legislation does not provide that better price. So today, many of us try again. Many of us who feel that unless we make some change in current farm legislation, many of those in farm country today are going to be doomed to ultimate failure and a complete loss of their family farms.

So today we introduce the emergency farm bill, a bill designed to do two things: First, to provide that better price; second, to provide credit necessary for many of them to get in the field.

Unless we make the effort, unless we provide a better price, unless we provide that credit, most farmers simply do not have a chance; and for many of us, that is unacceptable.

SHOCKING NEW STUDY REVEALS "SNOB COUNTIES IN AMERICA"

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, most people have read—and reacted to—the Harvard University "Hunger in America" study. The folks at Harvard plugged numbers in a computer and identified the top 150 "hunger" counties in the country.

What most people don't know is that the University of Montana-Rygate (located in Golden Valley County, supposedly the third "hungriest" county in America) has just announced its own shocking new study on "Snobbery in America."

This remarkable new study identifies the top 150 "snob" counties in America. The Rygate researchers reached their dramatic conclusions by multiplying MBA degrees by the number of county BMW automobiles, adding the in-county cases of mineral water, divided by the number of Perrier and health clubs. Reportedly heading the list of "snob" counties was Middlesex County in Massachusetts, home of fabled Harvard University itself.

Director of the controversial Rygate study, Dr. Lars Olson, said this about his study's shocking conclusions: "I'm not saying our study is perfect, but I am saying us folks in Montana can recognize snobbery a lot easier apparently than the people of Harvard can recognize hunger." If I needed help, I would much prefer depending on the help of the people of Golden Valley than begging outside the gates of Harvard.

FOREIGN AGENTS COMPULSORY ETHICS IN TRADE ACT

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, America is finally waking up to the new hired guns in Washington—former high-level Government officials who use their prestige, access, and expertise, gained at taxpayer expense, to lobby the interests of foreign governments and foreign corporations looking for special favors in Washington. And they make big money doing so—on average, $300,000 per contract.

When the American people take a good look at the lineup of former top officials being bought out by foreign interests, they're going to start asking some tough questions. Why is it so hard to get Washington to move on foreign imports pouring onto our shores? Who is calling the shots on U.S. trade, economic, defense, and foreign policies? Is it the former officials turned lobbyists, or the current officials just waiting to get on board the gravy train? Either way, the American people are being sold out.

This is why HOWARD WOLPE and I introduced last fall, H.R. 3733, the Foreign Agents Compulsory Ethics in Trade Act. We call it "Face It!" Mr. Speaker, when foreigners have greater access to administration decisionmakers than the American people do; it's time to face it. The integrity of our national institutions is at stake. America is not for sale!

UNITED STATES SUPPORT FOR PAKISTAN

(Mr. McCOLLUM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, I would like to take this opportunity to voice praise for President Zia of Pakistan, his Ambassador to the United States, Ejaz Azim, and the Pakistani Foreign Minister, Yaqub Khan, for the good will and friendship they have shown toward the United States.

The Islamic Republic of Pakistan has been forced to walk a foreign policy tightrope as a result of the increasing instability of its southwestern Asia neighbors, Afghanistan and Iran. The Soviet Union continues to exert an extreme amount of pressure on Pakistan by its illegal occupation of the country of Afghanistan. The flight of 3 million Afghan refugees, a full one-fifth of that country's population, to safety within Pakistani borders has created a tremendous burden on Pakistan's people and their economy. Yet, over 300 refugee camps are well-maintained and administered to the credit of the Pakistani Government.

The ongoing Iran-Iraq conflict is a constant threat to the fragile stability of the entire region. Soviet interests in escalating this conflict also requires the constant attention and resources of President Zia's government.

Pakistan continues to balance these tremendously important foreign policy concerns with their domestic programs in a truly remarkable and productive manner. Economic growth, drug eradication programs, and great improvements in the quality of life for the Pakistani people provide strong evidence of the progress the Zia government has achieved.

The United States is fortunate to have Pakistan as an ally and friend and we should continue to strive to improve this already solid relationship for our mutual benefit.

ADMINISTRATION'S BUDGET GUTS AGRICULTURAL COOPERATIVE EXTENSION SERVICES AND 4-H CLUBS

(Mr. McCLOSKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCLOSKEY. Mr. Speaker, not only has the administration's half-hearted implementation of the farm bill continued to reap uncertainty for so many of our Nation's farmers, the President's budget now seeks to gut local programs vital to continuing agricultural education. The 4-H Clubs and Agricultural Cooperative Extension Services of the Eighth District, Indiana, and the Nation are not the cause of the deficit. Yet the administration appears to believe that they are.

The 60-percent cut which the President's budget seeks to inflict on these important activities will only undo the good which these programs provide in educating future farmers, continuing education for present farm families, and important research and financial counseling services. It is almost as if the administration is consciously seeking to make agriculture obsolete by virtually banning Federal support for extension services activities. And these services are absolutely vital to farm families.

Let me take a moment to quickly summarize what Congress will be supporting by rejecting the administration's budget proposals in this area. Specifically, we will be bolstering the partnership of the Federal-State-county cooperative approach to educa-

tion about farm problems. This includes targeted education programs to help farm families under stress resolve farm and family management problems. We will be supporting development of new techniques and training to make sure that only appropriate amounts of pesticide are used on our farmland. Such techniques and training are sensitive to environmental concerns. Likewise, Extension Service soil and water conservation research will augment the congressionally drafted soil conservation plan being implemented as part of the farm bill. President Roosevelt once said that "a nation which destroys its soil destroys itself." Truly, destroying our Extension Services is tantamount to destroying an important part of our conservation effort.

Still more precious is our Nation's children whose ability to learn is a function of their nutrition. Slashing Extension Service funding reduces the ability to inform and educate about the importance of proper diet for the young and elderly. For Indiana, especially, staffing of the Nutrition Education Program [EFNEP] would be severely cut back.

In addition to these concerns, the administration's ill-conceived budget-cutting strikes at the heart of the Nation's 4-H Program so vital and popular in those rural school districts which those of us in the Indiana delegation represent.

This list of worthwhile activities might suggest to some a multibillion effort akin to making nuclear weapons impotent and obsolete. Certainly the return on our investment reflects such a value. This is because Cooperative Extension relies, and has relied, on the good works of people helping people. What we are talking about for Indiana is a $5.5 million restoration of funds just to maintain 1985 levels. I would support additional funding because we can afford it as we rework the administration's budget priorities. Certainly, we can find some room for restoration of these funds out of the $33 billion increase the administration is seeking in defense spending. I urge my colleagues to support adequate funding levels for the Cooperative Extension Service when this legislation comes before us for funding this important program.

□ 1120

NATIONAL BARRIER AWARENESS DAY

(Mrs. VUCANOVICH asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. VUCANOVICH. Mr. Speaker, today I am pleased to introduce a bill designating May 7, 1986, as National Barrier Awareness Day. I am also pleased to say that already, within a very few days, 44 of my colleagues have joined as cosponsors of this bill.

National Barrier Awareness Day is a nationwide event designed to increase the public's awareness of the social, cultural, physical, architectural, and attitudinal barriers that exist today for people with disabilities. It is important to note that four out of five Americans will be faced with one type of disability or another in their lifetimes. Already some 36 million Americans live their lives with some form of disability.

Recognition of this cause has been extensive. Not only has the American Association for the Advancement of Science, American Cancer Society, American Heart Association, American Foundation for the Blind, Muscular Dystrophy Association, Spina Bifida Foundation, United Cerebral Palsy, American Lung Association, Cystic Fibrosis Foundation, Multiple Sclerosis, National Association for the Deaf/Blind, American Diabetes Foundation, Juvenile Diabetes, Little People, the Arthritis Foundation, Lupus Foundation, Easter Seals, Epilepsy Foundation, National Amputation Foundation, National Association for Deaf Children, National Association for Visually Handicapped, National Head Injury Foundation, National Kidney Foundation, Tourette's Foundation, and the United Way lent their support, but as of this date 38 States have become involved with National Barrier Awareness Day.

In accord with the theme of National Barrier Awareness Day, many individuals will actually assume a disability to truly appreciate the barriers the disabled face in their everyday lives.

I am sure you will agree that this is a worthy cause, and I would urge your cosponsorship.

THE MAJORITY LEADER RESPONDS TO THE PRESIDENT

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, last night President Reagan gave us all an extraordinary opportunity to escape from reality and indulge in a fantasy, which sounded more like a sequel to the movie "Star Wars" than plans for a responsible national defense.

The President talked about his proposals for massive new Pentagon spending, yet he never mentioned how he wants America to pay for those increases or the threat that his unlimited borrow-and-spend policies pose to future generations.

He talked about war with the Soviet Union as if winning that war is a simple matter of one side outspending the other.

He talked about Third World conflicts around the globe as if the struggle for freedom had boiled down to whether their terrorists are better than our terrorists.

Mr. Speaker, responding to the President's address, our majority leader spoke eloquently for all Americans when he affirmed support for our national defense while pleading with the President for realism and common sense in Pentagon spending. I submit for the RECORD the remarks of our distinguished majority leader for further considerations by all concerned citizens:

HOUSE MAJORITY LEADER JIM WRIGHT—DEMOCRATIC RESPONSE TO THE PRESIDENT, FEBRUARY 26, 1986

Hello.

As House Majority Leader, I have been asked to give a Congressional perspective on our national defense, and freedom in our hemisphere, and how to make all this fit into our national budget. There are some facts we all need to know.

In a broader sense, what I have to say will not be partisan. Democrats have supported a strong defense and always will. There are times when only the President can speak for us all in the council's of the world—and when he does we want him to succeed.

We have cheered him on as he went to the summit with Mr. Gorbachev. We have supported his position in the Philippines. We oppose military dictatorship and the suppression of political liberties anywhere in our hemisphere, whether it be in Nicaragua or Chile.

In supporting the success and survival of freedom, there are no Democrats and no Republicans—just Americans.

We do have some very fundamental differences over spending priorities and the amount of debt we are willing to place upon the backs of our children.

We think the deficits themselves pose a danger to our national security.

We know that it adds to the debt to double military spending and cut taxes at the same time.

We believe that even the Pentagon should be held to strict standards of accountability in spending taxpayers' money.

And we believe that true national security depends on a lot of things in addition to military weapons.

Let's consider just how much we have already spent on defense. In the past five years, bipartisan majorities in Congress have doubled the rate of military spending—from $146 billion in 1980 to $292 billion this year.

This is the most massive military spending buildup the nation has ever undertaken in peacetime.

Unfortunately force-feeding sometimes results in waste. We're spending twice as much on missiles and getting only 16 percent more missiles for example.

But today the United States and the Soviet Union together have 60,000 nuclear warheads with a total destructive capacity more than one million times that of the bomb that destroyed Hiroshima. We have enough weapons to destroy each other eight or ten times over.

If Congress were simply to rubber stamp the President's entire Pentagon budget, we'd be spending almost four times as much on the military by the end of this decade as

the nation spent during the height of the Vietnam War.

Frankly, it just simply isn't possible to do this and rule out any new revenues and balance the budget. Republican leaders know that.

Let's look at what's happening here at home.

While borrowing to finance this unprecedented buildup in arms, the administration demands that we reduce our investment in education, cut Medicare and Medicaid, cut job training for displaced workers, reduce clean air and clean water programs, law enforcement retirement benefits, the G.I. Bill of Rights for Vietnam Veterans and the whole gamut of domestic government on which people depend.

Congress has cut discretionary domestic spending by 34 percent. But in spite of that, the deficit soars out of control.

Look, here is the staggering fact: In the short five years of this administration, as much has been added to the national debt as our ancestors added in the entire 192 years of our previous history—from George Washington though Jimmy Carter.

It doesn't have to be that way.

President Truman conducted the entire Korean War without adding to the national debt. We paid as we went. Even during the costly Vietnam War we did not pile up massive debts for our children to pay. Why must we do it in peacetime.

The American people are willing to pay for the necessary level of defense. But they do not want to pay for more defense than we get. The celebrated cases of the $400 hammers and the $7,600 coffee pots are atypical, thank God! But there shouldn't be any glaring waste.

The American people know, too, that real national security depends on certain other things equally as important to the country's future as armaments and weapons.

It depends first of all on education—the brain power of our citizenry.

Three years ago, the President's Commission on Education reported on what it called a Nation at Risk. It said "If an unfriendly foreign power had attempted to impose on America the mediocre education performance that exists today, we might well have viewed it as an act of war."

And yet, three years later, the President's budget asks that we zero out the G.I. Bill for our Vietnam veterans, and that we cut student loans and work-study grants which make it possible for young Americans of modest means to get an education. We think that is a misplaced priority.

Last year, Japan with only half our population graduated half again more scientists and engineers than we did. And people wonder why we're losing out in trade.

Most certainly our relations with the other nations of this hemisphere constitute an indispensible element in our national security.

We worry about Communism, but we don't seem to worry about the conditions that breed Communism.

Oh, surely, we are big enough and powerful enough that we could physically overthrow the government in Managua, or the one in Havana, if that should be necessary.

It would cost a lot more than $100 million and a precious lot of bloodshed but we could do it.

Yes, but what then? The problems of Latin America would still be with us—problems of illiteracy, and malnutrition, and disease, the problems of joblessness and a bondage of debt that amounts almost to servitude and a growing sense of hopeless disillusionment with society.

This is the stuff of which Castros and Ortegas are made.

In the last century, patriots like Bolivar and San Martin patterned their popular people's movements after us. We were the inspiration and the example, and we have a residue of good will if we'll build upon it.

Throughout Latin America, plain people cherish the memory of three American presidents:

Abraham Lincoln who freed the slaves;

Franklin Delano Roosevelt who withdrew U.S. Troops from Latin America and declared a "Good Neighbor Policy;" and

John F. Kennedy who inspired hopes of economic betterment for the average people through his short-lived Alliance for Progress.

If we would reap the respect of our neighbors to the south, we'll have to cultivate a sustained interest in them and their very real problems, not just that of a fire engine which rushes in to put out a fire and departs as swiftly to ignore the combustibles that lie everywhere upon the tattered landscape of a civilization cruelly battered by a history of neglect.

They have a saying South of the border: La mejor manera de consequir una amistad es ser amigable. The way to have a friend is to be a friend.

In seeking a policy for Latin America and by extension the rest of the world, that may be the best place to start.

REBUTTAL TO THE RESPONSE OF THE MAJORITY LEADER

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, we are going to be very interested in having those remarks that the gentleman just referred to in the RECORD because speaking of fantasy, the fantasy that Mr. WRIGHT engaged in last night was one that the American people should be aware of. Mr. WRIGHT for instance suggested we are going to have $150 billion increase in defense between 1980 and 1985. He is right. That is exactly what we did have.

What he did not bother to tell the American people was that in that same period of time total domestic spending has gone up by $191 billion. He called that a 34-percent decrease. In fact if he just talked of social welfare spending that went up by $135.4 billion. He called that a 34-percent decrease. He was only 76 percent wrong. I think we ought to have that in the CONGRESSIONAL RECORD. We ought to find out just how phony some of the budgeting is we do around here. He also said in that speech last night no one is talking about real defense cuts, no one is talking about cutting defense. Well, this year we are going to end up spending less for defense than we spent last year. Who did that? Gremlins? Is that happening without the majority leader knowing about it? I would hope the majority leader would at least go back and take a look at the figures and understand that someone, someone, and I suspect it may have been the leftwing of his party, decided we could afford a real cut in defense and we are having one this year.

IT IS TIME TO FACE IT—FOREIGN AGENTS COMPULSORY ETHICS IN TRADE ACT

(Mr. WOLPE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLPE. Mr. Speaker, at a time when our Nation is struggling with a whole range of trade problems that demand our immediate attention, the intense lobbying of foreign governments and foreign corporations is a growing obstacle to the development of responsible U.S. trade policy. What is most deeply troubling is that many of those being hired as agents for these foreign interests are former top-level U.S. Government officials who designed and once administered our Nation's trade, economic, defense, and foreign policies. People who have had the privilege to serve at the very highest levels of our Government have chosen to use the insiders' knowledge, the special status, the access that they have acquired in office on behalf of foreign interests. In effect the American Government has become a finishing school for top-dollar lobbyists for foreign corporations and foreign interests.

I believe that the American people expect and deserve better than this. It is simply wrong that former top-level officials should be for sale to the highest foreign bidder. That is why I have introduced with Representative MARCY KAPTUR the Foreign Agents Compulsory Ethics in Trade Act.

Our legislation has one objective, a simple objective: to close this revolving door. We invite our colleagues to join as cosponsors. It is certainly not too much to ask that those who have had the honor to serve in the highest offices of our Government should put the interests of America and the integrity of our policymaking process first.

B. OGLESBY IS LEAVING

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker and Members of the House, this morning during the joint leadership meeting with the President, the President announced that our good friend, M.B. Oglesby, universally known as B. Oglesby, will be leaving the White House where he has served as Assistant to the President for Legislative Affairs.

Knowledgeable, affable, well-versed in the intricacies of the legislative

process, B. is possessed with a sense of fairness and I might say a great sense of humor which have endeared him to both sides of the aisle. B. has been the consummate legislative liaison, someone who knows the issues, knows the difficulties, knows the legislative personalities, obviously close to the President, knows what he wants and I think most important of all he was an excellent nose counter and could count those votes when it really was necessary.

I have known B. for many years before he ever came to the White House staff. Previously he served as Deputy Assistant to the President for Legislative Affairs and as minority staff associate for the House Energy and Commerce Committee dealing principally with railroad, environmental, and commerce-related legislation.

He also served as deputy and acting director of the State of Illinois Washington Office and as executive assistant to Congressman EDWARD MADIGAN, our colleague from Illinois. Prior to coming to Washington he served in the Illinois State government as an assistant to Gov. Richard Ogilvie and as executive assistant to the Speaker of the House. B. also spent 3½ years in management positions with the Illinois Bell Telephone Co.

So as you can see, B. has had a career that placed him at the center of political decisionmaking for many years. We hate to lose that kind of experience, especially where it is allied with a love of the political process and that indefinable but absolutely necessary feel for issues and the people, and the Members of both Houses of the Congress. B. Oglesby has served his party and his Nation superbly and I am sure I am joined by Members on both sides of the aisle when I say: We are going to miss you, B. Good luck to you in your new career.

NICARAGUA'S NEIGHBORS OPPOSE MILITARY AID TO THE CONTRAS

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Mr. Speaker, the President says we should vote $100 million for the Contras to protect Nicaragua's neighbors. Let's look at what those neighbors say.

The President of Costa Rica, Mr. Monge, just normalized relations with Nicaragua. He thinks their differences can and should be settled peacefully. His successor, President-elect Arias, is against U.S. aid to the Contras. He doesn't think a paramilitary force on his border with Nicaragua helps out Costa Rica. He says, if we're going to spend this kind of money down there, it should be for economic aid to the region, not subsidies for the Contras. As for Honduras, the administration has trouble even getting supplies through to the Contras there because of official Honduran opposition.

President Reagan says Contra aid will help the Contadora process. Let's ask the Contadora countries about that one. The eight Contadora foreign ministers all pleaded with administration not to ask for more Contra aid. They are clear on this—a vote for the Contras is a vote against Contadora.

This administration's request for Contra money is not just illegal, not just unwise, and not just counterproductive. It is also unbelievably arrogant. Latin America doesn't want and doesn't need this kind of "help." Let's pull the plug on the Contra war now.

COMMUNISTS IN THE GUISE OF NEWSMEN

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, last night the President spoke to us about defense. I love our free and open system where our distinguished majority leader follows the President on television to make a strong case for his side contradicting most of the President's defense arguments. I appreciate the networks' making available the time for that message from the loyal opposition, who just happen to control this distinguished body making my side the loyal opposition here. During my first 4 years in Congress, when my good friends on the other side of the aisle also controlled the White House, that we Republicans had the opportunity to give the American people a different viewpoint after a President Carter national address.

However, on the ABC network at the end of Mr. WRIGHT's interesting remarks to America came host, Mr. Brinkley, who I have always held in high esteem and still do. But, for shame, David. You said, in introducing Vladimir Posner, a paid Communist propaganda expert, the following, and this is almost your verbatim introduction. Before I give Mr. Brinkley's introduction of Posner let me observe there were some fascinating statements on the majority side of the aisle this morning about people and firms lobbying in our country for foreign powers and drawing exorbitant sums of money for their efforts. What is the largest lobbying operation in the free world, my colleages? It is the Soviet Union disinformation operation, and their agents are afforded the cover of being called newsmen. And Vlad Posner is one of their very best disinformation specialists.

Now, Mr. Brinkley—David—I say shame on you because this is just about what you said when you introduced the top Soviet-paid television propagandist last night:

Coming up next is Mr. Vladimir Posner. He spent his younger years here in the United States and now works for Radio Moscow.

Mr. Posner, thank you for coming in to talk with us. Tell me your reactions to Mr. Reagan's talk.

Then this little flunkie, Vladdie, comes on by satellite from Moscow, sits there and calls our President a liar, saying he "did not tell the truth," and then uses the word "dishonest" against our President. It's outrageous.

Now, Mr. Speaker, I ask you, how long are we going to tolerate our networks putting on, improperly identified, agents of a foreign power like Josef Adamov, Vladimir Posner, Alexander Polodin, and the kingpin of propagandist of them all, Georgi Abartov. How can the networks call these people "newsmen" or "scholars" as in Abartov's case. "There is no news in Isvestia and there is no truth in Pravda." That's a common irony whispered in the streets of Moscow. I am tired of having my Government, and both of our political party leaders, insulted by paid Communist toadies.

Let us put a stop to it by getting the truth out to our fellow citizens. For example, Vladimir Posner was born a Jew and yet he covers up the rampant anti-Semitism in the Soviet Union as the main spokesperson assigned to malign Jewish dissidents and refuseniks as traitors, hooligans, and parasites when he is the traitor.

Ask Columnist Richard Grenier about this disloyal betraying little turncoat. A Jew who is an apologist for the oppressors of Jews. He sits there on television claiming that he is somehow or other a newsman, and then distorts the truth and brings further suffering to Soviet Jews by claiming there is no anti-Semitism in the U.S.S.R. when Posner admitted in his youth that he himself was victimized by prejudice, and that bigotry limited his advanced education by denying him entrance to Moscow University.

It is an affront to decency and dignity and an affront to Jewish people all around the world to have Posner appear on network television unidentified as to just who he really is.

Please, my colleagues, read the following column by Richard Grenier—a schoolmate of Posner's—which appeared in the Washington Times on January 7, 1986, entitled, "Do You Remember Me, Vlady?"

Mr. Speaker, the truth will out.

DO YOU REMEMBER ME, VLADY?

(By Richard Grenier)

I'll bet he doesn't. Hanging around with Phil Donahue and all those big network types, co-hosting a "Citizens' Summit" between the people of Seattle and Leningrad. Not to mention Ted Koppel and Sam Donaldson and all the people from ABC's "Nightline," where Valdimir Posner often

appears as a Soviet "journalist." I'll bet it's gone to his head. He's a member of the Soviet elite now, you see, dressed up all spiffy in preppy American clothes, white collar on colored shirt, blazer and grey flannel slacks. As opposed to the old days at the Moskva Hotel in Moscow, where I remember him still dressed like a former student of Peter Stuyvesant High School in New York—which is what he is.

It's been a few years since those days in Moscow, mind you. The summer of 1963, to be exact. I wouldn't want to say the Soviet Union ever had anything like a "Prague Spring" or Poland's Solidarity, but they had a few balmy days there. It was the "Thaw," as they used to say, and Khrushchev was de-Stalinizing, up to a point. Solzhenitsyn's "One Day in the Life of Ivan Denisovich" had just been published, and Russians felt free, not only to read him, but to praise him to foreigners. A heady feeling of semi-freedom was in the air.

Vladimir and I were kids, of course. I already had some pretty clear notions in my head about the Soviet Union, though, gleaned from studies, and books, and a close reading of the press, and listening to Radio Tirana—and having been to Russia before, as a matter of fact. Although things were definitely loosening up, I was actually seeing little that altered my basic opinions. It was Vladimir who was subject to those giddy fits of euphoria.

He would always head straight for the table in the Moskva dining room where the Americans were sitting, with our little American flag on its little jackstaff, and he told me how he cried when he saw "West Side Story." He was in a strange position between two cultures, he explained. Here he had spent all his school years in New York until the age of 15, at which point his father, a Russian-born Communist, had pulled him up by the roots in 1949 and brought him with the family back to the Soviet Motherland.

It had not been a bed of roses, he made clear. He had been refused admission to Moscow University because he was a Jew, he said. The Russian kids had beaten up on him and his brother, and called them the Russian equivalent of "kikes"—as Vladimir translated the word. (In New York, the kids had beaten him up for being a "commie," making me think that this guy had been through the mill.) The whole thing was very odd. "Here I am a Soviet citizen," he said emotionally, "but I still feel New York is my hometown."

I should make it absolutely clear that Vladimir Posner never said anything "disloyal" to the Soviet Union. He never said he preferred the American system of government to the Soviet, or anything even close to this. But he obviously still had a powerful attachment to New York and America. Was it just for the frankfurts and hamburgers? Also—although he never said this—he was patently avid to see New York again, perhaps to stay for a few weeks, months, years. Who knows?

American airheads determined to find the Soviet Union a country "just like us" are not a pure product of detente. I remember in 1963 an American photographer coming to a table where Vladimir Posner and I were talking and saying, what do you mean they don't have freedom of speech in Russia? He'd just seen a Russian movie that was very critical of Russia. "I hate to tell you this," said Vladimir with some embarrassment. "But we've had a change of government here. That was the earlier government the movie was attacking, Stalin. It's not criticism of the present government." The photographer went off with a surly look.

How bad a time had Vladimir Posner's father, also named Vladimir Posner, been given when he returned to Russia? Had he been sent to a labor camp? My memory is uncertain on that point. In any case, by 1963, having been a senior MGM executive in New York, he had climbed the slippery pole again in Moscow and was director of the Moscow Film Festival. Perhaps young Vladimir spoke freely because he thought a new dawn of freedom and come in Russia Perhaps he thought that never again would Russians have to bite their tongues, at least not bloody.

He sees things somewhat differently today, perhaps. He is well-paid to keep his mouth shut on awkward subjects. He dresses well, has a comfortable apartment, most of the benefits due the Soviet elite.

Espousing Soviet government policies is probably second nature to him by now. Given his options, it's not a bad deal, all things considered. It's a living.

Meanwhile, he makes an extraordinarily attractive Soviet spokesman for American audiences, the best they have. He is handsome, looks less Russian than I do (and with reason). Given his formative years, I consider him culturally American. He speaks our language in more ways than in one. But the Vladimir Posner I used to know can't have disappeared completely. I think he's still there inside the real Vladimir Posner.

My question to Phil Donahue is how come my Vladimir Posner wasn't on his "Citizens' Summit"? How come, when an American asked about racial discrimination in the Soviet Union, Vladimir didn't tell about how he was refused admittance to Mosocw University because he is a Jew? How come we were given some little Mongolian Pangloss, who mouthed—as did all the Soviet speakers—What journalists call "boilerplate"—fixed, memorized speeches, never differing from official policy by an iota.

I counted no fewer than seven of the Soviet speakers wearing decorations (whether military, Order of Lenin or Hero of Soviet Labor, I couldn't tell). About one-third were men 60 and over, obviously communist local or work-unit leaders. I can guarantee Phil Donahue from personal experience that every single member of the Soviet "audience" was either a member of the Soviet Communist Party (an elite group) or of the Komsomol, the Soviet youth organization.

Not only the Leningrad audience, but the Seattle audience, was rigged, since I spied a credit for an "audience selection" service on the American side. I have a feeling that the service screened out any Americans knowledgeable about the U.S.S.R., since none of the U.S. participants seemed to recognize the Soviet speeches for the boiler-plate they were.

My favorite Soviet speakers were two pretty young women. One, an Aeroflot hostess, said, "Our government has sworn never to attack a foreign country. How could you not trust a government like that?" But no American said, "How about Hungary, Czechoslovakia, Afghanistan?" Another Soviet woman said, what do you mean the Soviet Union doesn't allow protest meetings?" Why, I myself took part in a protest meeting against militarization. And I fully agree with the policy of our Government (meaning she was protesting militarization in other countries)."

The booby prize, I'm afraid, goes to an American woman, who, after listening to two hours of official Soviet policy from Leningrad "citizens," said, "I see the major differences are between our governments and not the people sitting in these audiences . . . It is up to us to let our governments know . . . our priorities."

If Phil Donahue's Citizens' Summit did anything to foster the preposterous notion that the Soviet Union would under any circumstances whatever allow ordinary, private citizens to participate in and express themselves freely at any such summit, he has shamelessly misled the American people as to the nature of Soviet society.

I have wondered for some years now whether Phil Donahue is just a well-meaning policial idiot or whether he knows what he's up to. The credits at the end of his "summit" program were therefore not without interest. Listed as either "consultants" or "supporting" foundations were: Cora Weiss, the Samuel Rubin Foundation, the Ruth Mott Fund, Stephen F. Cohen, Roger Fisher, Seweryn Bialer, and J.K. Galbraith. Most of these people or foundations are quite notorious for holding views which, shall I say, parallel those of the Soviet Union. When I saw these names I won't say I heard a click. I don't suppose many of you have heard the sound of a 16-inch shell being slammed into the breech in the gun turret of a ship of the line. That's what it sounded like.

HAIL AND FAREWELL—WITH LOVE

(Mr. BEDELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEDELL. Mr. Speaker, many of us felt that the farm bill as we continued current policies and simply lowered support prices was not the answer to our current program. Today many of us are introducing a farm bill which will get the income for farmers from the market rather than from the Government and do something about the severe credit problem that those people face.

While I am here, Mr. Speaker, last weekend I announced that I would not run for reelection. And I want to take this opportunity to thank my many, many colleagues for the wonderful friendship that they have shown me and the great, great way that they have treated me as long as I have been here.

I would like to read one sentence from that announcement:

> We are thankful for our friends in the Congress. Contrary to the general perception we have found among them some of the finest people we have ever known.

Mr. Speaker, that comes from my heart. I cannot tell you how great I think that the Members of this body are. I only wish the American people realize the dedication, the competency, and the sincere effort that so many Members of this body put forth in an effort to truly serve their constituencies. It is a real honor to serve with so many of you colleagues, and I certain-

ly wish you well after the end of this year as we leave the Congress.

PRESIDENT CALLS FOR CONTINUED INCREASED MILITARY SPENDING—POLL SHOWS 59 PERCENT OF AMERICANS FAVOR CUTTING DEFENSE SPENDING

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. President, throwing more billions of dollars at an already bloated military budget is like putting a second scoop of whipped cream on our ice cream sundae—we really don't need it.

Mr. President, you had to take your campaign for continued massive military spending to the American people because the latest polls show that 59 percent of Americans believe that the military budget is unreasonable and should be cut to help reduce the deficit. Fifty-nine percent of Americans know that military spending has increased 119 percent in 5 years and they oppose further increases for three additional reasons: First, the nuclear capability we already have to destroy the Soviet Union many times over; second, the scandals of overpricing, cost overruns, fraud, waste, and abuse at the Pentagon; and third, the deeply held feeling that national security also depends upon educating our young, housing our homeless, helping our small businesses, our cities, and our farmers.

□ 1135

I believe in the wisdom of the American people, and I believe they will support a reasonable defense budget, but they will not support a bloated one.

DAIRY PRODUCTS

(Mr. ROWLAND of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROWLAND OF Georgia. Mr. Speaker, for a number of years, now, we have heard warnings about the ill effects of various foods and how, in order to stay healthy, we should avoid them. Recently, researchers have been offering us more positive findings which suggest that we should consume more of certain foods to maintain our good health. Frankly, I believe this positive approach is a much more effective one that should lead to healthier food consumption.

Today, I wish to share with the House recent reports on the role of calcium in the diet. My interest in this is not only as a physician, but also as a Member whose district includes a good deal of dairy farming. I am particularly pleased that this industry, which has suffered in the past from criticism of its products, can again trumpet the beneficial aspects of dairy product consumption. As a matter of fact, I spoke at the Georgia Milk Producers' Association's annual meeting last week about this very subject.

Studies in the British medical journal, Lancet, reveal that men who regularly consumed milk have a lower rate of colon cancer than those who are not milk drinkers. As a matter of fact, the rate was almost three times higher for the nonmilk drinkers. The researchers believe that this is due to the binding of calcium with carcinogens and converting them to compounds that can be excreted harmlessly.

Another series of studies deal with the relationship of calcium to hypertension. This research documents the contribution of higher calcium intake to lower blood pressure. In fact, preliminary studies support the use of dietary calcium supplementation as an effective nonpharmacologic means of reducing blood pressure in some patients.

Finally, at the University of Iowa, researchers on osteoporosis, a degenerative disease of the bones in the elderly, particularly women, believe that chronically low calcium and vitamin D intake is a major factor behind the current epidemic of cases. The typical adult woman in our country consumes less than half of the recommended daily allowance. While increasing the consumption of calcium and vitamin D in the diet will not cure this condition, it will slow down the rate of bone mass loss.

I find these studies' results very encouraging. We may very well have the opportunity to deal ever more effectively with diseases, which were previously thought to be treatable only with drugs, through our diet. Milk and other dairy products can provide us with the calcium that at least some of our population can use in helping to avoid the greatest killers in our society—cancer and hypertension. Although diet may not be an effective method for everyone, good nutrition, along with exercise, and stress reduction, can be very helpful to many Americans who are concerned about their health status.

EMERGENCY FARM INCOME AND CREDIT BILL OF 1986

(Mr. WILLIAMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILLIAMS. Mr. Speaker, today my colleagues and I are introducing the emergency farm income and credit bill of 1986. This bill has new hope for America's agriculture by raising farm prices, not driving them downward as last year's farm bill did.

President Reagan, the U.S. Department of Agriculture and the Congress are wrong. Lowering wheat loan rates from $3 to $2.40 does not only hurt farmers, it is costing the U.S. Treasury more. The 60-cent reduction in world wheat prices will cost the U.S. Treasury this year $1,200 million.

This notion that lower farm prices will help American agriculture get out of debt is a farce and a sham.

Our bill has the proper formula for recovery. Raise farm prices; reduce interest rates to farmers in trouble; lower production; lower the surplus; reduce Treasury costs; and restore farm products.

Mr. Speaker, I want to encourage my colleagues and the congressional leadership to help us move this bill, before the barn door closes on thousands of America's farmers.

ALLEGED SOVIET MILITARY SUPERIORITY

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, last night the President, in a word, tried to scare the American people and this Congress. Alleged Soviet military superiority, that was the linchpin of his argument for an 8-percent increase in defense expenditures.

In 1982, President Ford's Secretary of Defense Schlesinger said, "Superiority is very difficult to measure."

Just last night, a senior administration official, in briefing the press before the President's speech, when asked about alleged superiority of the Soviets said, "It's a very close call and an overall assessment is difficult, but the two sides are very close."

In 1982, when Joint Chief of Staff head General Vessey was asked about this alleged superiority, he said this: "overall would I trade with Marshal Ogarkov? Not on your life."

The President said last night "if our country is going to have a useful debate on national security, we have to get beyond the drumbeat of propaganda and put the facts on the table."

Mr. President, I respectfully urge you on defense issues to practice what you preach. We need a strong defense. The fact is that we now have one.

WE NEED AN ALTERNATIVE FARM PROGRAM

(Mr. PENNY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENNY. Mr. Speaker, if one thing has become evident, it is that there is not support for the recently passed farm bill out in farm country.

At meeting after meeting in my district, when I ask for a show of hands among farmers as to who feels that we have a pretty good farm bill now in place, no one ever raises their hand.

Farmers have concluded, as many of us in Congress have concluded, that the current farm bill will do little, if anything, to reduce the surplus or to bring commodity prices back up. We need an alternative farm program, especially in light of the fact that all Federal programs, including agriculture, will be called upon this year to take additional budget cuts.

Today I and several of my colleagues have introduced an alternative farm program that will help farmers get a decent price from the market. It will provide for a $3.50 price for corn and $5 for wheat. It would also provide for a marketing loan provision that would help to keep our grain competitive in world markets. But most importantly, it would save at least $1 billion in farm program spending in fiscal year 1987 and billions more as time goes by. That is a combination, a better price for farmers and lower cost to the Treasury, that this Congress cannot reject.

CONTAMINATION OF SANTA MONICA BAY

(Mr. LEVINE of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVINE of California. Mr. Speaker, today, along with Chairman HENRY WAXMAN, I am introducing a bill to direct the Food and Drug Administration to conduct a study of the health effects of toxic contamination of fish in Santa Monica Bay.

For years, Santa Monica Bay has been the dumping ground for DDT, PCB's, oil refinery byproducts, raw sewage and other pollutants. Although private studies have shown some fish to be highly contaminated, the Federal Government has not been nearly as vigilant as it should have been in informing the public of possible health risks from consuming the fish.

My legislation would instruct the FDA to assess the level of contamination of edible fish caught in the bay and surrounding waters; determine the rate of consumption of contaminated fish from the bay and surrounding communities; and, evaluate the health risks associated with the consumption of such contaminated fish. The FDA would be required to report its findings to the Congress within 6 months of the bill's enactment.

Santa Monica beaches are the most heavily used recreational beaches in the country. Everyone who lives near or visits the Santa Monica Bay area has the right to know the health implications of eating bay fish, particularly since more and more people today are making fish a prominent part of their diets. My legislation would direct the FDA to produce that critical public health information.

WE NEED A NATIONAL SECURITY PETITION NOW

(Mr. LUKEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUKEN. Mr. Speaker, this week marks the second anniversary of the day on which the White House received a recommendation from the Department of Commerce to approve a national security petition which is essential to the survival of a vibrant domestic machine-tool industry.

Three years ago, the machine tool industry filed a petition under the national security section of the Trade Expansion Act to limit imports of machine tools to a level that would permit our American machine-tool builders to survive against competitors that have targeted our most basic industry. This section of the trade laws is designed specifically to assure that in times of emergency there would be a healthy industry to turn out the weapons and materials we need for the national defense. No industry could be more basic to our defense capability than the machine-tool industry, since these tools are used to produce every gun, tank, ship, and aircraft.

At the time the industry filed its petition, imports accounted for 27 percent of the value of all machine tools purchased in this country. That statistic was alarming enough to convince Secretary of Commerce Baldridge to recommend that the President approve a plan to limit this import penetration. Yet now, 3 years after the petition was filed, and 2 years after it was placed on the President's desk, we can't even get a decision out of the White House, despite the fact that penetration by imports has grown to more than 45 percent.

While we sit on our hands, the Soviets are recognizing the strategic significance of this industry. Yesterday's Washington Post reports that in his first speech to the Congress of the Soviet Communmist Party, Mikhail Gorbachev proposed "pumping 200 billion rubles—$270 billion—into the Soviet machine-tool industry between now and 1990."

It's time to act. During consideration of the Trade Law Modernization Act, the Energy and Commerce Committee passed a requirement for the President to act within 90 days of receiving a recommendation to approve a national security petition. But the President does not have to wait for this legislation to be enacted to end this dangerous delay. The time to act is now.

□ 1145

THE INTERNATIONAL TRADE WAR

(Mr. ECKART of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Speaker, last evening the President gave one of his many speeches on defense. He spoke about a secure world and a secure America.

Well, Mr. Speaker, we all acknowledge what the President calls for is needed and necessary, but what he fails to acknowledge is you cannot have a first-rate military if you have a third-rate economy. And when, in fact, was the last time the President gave a speech about another war that is brewing in the world, the international trade war?

The President said that we have already taken actions to counter unfair training practices and to pry open closed foreign markets. But the facts speak stark contrast to the President's rhetoric.

The facts are that the Department of Commerce recently released the facts for 1985 in which we had a $148 billion trade deficit, breaking the previous year's record. And in northern Ohio alone, an estimated 40,000 workers have lost their jobs just due to the hemorrhaging trade deficit. Unemployment is up, more than double the national average, in parts of my district.

Yes, there is indeed, a different kind of war that is going on in Angola or Nicaragua and other parts of the world, which we will speak about on this floor, too, but there is another war, and the casualties are found in northern Ohio from an international trade war that burns out of control while the Reagan administration fiddles.

We must act now to attack this ever-increasing trade deficit. American jobs should be our top priority, not our top export.

CONGRESSMAN LEE HAMILTON ON THE ROLE OF CONGRESS IN INTELLIGENCE OVERSIGHT

(Mr. BOLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BOLAND. Mr. Speaker, the February 12 edition of the Baltimore Sun carried an article written by Congressman LEE HAMILTON, chairman of the House Permanent Select Committee on Intelligence entitled "Congress, the CIA, and the Year of the Spy."

In his article, Chairman HAMILTON makes a convincing case for congressional oversight of our intelligence

agencies. That is a point of view with which I am in total agreement. Intelligence needs oversight. Oversight which is sensitive to the extraordinary difficulty of intelligence work, and the need for secrecy in it, but oversight which is nonetheless independent. The Intelligence Committee which serves this House has, I believe, fashioned a record of good, honest inquiry, good security and, in my opinion, good judgment. That record and that committee, have served the best interests of this body, the intelligence agencies, and the Nation.

As Chairman HAMILTON notes, the job of Congress is to provide the intelligence community the resources "able to give the right person the right information at the right time, and to offer the President the advice of an independent, but supportive, partner." Under his leadership the House Intelligence Committee is performing that vital function. I want to include Mr. HAMILTON's thoughtful article on this subject at this point in the RECORD and commend it to the attention of my colleagues.

[From the Baltimore Sun, Feb. 12, 1986]

CONGRESS, THE CIA, AND THE YEAR OF THE SPY

(By Lee H. Hamilton)

WASHINGTON.—1985 was "the year of the spy" to Newsweek magazine and may be remembered as the "year of the press" by the intelligence community. Espionage cases, two-way defectors, leaks, and charges about the quality of intelligence and its congressional oversight have brought on singular public scrutiny.

The debate on intelligence goes on amidst this scrutiny. It is a debate our democratic and open society makes unique and uniquely difficult. Most of us believe that secrets must be kept and that good intelligence is essential to national security, but we also think that intelligence agencies must be watched to improve their performance and to prevent abuse.

Since 1976, the task of keeping an eye on these agencies has been given to the House and Senate Intelligence Committees. The oversight committees try to decipher the world of intelligence—to know its goals, sources, and methods, and to keep it operating within agreed limits. These committees alone review the intelligence activities of the executive branch. Because their oversight is exclusive, it must be thorough.

The committees have the near-impossible task of trying to satisfy a public hunger for information about the government's secret activities while respecting the executive branch's desire that each secret shared with the committees should remain so. The approach of the House Intelligence Committee in this regard has been to say little to the press or to our colleagues about its work, although any member may ask to review committee documents at any time he chooses.

This is a frustrating compromise, because neither the press nor our colleagues can be expected to trust the committee's judgment in the absence of extensive public debate on behalf of its recommendations.

Lately, this task of legislative review has become more difficult. In a recent public letter to Senator David Durenberger of Minnesota, chairman of the Senate Intelligence Committee, central intelligence director William Casey asserted that this process "has gone seriously awry." Mr. Casey suggests intelligence oversight cannot be conducted well if conducted publicly.

While aspects of the director's concerns are understandable, I do not share his judgment that the process has gone awry.

Although it is not always evident to the public, the intelligence committees have been struggling with spy cases and the other security problems that beset the intelligence community. They have significantly increased counterintelligence funding and personnel in the last six years, and are reviewing in detail each of the spy cases and attempting to learn from them.

The House committee has also reviewed its own security procedures and personnel practices to ensure they continue to match intelligence community standards. The size of the committees is kept small, and the members are chosen by the congressional leadership with great care. While there have been no documented leaks of classified information from the intelligence oversight committees, any security system can bear improvement. A security review for the Congress as a whole is warranted.

In addition to security, the committees have an important role in improving the performance and product of the intelligence community. They can stimulate support for specific intelligence-gathering and analysis activities, and can assure that intelligence agencies are sufficiently funded for their tasks. They burrow deeply into arcane budgets and operations, and few of the details they hear behind closed doors can be disclosed. The committees' overall judgments, however, and the general outline of their debates can and should be made public. This aspect of public disclosure can be helpful in shaping better policy.

Within the committees, there is strong bipartisan backing for the intelligence community's basic mission. But what the intelligence committees cannot do is resolve in secrecy hotly debated foreign policy issues which concern many Americans and are properly addressed by the Congress as a whole.

Nicaragua, the subject of so many recent congressional battles, is one obvious example. Angola may be another. The intelligence committees rarely want to get into a public dispute with the administration. However, this cannot be avoided on contentious foreign policy issues related only in part to intelligence activities.

There is a committee consensus that we have excellent intelligence services, supported by dedicated, skilled, and patriotic professionals. We also believe they can be better. We want a cost-effective and responsible intelligence community, mindful of the privacy of our own citizens, and able to give the right person the right information at the right time.

The job of Congress is to provide adequate resources to meet that goal, and to offer the president the advice of an independent, but supportive, partner. In our system of checks and balances we have the opportunity and responsibility to do this work together.

PROCEEDINGS AGAINST RALPH BERNSTEIN AND JOSEPH BERNSTEIN

Mr. FASCELL. Mr. Speaker, I rise to a question of the privileges of the House, and by direction of the Committee on Foreign Affairs I call up a privileged report (H. Rept. No. 99-462).

The Clerk read as follows:

PROCEEDINGS AGAINST RALPH BERNSTEIN AND JOSEPH BERNSTEIN

(Mr. Fascell, from the Committee on Foreign Affairs, submitted the following report together with separate, additional, and dissenting views)

INTRODUCTION

In closed hearings on December 11 and 12, 1985, the Subcommittee on Asian and Pacific Affairs questioned two witnesses, Ralph Bernstein, a nonlawyer who works extensively in real estate investment, and his brother Joseph Bernstein, a lawyer who assists with that investment. The questions concerned investment work allegedly performed by them on behalf of President Ferdinand Marcos of the Philippines and his wife, Imelda Marcos. That subcommittee was pursuing allegations of vast holdings by the Marcoses in the United States, part of a flight of capital from the Philippines that has been reportedly estimated at over $10 billion in recent years. Such investments would have serious implications for U.S. foreign policy and the U.S. aid program for the Philippines.

The two witnesses, alleged to be at the center of a web of dummy corporations shielding the Marcos' holdings, firmly refused to answer the subcommittee's questions about their investment work, or even to state whether they knew or had met the Marcoses. Their refusals to answer denied the subcommittee information that is crucial to its investigation.

Ralph and Joseph Bernstein presented a number of legal claims, chief among which was the assertion that they could not give information on any relationship between them and the Marcoses because of attorney-client privilege. The subcommittee gave these claims every possible consideration. Its chairman and ranking minority member heard the counsel for the witnesses informally, and the subcommittee reviewed their legal memoranda carefully. In its executive session hearings, it heard repeated oral presentations on the witnesses' behalf over a 2-day span. After due consideration, the subcommittee overruled these claims, and, when the witnesses continued their resistance, held the witnesses to be in contempt of Congress, based on the legal advice of the general counsel to the Clerk of the House, and the minority counsel of the House, that the claims were without merit.

For the House of Representatives not to pursue all legal steps to vindicate its right to this information would undermine severely this investigation of the Marcos' holdings. More important, it would cast grave doubt on the credibility of, and precedents for, other House investigations. Accordingly, the subcommittee voted to report the contempts to the committee, and the committee voted to report to the House a contempt resolution for the Bernsteins. Upon adoption by the House, the resolution would direct the Speaker to turn the matter over to the U.S. Attorney for prosecution in accordance with the statutory provision for contempt of Congress, 2 U.S.C. section 192. That offense carries a maximum sentence of 1 year in prison, plus fines.

FACTS, BACKGROUND, AND CHRONOLOGY

CONGRESSIONAL INTEREST IN THE PHILIPPINES

The Subcommittee on Asian and Pacific Affairs has been conducting an investiga-

tion of allegations of major investments by Philippines President Ferdinand Marcos and his wife, Imelda Marcos, in real estate in the United States. This investigation follows the strong interest of the subcommittee and committee in the Philippines, manifested in the course of consideration of foreign aid legislation, other kinds of legislation, and oversight regarding the Philippines generally in recent years. Concerning foreign aid, each year the subcommittee has conducted in-depth oversight of the matters concerning the Philippines.[1] Key aspects of the most recent foreign aid bill relating to the Philippines developed from the provisions reported by the subcommittee and committee, as reflected by the committee report on the foreign aid bill and the conference report on that bill.[2]

Last year's foreign aid bill included a specific provision, section 901(a) [99 Stat. 266], linking future foreign aid to the Philippines with progress toward a number of specified goals. The provision stated that "the Congress affirms its intention to grant future aid to the Philippines according to the determination of the Congress that * * * sufficient progress is made by the Government of the Philippines" toward a number of goals, one of which was "implementing structural economic reforms and a strengthening of the private sector, including elimination of corruption and monopolies. * * *" To implement that provision, section 901(c) [99 Stat. 267] provided:

"Congressional oversight.—The Congress, in determining future aid levels for the Philippines, will take into account not only our military bases agreement with that country, but also the extent to which the objectives and goals specified in subsections (a) and (b) have been implemented. * * *"

Thus, the legislation required that congressional oversight be conducted to provide the information necessary regarding the Philippines for future foreign aid legislation.

Not only the American aid program, but also other important legislation has developed from the congressional interest in the Philippines.[3] Besides the investigations and oversight in connection with the aforementioned hearings, reports, bills, and concurrent resolutions, the committee and subcommittee have employed a variety of other oversight efforts regarding the Philippines.[4] Concerns which have played an important part in these legislative and oversight proceedings have been addressed by the subcommittee chairman on a number of occasions,[5] particularly as they may tend to affect the larger movement of events in the Philippines and relations between the Philippines and the United States.[6]

ALLEGATIONS REGARDING THE MARCOS' HOLDINGS

The particular allegations currently under investigation have been reported in articles in a number of publications, including the New York Times, the Wall Street Journal, the Washington Post, the San Jose Mercury News and the Village Voice. The articles were reprinted in the Congressional Record, 131 Cong. Rec. S15126-15143 (daily ed. Nov. 7, 1985), in connection with a proposed concurrent resolution regarding elections in the Philippines and were made part of the hearing record of this current investigation. The alleged investments, if substantiated, have major implications for American policy.

At this stage, the subcommittee has not resolved the truth of the allegations or their implications—in fact, the very point of this contempt report is that the witnesses' recalcitrance has denied Congress information of great importance regarding those allegations. However, the subcommittee has compiled a sufficient record to conclude that these witnesses do have invaluable information to provide regarding the allegations concerning the Marcos' holdings and, thus, a discussion of the allegations is essential to understanding what the subcommittee sought and why it sought it.

The allegations are, first, that the Marcoses have acquired—directly or indirectly—a number of highly expensive real estate properties in the United States, which are controlled through a web of corporations. A New York Times article of August 14, 1985, reprinted in 131 Cong. Rec. S15133 (daily ed. Nov. 7, 1985), reporting on an impeachment complaint filed in the Philippines against President Marcos, detailed some of the allegations:

"The complaint listed a dozen properties that, the opposition says, are owned by the Marcos family, either directly or by proxies. The property list was a mixture of previous allegations and new ones. The Government has denied that President Marcos and his wife, Imelda, have any sizable investments outside [the] Philippines.

"The complaint charged, for example, that in 1981, Mrs. Marcos bought the Crown Building in Manhattan, an office tower on Fifth Avenue and 57th Street, valued at $51 million under the name of a Netherlands Antilles holding company, Lastura N.V. Later, the compl[ai]nt states, the property was transferred to another holding company owned by Mrs. Marcos, the Canadian Land Company.

"Also in 1981, the complaint said, Mrs. Marcos bought property on Long Island known as the Lindenmere Estate.

"Among other properties, the complaint said, Mrs. Marcos owns a six-story townhouse in Manhattan at 13 East 66th Street, a $104 million highrise commercial building at Seventh Avenue and 57th Street, an $18 million mansion in London and a $20 million estate in Rome. In some cases, the document said, close friends of the Marcos family made the purchases on her behalf."

Second, the allegations are that the two recalcitrant witnesses, Ralph Bernstein, a nonlawyer expert in real estate investment, and Joseph Bernstein, a lawyer who is an officer in a real estate company and a partner in the New york firm of Bernstein, Carter & Deyo, initially made, subsequently have controlled, and currently continue to control, many investments on behalf of the Marcoses.[7] An article in the San Jose Mercury News, reprinted in 131 Cong. Rec. S15142 (daily ed. Nov. 7, 1985), described some of these alleged links:

"In the forefront of many transactions involving powerful Filipinos are a handful of real estate agents and several prominent lawyers and law firms in the United States. * * *

"Bernstein, Carter & Deyo, a New York law firm that has represented Mrs. Marcos in two documented real estate deals and according to Philippine banking and business sources has handled other purchases of office buildings and a department store in New York City for the Marcoses.

"The firm's senior partner is Joseph E. Bernstein, a Hillsborough native and self-described expert on offshore real estate investment in the United States. * * *

"Bernstein has family ties to the Philippines and acknowledged that his law firm

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[1] See Foreign Assistance Legislation for Fiscal Year 1985 (Part 5): Hearings and Markup Before the Subcommittee on Asian and Pacific Affairs of the House Committee on Foreign Affairs, 98th Cong., 2d sess. 18-23, 93-94, 124-25, 325-60 and elsewhere *passim* (1984); Foreign Assistance Legislation for Fiscal Years 1986-87 (Part 5): Hearings and Markup Before the Subcommittee on Asian and Pacific Affairs of the House Committee on Foreign Affairs, 99th Cong., 1st sess. XXXVI-XXXIX, 4-5, 11-15, 87-89, 98-101, 124-25, 455-536, 541-647 and elsewhere *passim* (1985).

[2] International Security and Development Cooperation Act of 1985, H. Rept. No. 34, 99th Cong., 1st sess. 100-01 (1985) (committee report); International Security and Development Cooperation Act of 1985, H. Rept. No. 237, 99th Cong., 1st sess. 151-52 (1985) (conference report).

[3] For example, in 1983, the Congress adopted H. Con. Res. 187, 98th Cong., 1st sess., calling for an impartial investigation of the assassination of Benigno Aquino. See The Consequences of the Aquino Assassination: Hearing and Markup Before the House Committee on Foreign Affairs and its Subcommittee on Asian and Pacific Affairs, 98th Cong., 1st sess., (1984).

In November 1985, the Congress adopted H. Con. Res. 232, 99th Cong., 1st Sess., a "bipartisan and bicameral resolution [which] expresses the sense of the Congress with respect to the importance of bringing about a restoration of democracy in the Philippines," 131 Cong. Rec. H10209 (daily ed. Nov. 14, 1985) (Representative Solarz). As two of its predicates, H. Con. Res. 232 declared that "the Philippines is of vital importance to U.S. security" and that "the Republic of the Philippines is experiencing serious political, economic, and security problems which directly threaten the stability of the country. * * *" 131 Cong. Rec. H10211 (daily ed. Nov. 14, 1985).

[4] For example, in response to the committee's interest, the Comptroller General compiled an in-depth report, "Economic Support Fund Assistance to the Philippines," GAO/NSIAD-84-44 (1984). A number of staff and Member studies have also been conducted on various aspects of Philippine affairs. Among the many issues explored in legislative and oversight proceedings have been allegations concerning corruption and the flight of capital from the Philippines. See, e.g., Foreign Assistance Legislation for Fiscal Years 1986-87 (Part 5): Hearings and Markup Before the Subcommittee on Asian and Pacific Affairs of the House Committee on Foreign Affairs, 99th Cong., 1st sess. 635 (1985) (testimony by Hon. Paul D. Wolfowitz, Assistant Secretary of State for East Asian Affairs and by Hon. Charles W. Greenleaf, Jr., Assistant Administrator, Bureau for Asia, Agency for International Development, in response to inquiry by Representative Solarz concerning capital flight from the Philippines).

[5] For example, as published in the Congressional Record, Representative Solarz has written:

President Marcos' power base has now shrunk to the point where his support is largely restricted to his own family, a handful of close associates, and a few favored military and political appointees. The vir[tu]ally complete collapse of confidence in his regime can be traced to several factors. A principal cause has been the system of "crony capitalism" he has established to enrich his political allies. Perfecting the art of politically connected plunder to a degree undreamed of by President Mobutu of Zaire and other expert practitioners of the trade, Ferdinand Marcos and his associates have directed millions of dollars from critical development needs for their private purposes.

131 Cong. Rec. E1668 (daily ed. Apr. 23, 1985) (reprinting article by Representative Solarz).

[6] "To a very large extent it is the decline in the economy of the Philippines, and the growing i[m]poverishment of the people of the Philippines, which is a significant source of strength for the Communist-dominated challenge to the government of that country. * * *"

131 Cong. Rec. H5283 (daily ed. July 9, 1985) (statement by Representative Solarz during floor debate on foreign aid bill).

[7] Counsel have represented that Ralph Bernstein formerly worked for Bernstein, Carter & Deyo and currently is a client of the firm with interests in common with those of the clients on whose behalf privilege is assertedly being claimed.

'from time to time might get somebody with a Philippine connection.'

"According to New York real estate records, a company Bernstein heads, the New York Land Co., has handled the purchase of several office buildings in New York by Netherlands Antilles corporations. One building in particular, the $51 million Crown Building in Manhattan, has been singled out by several Filipino business and banking sources as having been bought and sold for Imelda Marcos.

"The Mercury News found that it was bought in 1981 by Lastura N.V., a Curacao corporation, and later was transferred to another Curacao firm, Canadian Land Co. of America N.V., which is managed by Bernstein. That firm is controlled by a third Curacao firm, Caribbean Management N.V. The offices of Lastura and Canadian Land are in the same suite as the offices of New York Land.

"Bernstein denied that he represents Mrs. Marcos.

" 'I don't know her,' he said, declining to discuss the identities of his clients. 'I wish I did. Everybody thinks I do * * * Send her my way.' "

Finally, there is a third allegation, on which there is no dispute because the Bernsteins confirmed it in their testimony. The Bernsteins receive hundreds of thousands of dollars a year to perform their services, particularly on behalf of foreign clients, under the arrangement that they will not reveal the identities of those clients.[8]

To investigate the allegations, the subcommittee took a number of steps. Among others, on December 3, it voted to subpoena Ralph and Joseph Bernstein, along with William Deyo, a partner of Joseph Bernstein in the firm of Bernstein, Carter & Deyo. Those subpoenas, which were served by U.S. Marshals several days later, required production of documents relating to the properties and companies allegedly linked to the Marcoses and required the individuals to appear and testify before the subcommittee on December 11.

From the outset, the witnesses manifested an intention to resist the subcommittee's demands for information. This resistance was conducted respectfully, through presentation of their legal position; there was no witness disrespect or disruption, apart from the refusals to provide information. However, those refusals, while couched respectfully, were absolutely firm on the critical points, and neither repeated requests by the subcommittee for the witnesses to reconsider, nor the application of legal compulsory process, budged them from that resistance.

The subcommittee gave the witnesses every opportunity to make their case as to why they should not have to provide the information. These witnesses retained well-respected counsel to present their case. The chairman and ranking minority member of the subcommittee afforded these counsel an informal meeting lasting for 3 hours on December 10, to allow counsel to make a full preliminary presentation of the witnesses' position. Those counsel also met with the offices of other Members and circulated among the Members a legal memorandum setting forth their position at length. On December 11, the subcommittee commenced its hearing regarding the Bernsteins in executive session. The Bernsteins refused to answer a number of questions, claiming various privileges as discussed below. Again, their counsel presented their position at length, their written submissions were made a part of the record, and they were given a full opportunity by the subcommittee to be heard.

Although the witnesses declined to answer questions, the subcommittee held off on proceeding toward contempt during lengthy questioning lasting all afternoon and into the evening. In the face of continued refusals to provide information, the subcommittee did not overrule the witnesses' objections, in order that all their claims could be fully and fairly aired prior to reaching a contempt situation. During that preliminary questioning, and at the end, the subcommittee heard from the general counsel to the Clerk, Steven R. Ross, and the minority counsel of the House, Hyde Murray. Both advised that the witnesses' claims be overruled, based on legal reasoning summarized in a written memorandum appended to this report. Finally, at the end of that long hearing, the chairman of the subcommittee overruled the witnesses' claims and ordered and directed that the witnesses answer the subsequent questions.

At this point, prior to an actual contempt situation, the witnesses requested deferral of final questioning for another day. Although this request was not expected and created significant burdens for the subcommittee, the subcommittee agreed to recess until the next morning. The subcommittee then made available to the witnesses the questions it intended to ask the next day—an extraordinary effort by the subcommittee to be of assistance to the witnesses, going far beyond what virtually any other congressional investigation would do—to give the witnesses every opportunity to review the questions in private with their counsel, to reevaluate their legal situation, and reconsider their refusals to testify.

Finally, on the morning of December 12, the subcommittee reconvened. Again, it heard a lengthy statement by counsel for the witnesses. It then propounded the questions that had been provided to the witnesses. The witnesses answered a few of the questions but continued to refuse to provide information on the key points. At this point, the subcommittee excused the witnesses, again heard from, and questioned, the general counsel to the Clerk and minority counsel of the House—who advised, again, that the claims of privilege were not well taken—and debated whether to hold the witnesses in contempt.

The chairman, with the subcommittee's concurrence, held in abeyance the question of contempt for William Deyo. Although Deyo had declined to provide information concerning the Marcos' holdings, he had given a number of answers indicating what he did not know and what he had not done. These negative answers suggested Deyo's role included a much lesser degree of involvement in the alleged Marcos' investments, and the subcommittee concluded that it was not necessary, at this time, to press the matter regarding him. The matter of documents that had been withheld was continued to a later date, to await more concrete decisions by the subpoena respondents on what they were providing and what they were withholding. The subcommittee then voted 6-3, by identical recorded rollcall votes for each witness, to report contempt resolutions for Joseph Bernstein and Ralph Bernstein to the full committee:

Mr. Solarz	Aye	Mr. Leach	Aye
Mr. Dymally	No	Mr. Roth	No
Mr. Torricelli	Aye	Mr. Solomon	No
Mr. Udall	Aye	Mr. Bereuter	Aye
Mr. Gejdenson	Aye		

On December 17, the full committee debated the matter for several hours. It made the executive session transcripts at which the key testimony had occurred available to the witnesses and for the purposes of the committee's action. Besides the debate among the Members, the committee heard from the general counsel to the Clerk, the minority counsel of the House, and counsel for the witnesses. The committee then voted 21-2, by identical recorded roll call votes for each witness, to report a contempt resolution for Joseph Bernstein and Ralph Bernstein to the House:

Mr. Fascell	Aye	Mr. Broomfield	Aye
Mr. Yatron	Aye	Mr. Gilman	Aye
Mr. Solarz	Aye	Mr. Lagomarsino.	No
Mr. Bonker	Aye	Mr. Leach	Aye
Mr. Wolpe	Aye	Ms. Snowe	Aye
Mr. Gejdenson	Aye	Mr. Solomon	No
Mr. Kostmayer	Aye	Mr. Bereuter	Aye
Mr. Torricelli	Aye		
Mr. Smith	Aye		
Mr. Berman	Aye		
Mr. Reid	Aye		
Mr. Levine	Aye		
Mr. Feighan	Aye		
Mr. Weiss	Aye		
Mr. Ackerman	Aye		
Mr. Garcia	Aye		

Authority and Legislative Purpose

The witnesses did not contest the authority and valid legislative purpose of the investigation, or the pertinency of any of the questions on which contempt occurred. These are established clearly in the record and extensive discussion is unnecessary. While the subcommittee indicated a number of other legislative purposes, the chairman summarized part of the subcommittee's authority and purposes at one point:

"Pursuant to House Rule X, clause 1(i), the Committee on Foreign Affairs has jurisdiction and responsibility regarding 'Relations of the United States with foreign nations generally.'

"Pursuant to the Committee on Foreign Affairs' Committee Rule 14(b)(B), this subcommittee, as the regional subcommittee with jurisdiction over Asian and Pacific Affairs, has jurisdiction and responsibility regarding 'Matters affecting the political relations between the United States and other countries and regions,' and 'Identification and development of options for meeting future problems and issues relating to U.S. interests in the region.'

"Pursuant to these rules, this subcommittee considers and makes legislative recommendations on aid requests of the Philip-

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[8] As the opening statement on behalf of the three witnesses explained, their work

emphasize[ed] the specialty [they] had developed in foreign investment in the United States * * * and [they] now represent clients from several nations in connection with business activities both in the United States and in other countries. * * *

A desire to preserve privacy and to maintain confidentiality as to the nature of business activities is a common incident of representation of domestic and foreign investors.

With specific reference to the matters under investigation, the Crown Building in New York City, and the Canadian Land Co., are allegedly tied ultimately to the Marcoses. Joseph Bernstein testified that while the Crown Building was owned by the Canadian Land Co. (whose stockholders he declined to disclose), the property had as its managing agent the New York Land Co. Joseph and Ralph Bernstein respectively testified that each of them was paid a salary of $144,000 by the New York Land Co.

pine government. Currently, for example, this [s]ubcommittee is conducting oversight over whether aid to the Philippines should be reduced. The alleged investment by members of that government of large sums in United States real estate, allegedly performed by and through these witnesses, falls directly within that jurisdiction and responsibility."

CLAIMS OF THE WITNESSES WHO REFUSED TO ANSWER

REFUSALS TO ANSWER

Attached to this report as an appendix is a transcript excerpt for the witnesses' refusals to answer. To summarize, Ralph Bernstein, the nonlawyer real estate investment adviser, refused to answer questions with respect to either President or Imelda Marcos such as:

Do you know either?

Have you met either?

Did you meet either on your 1982 trip to the Philippines?

Have you located real estate properties for either?

Have you acquired real estate properties for either?

From your business activity—locating and acquiring real estate properties, and so on—do you know if either has any interest in Crown Building?

From your business activity, do you know if either has any interest in Herald Center?

From your business activities, do you know any investments by the Marcos family in the United States?

Joseph Bernstein, the lawyer who assists in the real estate investment activity, refused to answer such questions with respect to either President or Imelda Marcos as:

Do you know either?

Have you met either?

Have you ever had any business dealings with either?

Have you located any real estate properties for either?

Have you acquired any real estate properties for either?

Have you provided any real estate or financial advice to either?

Have you drafted any leases or mortgages for either?

Who were the shareholders of Canadian Land Co.?

When did the shareholders of Canadian Land Co. first become shareholders of it?

Was there any change of ownership when the name was changed?

Are any shareholders Filipino?

Has any money to purchase or renovate the Crown Building come from the Philippines?

Do they have any interest, direct or indirect, in Lastura, N.V. or Canadian Land Co.?

Are you acting directly or indirectly for any other principal in your capacity as director of Canadian Land Co.?

Do they have any direct or indirect financial interest in the Crown Building?

A number of questions concerned business, rather than legal activity. The witnesses and their counsel made protestations that their work was legal. However, having been given numerous opportunities to raise their objections and to make their case, including providing written submissions as well as oral statements, the Bernsteins made no effort to establish that their services were legal rather than business in nature.

CLAIMS OF THE WITNESSES

The witnesses' basic claims are set forth in their legal memorandum attached to this report. Other articulations by the witnesses and their counsel of their claims are preserved in the record of this hearing, and the witnesses were assured by the subcommittee that all such claims are preserved and incorporated by reference in their refusal to testify.

To summarize, the witnesses' basic claims are threefold. First, they contended that they needed more time to review their records, in order to determine whether they had to refuse to answer. Second, and most important, they claimed attorney-client privilege. Third, they asserted requirements imposed by the bar for preservation of secrets and confidences. With regard to these claims, they contended that answers would subject them to disbarment and lawsuits. Each claim will be addressed in turn.

CLAIMS REGARDING TIMING

The witnesses claimed that they needed more time to review their records. In the particular facts and circumstances of this hearing, this claim was without merit. The witnesses were subpoenaed the week before the hearings, with subpoenas for documents that gave ample advance notice that the subject of the hearings would be the Marcos' holdings. When they appeared in response to those subpoenas, the overwhelming majority of the questions on which they were held in contempt were extremely simple and straightforward questions involving their contact with the Marcoses and the most elementary knowledge of their holdings. In the subcommittee's judgment, no review of their documents was required for them to answer the questions.[9] The witnesses made an overall claim regarding time, rather than a particularized claim that one or another specific question involved some particular point that required checking.

Finally, it was clear that the witnesses would not answer any questions relating to the allegations that they had made major investments on the Marcos' behalf. The courts have accepted much shorter times in congressional investigations than were involved here—see, for example, *United States v. Kamin*, 136 F. Supp. 791, 793-94 (D. Mass. 1956), where it was clear, as here, that the witnesses' refusals covered whole lines of questioning and that a delay in the proceedings, such as to check details, would therefore not produce any major change in the eventual result.

CLAIM REGARDING ATTORNEY-CLIENT PRIVILEGE

The subcommittee devoted much time to hearing the witnesses' attorney-client privilege claim, and the response of the general counsel to the Clerk and the minority counsel of the House, summarized in memoranda appended to this report. It eventually decided to overrule that claim, for the reasons set forth orally and in writing by the general counsel and the minority counsel. Those reasons may be summarized under two headings in abbreviated fashion as follows.

First, the witnesses—one nonlawyer real estate investment expert who has, in the past, been associated with a law firm, and one lawyer who assists in that investment activity—sought to claim attorney-client privilege on business and personal activity for which, even in questioning by the courts, such a privilege would not be recognized. Courts recognize the privilege only for a client's communications seeking legal advice from a professional legal advisor acting in that capacity, and apply it only to communications regarding action in that capacity. "Thus, where the attorney acts as business advisor or collection agent, gives investment advice, or handles financial transactions for his client, the communications between him and his client are not protected by the privilege." In re *Shapiro*, 381 F. Supp. 21, 22 (N.D. Ill. 1974) (footnotes omitted).

In a recent case, documents were supoenaed by a grand jury from an attorney regarding real estate property purchases. The attorney had represented two undisclosed principals. The subpoena required all the business records of the pertinent real estate company, all the records concerning the purchase and sale of the properties, and "direct(ed) petitioner (the attorney) to testify before the grand jury regarding his knowledge of the business affairs of XYZ Realty, Inc. (the pertinent real estate company)." In re *Application of John Doe, Esq.*, 603 F. Supp. 1164, 1167 (E.D.N.Y. 1985). Among the specific questions that were to be answered in that questioning was one parallel to the key one for the subcommittee's hearing: "Who funded XYZ; (a) How much cash was put into the corporation; (b) Who funded the corporation." Id. at 1167 n.1. The district court held the attorney-client privilege inapplicable: Some of the document "categories [were] unprivileged because they relate[d] to business, not legal, advice," others were unprivileged because they related to "petitioner's fee arrangements with his clients." Id. at 1167. The questions "appeared to seek answers concerning only business advice which, though perhaps intended to be private, most certainly were not privileged." Id.

Of course, the burden is always on those who would claim a privilege. See, e.g., *Shapiro*, 381 F. Supp. at 22. Here, the record makes apparent that the witnesses failed to sustain that burden, and failed to rebut the strong indications that they were conducting investment activity, not just providing legal advice, to the Marcoses. For Ralph Bernstein, the nonlawyer real estate investment expert, the situation is patent. He attempted to claim privilege regarding such questions as whether he had located or acquired real estate properties for the Marcoses. If attorney-client privilege covered the real estate investment activities of nonlawyer real estate experts, simply because of their present or past association with law firms, the courts would quickly find the ability of the law to police real estate activity reduced to a nullity.

Joseph Bernstein's situation is no different. For example, he claimed privilege regarding whether he had located or acquired real estate properties for the Marcoses, or provided them with real estate or financial advice. He refused to answer questions about the Canadian Land Co., a dummy corporation of which he is admittedly a director, which allegedly is a front for the Marcos' holdings—questions regarding changes in its ownership, who were the shareholders, or when they became shareholders. The *Doe* case, which reflects longstanding law, simply makes a claim of privilege untenable for such questions.

Furthermore, even for attorneys, unlike Joseph Bernstein, engaged purely in the practice of law rather than business, it is the general rule that the identity of an attorney's clients is not privileged. This point

[9] As for the witnesses' request for more time to respond fully to the demand for documents themselves, based on assertions as to the number of documents to be searched in order to provide that full response, the subcommitee granted a continuance until Jan. 15, 1986, subject to certain terms and conditions.

of law was conceded by the witnesses. Whatever exceptions may exist in limited circumstances, this matter was not one of them.

It became clear to the subcommittee that the witnesses were withholding the information pursuant to an arrangement that they will not reveal or confirm for whom they perform their investment services. That arrangement may be profitable, but it is not a sufficient basis for precluding the subcommittee from investigating the Marcoses' holdings in this country.

A second basis, separate and independent, for overruling the claim of privilege was proposed to the subcommittee by the general counsel to the Clerk, involving invocation of Congress' full constitutional investigatory authority. That second basis is set forth here, followed by the committee's conclusions regarding it. That second basis is that the Congress has taken a limited view as to the applicability of attorney-client privilege. Congressional committees have entertained, as a matter of discretion, claims of such privilege. However, where in the particular circumstances an investigation determines that the legislative need for the information outweighs the arguments against production, such production has been required. In this situation, as described above, the underlying claim is attenuated by the "business" nature of the information sought.[10] The precedents of the House and the appropriate judicial precedents thus support rejection of the claim of privilege.

The historical position of the Congress in this matter may be set forth briefly. Congress' power to investigate derives inherently from its power to legislate, as modeled on Parliament's power. At common law, while the English courts were bound by attorney-client privilege, Parliament was not. As Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, relied on by the Supreme Court as a guide to parliamentary and congressional investigatory authority,[11] specifically notes:

"A witness is, however, bound to answer all questions which the committee sees fit to put to him, and cannot excuse himself, for example, on the ground that he may thereby subject himself to a civil action, or because he has taken an oath not to disclose the matter about which he is required to testify, *or because the matter was a privileged communication to him, as where a solicitor is called upon to disclose the secrets of his client* * * * some of which would be sufficient grounds of excuse in a court of law."

May's Treatise at 746-47 (20th ed. 1983).

Consistently, congressional committees have acted on their authority to reject the applicability of claims of attorney-client privilege. Such rejections, in both the 19th century[12] and the 20th century,[13] have occurred in incidents widely noted both for the investigations themselves, and the ensuing litigation. No case ever denied congressional committees the authority claimed, or reversed the contempt involved. In recent years, the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce has repeatedly rejected—based on extensive research by the Library of Congress—claims of attorney-client privilege.[14] Both the House and the Senate have failed to adopt proposals to specifically incorporate a privilege respecting attorney-client confidences in their Rules.[15]

The general counsel to the Clerk has further noted that this history reflects the well-known bases in the law for the derivation of privileges. Apart from those specific privileges created by the Constitution, such as the fifth amendment privilege against compulsory self-incrimination,[16] which all the branches follow, the privileges applicable to judicial and legislative proceedings arise from policy determinations by the lawmaker empowered to make those policy decisions. For legislative proceedings, Congress makes those determinations, through its statutes, rules of the House and Senate, and committee rules. Those statutes and rules create numerous protections for witnesses.[17] However, Congress also does not impose many restrictions on its proceedings which apply in judicial proceedings, see e.g., *United States* v. *Fort*, 443 F.2d 670, 679-80 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971), and for it to do so by applying the privileges and procedures of other kinds of proceedings would bring key congressional inquiries to a halt.[18] No statute, House rule, or Foreign Affairs Committee rule changes the English rule that attorney-client privilege did not have to be accepted in legislative proceedings; Congress has never decided to impose that restriction on its proceedings. For judicial proceedings, by contrast, the policy determination is made by the judiciary as a matter of Federal common law, and the courts define the boundaries of attorney-client privilege as they accept it.

The subcommittee overruled the claim of privilege by these witnesses on both these grounds: That the claim of privilege would not have been upheld even in a court, and that a congressional committee was obliged to decide whether to accept such claims of privilege apart from whether a court would uphold the claim. However, during debate in the full committee, several members questioned the necessity of relying on that second ground. These members received assurances by the subcommittee chairman that the claims of privilege made by these witnesses would not have been upheld even

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[10] While the witnesses asked the subcommittee to obtain the information some other way, they never offered, from their knowledge of the matters under investigation, a concrete suggestion of any kind, let alone one that comported with the investigation's needs.

[11] See, e.g., *McGrain* v. *Daugherty*, 273 U.S. 135, 161 & n.15 (1927) ("power to secure needed information by such means has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament. * * *") (citing "May's Parliamentary Practice, 2d ed., pp. 80, 295, 299").

[12] In the 19th century, the House conducted a notable investigation into the financing of the Union Pacific Railroad and the activities of the Credit Mobilier. The House held Mr. Joseph B. Stewart, counsel for the Union Pacific Railroad, in contempt notwithstanding his assertion of attorney-client privilege. See *Stewart* v. *Blaine*, 1 MacArthur 453 (D.C. 1874) (dismissing Stewart's suit for false imprisonment against Speaker Blaine) and Eberling, Congressional Investigations 349-50 (1928). "During the [Credit Mobilier inquiry], Joseph B. Stewart, counsel for the Union Pacific, declined to answer the committee's questions on the ground that to do so would violate the confidential relationship between himself and his client, the railroad. Unimpressed, the House locked him up in a room at the Capitol." T. Taylor, Grand Inquest: The Story of Congressional Investigations 45 (1955).

[13] In the 20th century, a famous investigating committee led by Senator (later Justice) Hugo Black subpoenaed the books and records relating to certain mail contracts from an attorney, William P. MacCracken, Jr. MacCracken claimed attorney-client privilege and testified before the committee in support of that claim, but "[u]pon the conclusion of MacCracken's testimony on February 2, the Committee decided that none of the papers in his possession could be withheld under the claim of privilege." *Jurney* v. *MacCracken*, 294 U.S. 125, 146 (1935). The Senate learned that MacCracken had allowed some of the documents under subpoena to be destroyed, and he was held in contempt of Congress. The Supreme Court affirmed the contempt. Id. at 152. The contempt case focused on the destruction of documents rather than the claim of privilege, and so it did not produce a definitive judicial discussion of the claim of privilege; as the Court noted, "[t]he claim of privilege hereinafter referred to is no longer an issue." Id. at 144.

[14] See Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, Attorney-Client Privilege: Memoranda Opinions of the American Law Division, Library of Congress (Committee Print 1983); see also Hearings on the International Uranium Cartel before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess. (1977) (vol. I).

[15] See Senate Report No. 2, 84th Cong., 1st sess. 27-28 (1954); H. Res. 178, 84th Cong., 1st sess.

[16] The witnesses made no claim of fifth amendment privilege against self-incrimination here, on their own behalf or on behalf of others. Whether hypothetical situations very different from this one might entwine the fifth or sixth amendments in attorney-client situations (such as when criminal defendants reveal incriminating information to defense attorneys), here, in this context of information sought from a nonlawyer and his associate, a lawyer, regarding real estate investments, the two are quite distinct. *Fisher* v. *United States*, 425 U.S. 391, 402-14 (1976) (sharply distinguishing the fifth amendment and attorney-client privilege in context of tax information).

[17] See, e.g., *Yellin* v. *United States*, 374 U.S. 109 (1963); *Christoffel* v. *United States*, 338 U.S. 84 (1949).

[18] To take the most obvious example, as full application of the "state secrets" privilege would bar much of the oversight conducted by the Foreign Affairs, Armed Services, and Intelligence Committees, over the conduct of the Nation's foreign affairs and defense. Parliament never imposed such a bar upon itself, nor has the Congress. To take another example, the courts have repeatedly refused to interfere with congressional investigatory probes of assertedly privileged trade secrets, noting that the judiciary "'must presume that the committees of Congress will exercise their powers responsibly and with due regard for the rights of affected parties.'" *FTC* v. *Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 970 (D.C. Cir. 1980) (quoting *Exxon Corp.* v. *FTC*, 589 F.2d 582, 589 (D.C. Cir. 1978), cert. denied, 441 U.S. 943 (1979)).

Notwithstanding these obvious examples, the argument sometimes put for why privileges that apply elsewhere must be applied to Congress is that if the attorney-client privilege were overruled by a congressional committee in an instance when a court would not overrule it, this would deprive the privilege of its value in general to encourage clients to confide in attorneys. Even to state this argument is to show its absurdity. The investigations by Congress of state and trade secrets have hardly even disturbed these privileges' general utility, let alone destroyed the reasons they continue to be upheld in courts. There is no more likelihood that Congress would terminate the attorney-client privilege's usefulness by misuse of its investigatory authority than that Congress would take the considerably simpler step of amending Federal Rule of Evidence 501 to abolish the privilege in Federal cases. Few would contend that the Congress, as a historic matter, has proved antagonistic to the role of lawyers in this country or has set out to impair the practice of law. The burden is on those who would challenge the historic rule: Parliament's rule has hardly impaired the practice of law in Great Britain, nor has Congress' historic tradition, described above, impaired it here.

in a court, and that he would place his primary reliance on the advice of the general counsel to the Clerk in that respect. These members noted their strong preference that the committee not rely on a claim of power which was broader than necessary, and which, in their view, raised concerns about the future or about other contempt situations that they did not have to address in voting with regard to the contempt that had occurred here.

In light of the concerns and preferences expressed by these members, the committee requests that the U.S. attorney, in presenting this matter, proceed primarily and strongly with emphasis on the primary ground relied on by the subcommittee, that this claim of privilege would not have been upheld even in a court. It is the committee's expectation that this ground alone will suffice to sustain its investigation, without a need to address broader questions. The courts should find this approach preferable in any event, as it is consistent with the ancient and oft-repeated maxim that congressional contempts should apply "the least possible power adequate to the end proposed," *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204, 230 (1821).

CLAIM REGARDING BAR REQUIREMENTS

Finally, the witnesses claim bar requirements forbid the disclosure. They rely heavily on Legal Ethics Committee opinion No. 124 of the District of Columbia Bar, which advises the inquirer that tax lawyers should not voluntarily disclose the identity of the firm's clients to IRS auditors and should, if confronted with a summons, resist disclosure on behalf of their clients. They trace this requirement ultimately back to the rules of the bar, to some extent enacted into State statutes, to maintain what a lawyer considers to be client secrets or confidences, absent a court order.

This Ethics Committee's advisory opinion is inapposite, for several reasons. The relevant portions of the Code of Professional Responsibility do not, in fact, prohibit disclosure of client confidences absent a court order. The Code permits disclosure where "required by law or court order." See ABA Model Code of Professional Responsibility, DR 4-101(C)(2) (the Code has been adopted in both New York and the District of Columbia). Thus the "ABA Model Code * * * poses no ethical dilemmas for lawyers who are told by a law or by a court that, despite the general ethical prohibition against disclosure, they must reveal client confidences." ABA/BNA Lawyers' Manual on Professional Conduct, § 55:1201 (1984).

The witnesses contend that "Because 'voluntary' disclosure is that which has not been judicially compelled * * * *disclosure pursuant to a congressional subpoena could be considered voluntary.*" Memorandum of December 10, 1985, at 9-10 (submitted to the subcommittee by the recalcitrant witnesses' attorneys) (italics added and citations omitted). However, disclosure cannot be considered voluntary in the context in which these witnesses committed their contempt. In contrast to IRS summonses, there is no opportunity, in disobeying the considered ruling of a congressional investigation, to await a further court order before deciding whether to comply.[19] The procedure in congressional investigations has been described thusly by the Supreme Court:

"Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under § 192. Thus, if he raises an objection to a certain question—for example, lack of pertinency or the privilege against self-incrimination—the committee may sustain the objection. * * * In such an instance, the witness' refusal to answer is not contumacious, for there is lacking the requisite criminal intent. Or *the committee may disallow the objection* and thus give the witness the choice of answering or not. Given such a choice, the witness may recede from his position and answer the question. *And if he does not then answer, it may fairly be said that the foundation has been laid for a finding of criminal intent to violate § 192.*"

Quinn v. *United States*, 349 U.S. 155, 165-66 (1955) (italics supplied).

Thus, the congressional context cannot be analogized to the IRS context. Once the Chair in a congressional proceeding overrules the objection, the period when disclosure would be "voluntary" is past.[20] Once the subcommittee overruled their objection, the Bernsteins were bound to obey its direction, and follow its ruling as a commandment of disclosure, in the words of the Code, "required by law." Their resistance to doing so was contempt of Congress.

As an entirely separate matter, it is well-established that no professional or bar association rule can override Federal law, such as the Congress' inherent constitutional investigatory power.[21] In this instance, all the facts and circumstances strongly established for the subcommittee that the witnesses did not face a realistic threat of disbarment. In fact, one witness, Ralph Bernstein, is not even a member of the bar. This subcommittee simply could not credit that any organized bar would challenge its investigatory authority to the point of punishing witnesses who, having made every possible effort to present a claim of privilege, had had their claims overruled by a congressional tribunal of competent jurisdiction with authority to certify for criminal prosecution under 2 U.S.C. §192. It also notes that witnesses in congressional procedures have a range of statutory and common law protections which, along with obvious practical considerations, make concern about civil lawsuits far-fetched.

HOUSE RULES REQUIREMENTS

COMMITTEE ACTION AND VOTE

Pursuant to clauses 2(l)(2) (A) and (B) of rule XI, a majority of the committee having been present, the resolution recommended in this report was approved by a vote of 21 ayes to 2 nays.

COMPLIANCE WITH RULE XI, CLAUSE 2(l)(3)

(1) With reference to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, a separate hearing was held on the subject matter of this resolution by the subcommittee on Thursday, December 12, 1985.

(2) With respect to the Budget Act requirements of clause 2(l)(3) (B) and (C) of rule XI, neither is applicable as the measure reported is neither a bill nor a joint resolution.

(3) With respect to clause 2(l)(3)(D), no summary of oversight findings by the Committee on Government Operations was received.

CONCLUSION

The subcommittee properly proceeded with its bipartisan investigation of the allegations regarding the Marcos holdings. Upon due deliberation, it received the advice of the general Counsel to the Clerk and the minority counsel of the House that the witnesses' claims were not well taken. In essence, the witnesses are seeking to preserve an arrangement by which they have received hundreds of thousands of dollars a year for keeping secret their real estate investment services for foreign clients. The Congress cannot accept that arrangement as a constraint on its investigatory authority.

Accordingly, the committee recommends to the House the following resolution:

"*Resolved,* That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Ralph Bernstein to answer questions of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

"*Further resolved,* That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Joseph Bernstein to answer questions of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law."

[19] Opinion No. 124 is specifically tailored to one very narrow situation: An IRS audit and summons. Unlike Congress, the IRS operates under a detailed statutory framework which allows lawyers making privilege claims to await court orders rather than being bound by law to make disclosures on some other basis. While the IRS has a provision for criminal penalties for extreme instances of disobedience to summonses, 26 U.S.C. § 7210, the Supreme Court has held that "this statute on its face does not apply where the witness appears and interposes good faith challenges to the summons." *Reisman* v. *Caplin*, 375 U.S. 440, 447 (1964). Among such appropriate good faith challenges is the assertion that the matter "is protected by the attorney-client privilege." Id. at 449. Thus, the Court found that "a witness would suffer no injury" while awaiting a court order to obey the summons. Id.

[20] In that regard, it is well to note that such memoranda as the witnesses' law firm has provided, or other legal advice, may well assist the witness in presenting an objection to the investigatory committee. However, once the Chair overrules an objection, compliance is not voluntary; such memoranda do not excuse noncompliance. Again, as the Supreme Court explains.

There is no merit in appellant's contention that he is entitled to a new trial because *the court excluded evidence that in refusing to answer he acted in good faith on the advice of a competent counsel.* The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense. *Armour Packing Co. v. United States*, 209 U.S. 56, 85. *Standard Sanitary Mfg. Co.* v *United States*, 226 U.S. 20, 49. *Sinclair* v. *United States*, 279 U.S. 263, 299 (1929) (italics supplied.)

[21] Indeed, in recent years, the Supreme Court has repeatedly refused to follow bar rules found inconsistent with Federal constitutional or statutory law. See, e.g., *Supreme Court of New Hampshire* v. *Piper*, 105 S. Ct. 1272 (1985) (rule limiting bar admission to residents invalid under privileges and immunities clause); In re *Primus*, 436 U.S. 412 (1978) (bar rule restricting client solicitation by members of bar invalid under first amendment; *Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977) (bar rule banning advertising invalid under First Amendment); *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773 (1975) (bar associations publication and enforcement of minimum fee schedule invalid under the Sherman Act).

SEPARATE VIEWS OF HON. LAWRENCE J. SMITH

I am pleased that in its consideration of this contempt resolution, the full Committee decided to avoid the assertion that attorney-client protections applicable before judicial or administrative bodies are or may be inapplicable before the Congress. It is my understanding that the majority report will make clear the Committee's intention that the United States attorney who will be responsible for prosecuting this matter, if a prosecution becomes necessary, is not to base his case in any way on any contention that attorney-client protections may lawfully be disregarded in this or any other Congressional proceeding.

If such a proposition were to prevail, attorney-client protections could be eviscerated, and the values they are designed to serve would be made unsecure. A confidence can only be secure against disclosure if it is secure everywhere, in every forum where an attempt might be made to extract it.

If a client's confidences and secrets were not secure once given to an attorney, then there would be little meaning to the Fifth Amendment right against compelled self-incrimination, nor to the Sixth Amendment right to counsel, nor to any of the particular component Constitutional guarantees of due process.

Hence, the case against these two witnesses must stand or fall on the particular questions they declined to answer, and on the claim that normally applicable attorney-client protections do not support their refusals to testify in these instances. There appears to be no mechanism by which to test the validity of these witnesses' claims of privlege, other than through the issuance of a resolution of contempt, and ultimately, a court proceeding under 2 U.S.C. 192. Hence, I feel there is no alternative but to vote for the resolution before the Committee.

Indeed, this case demonstrates the urgency of a need for the Congress to take measures to avoid the unproductive and unfair dilemma in which we and these witnesses find ourselves. Appropriate committees should expedite development of legislation or other measures sufficient to establish an orderly and fair procedure for securing judicial resolution of contested claims of privilege in Congressional proceedings.

LARRY SMITH.

ADDITIONAL VIEWS OF HON. HOWARD L. BERMAN AND HON. MEL LEVINE

It was our understanding at the full Committee hearing that the majority report would make clear the Committee's intention that the United States attorney who will be responsible for prosecuting this matter is not to base his case in any way on the contention that attorney-client protections may lawfully be disregarded in this Congressional proceeding.

Although the Committee decided not to address the applicability of the privilege to Congressional proceedings in general, we believe that an assertion that such protections do not apply to the Congress would be a truly frightening proposition. If it were to prevail, attorney-client protections could be completely eviscerated, and the values they are designed to serve would be crushed. A confidence can only be secure against disclosure if it is secure everywhere, in every forum where an attempt might be made to extract it.

If a client's confidences and secrets were not secure once given to an attorney, then there would be little meaning to the Fifth Amendment right against compelled self-incrimination, nor to the Sixth Amendment right to counsel, nor to any of the particular component Constitutional guarantees of due process.

Hence, we were pleased that the Committee agreed that the case against these two witnesses must stand or fall on the particular questions they declined to answer, and on the claim that normally applicable attorney-client protections do not support their refusals to testify in these instances.

Indeed, this case demonstrates the urgency of a need for the Congress to take measures to avoid the unproductive and unfair dilemma in which we and these witnesses might find ourselves. Appropriate committees should expedite development of legislation or other measures sufficient to establish an orderly and fair procedure for securing judicial resolution of contested claims of privilege in Congressional proceedings.

HOWARD BERMAN.
MEL LEVINE.

DISSENTING VIEWS OF HON. GERALD B.H. SOLOMON

The action by the Committee on Foreign Affairs to authorize contempt of Congress citations against two American citizens takes what started out at the Subcommittee level as a fishing expedition and raises it to the scale of a full-blown witch hunt. Moreover, the action that was initiated by the Subcommittee on Asian and Pacific Affairs (and now ratified by the full committee) amounts to nothing more than an attempt to interfere in the election process now underway in the Republic of the Philippines.

Let me say at the outset that I have no objection to the Subcommittee (or the full committee) investigating whether or not U.S. foreign assistance money for the Philippines has been diverted by the recipient government for other purposes. But I very strenuously object to the timing of this particular inquiry. By proceeding now, after a Presidential election in the Philippines has been set for February 7, 1986, the Subcommittee and the Committee are embarking on a course the only purpose of which is to create public controversy.

An inquiry of the magnitude that is presently underway will take many weeks, even months or years to complete. The only possible outcome between now and February 7 will be to provide a stimulus for sensational newspaper stories and irresponsible speculation. Once again, we will be treated to the spectacle of trial by headlines. I contend that Congress has more productive things to do.

As already noted, the ostensible purpose of this inquiry is to ascertain whether or not U.S. foreign assistance money for the Philippines has been diverted for other purposes. In the three years that I have been a member of the Subcommittee on Asian and Pacific Affairs, not one shred or evidence has ever been given to the Subcommittee that such diversions have ever taken place. The Subcommittee holds marathon hearings every year in connection with the foreign aid bill, but never once has any evidence been produced to confirm these suggestions.

A series of articles appeared in The San Jose Mercury-News on June 23, 24, and 25, 1985 alleging that President Marcos of the Philippines and members of his family and official entourage have invested large sums of money in real estate transactions in the United States. The question of whether or not some of this money may have been U.S. foreign assistance funds was never mentioned. And when the foreign aid bill came to the floor of the House during the second week in July, the issue of possible foreign aid diversions in the Philippines was never discussed then either.

When the foreign aid bill went to House/Senate conference in early August, the question of what mixture of economic and military assistance to provide to the Philippines became the most contentious issue of the entire conference. An amendment I offered to provide an adequate level of military assistance, as opposed to frontloading the whole package with Economic Support Funds, received substantial support, particularly from our Senate colleagues, because the delivery and use of military assistance can be much more effectively monitored than can ESF. But again, the issue of foreign assistance diversions was never raised, even by ⁺hose members who advocated frontloading the package with an inordinate amount of ESF.

My point simply is that allegations concerning investments by President Marcos and his associates have been in the public domain for many months, since even before the year's foreign aid bill came to the floor. And yet all during these protracted proceedings, the issue was never brought up. Not until President Marcos announced plans for an election did the Subcommittee leap into action. And I can only conclude from the timing of this inquest that its sole purpose is to create enough controversy and headlines so as to influence the outcome of that election.

Before moving on to my second principal objection to citing two persons for contempt of Congress, I would like to reiterate that I in no way want to belittle or disparage the importance of this inquiry. But I see no reason why it cannot begin on February 8, the day after the election.

But aside from the whole matter of timing, I also must strongly object to the extraordinary use of Congressional subpoena power in this case. Rather than first meeting with the reporters who have written the articles in The San Jose Mercury-News and, subsequently, other newspapers to learn from them the methodology and sources by which and from which the articles were written, the Subcommittee rushed headlong into issuing subpoenas against individuals who were named in the articles. I find this to be an unconscionable abuse of Congressional subpoena power.

Rather than commencing orderly deliberations and exploring all available avenues for receiving the desired information, the Subcommittee opted to take the quick and easy route by issuing subpoenas. So hasty was the Subcommittee's action that even the Chairman acknowledged having to call in outside consultants for advice on the case. At the insistence of the Subcommittee's ranking Republican member, these outside consultants were removed from the executive sessions that the Subcommittee conducted on this matter.

The subpoenas also placed extraordinary demands on the witnesses who are now being threatened with contempt of Congress citations. The subpoenas issued by the Subcommittee were so sweeping in nature that the witnesses have testified under oath that in order to comply fully with the Subcommittee's demand, they would have to sort through no less than 436 file folders of documents—an amount of material taking up 70 linear feet of file space and adding up to more than 150,000 pages. As if to compensate for months of inactivity and silence on its part, the Subcommittee chose to make

up for lost time on this issue and make other people do the work.

In conclusion, the whole pattern that has been established in this case is deplorable. At a time when the House has been considering some of the most important legislation in many years, the Subcommittee, and now the Committee, have decided to cite two Americans for contempt of Congress. This decision has been reached in literally the closing hours of last year's legislative session.

The process has been disorderly and the use of subpoenas has been questionable, but the timing of this whole enterprise leaves little doubt about what its intention is. That this whole affair is designed to affect the outcome of the election in the Philippines, preferably to bring down President Marcos, I haven't the slightest question. The real question is whether or not this is a worthwhile endeavor for the House of Representatives, particularly when it means that American citizens are persecuted in the process.

I am convinced that approval by the full House of Representatives of contempt of Congress citations in this case would constitute a denial of due process of law and be subject to a serious challenge in the federal courts. Moreover, the discredit that some people would like to confer on President Marcos will eventually redound to the discredit of this body.

JERRY SOLOMON.

DISSENTING VIEWS OF HON. TOBY ROTH

The issue before us is a serious one. It must be considered only after careful reflection and discussion. Contempt of Congress is one of the most severe actions this body can pursue. Our motives for action must only reflect the common good of our country. Not individual political advancement. Not unfair manipulation of foreign democracies. Not snap judgments or assumptions. This serious charge must only be pursued if the good of our country is at stake!

I urge my colleagues to oppose the contempt of Congress charge. We can easily be accused of entering court with "unclean hands." I question the motive. Is it solely for publicity? The hearing was rushed through the subcommittee during the busiest legislative time of the House Calendar. Members are deliberating on some of the most pressing domestic issues of our time, tax reform and deficit reduction. Personally, I was very torn between devoting my undivided attention to these hearings and the more serious domestic matters facing our Nation. The executive branch, the leading constitutional foreign policy arm of our Government, did not issue a request for such hearings. Why are we acting with such haste?

My opposition is grounded in the law governing congressional actions. There is no connection between these hearings and our legislative mandate. The subcommittee is fishing for a connection.

A real contempt of Congress charge is valid only if information pertaining to legislative measures is withheld during a hearing. The questions posed by my distinguished colleague, Mr. Solarz, to Mr. Ralph Bernstein and Mr. Joseph Bernstein, don't affect legislation. Therefore no grounds exist to press for contempt of Congress.

Law also states that ample time must be given to the witnesses to prepare testimony. This is clearly not the case. The subpoenas were signed by our committee chairman on December 4th and delivered to the witnesses shortly thereafter. The witnesses appeared before the subcommittee on December 11th, and a contempt of Congress charge was initiated the following day, December 12th. This was hardly a fair amount of time for the witnesses to prepare testimony. Most of us know that witnesses who appear before subcommittee usually are notified weeks in advance if not longer. Why are we rushing?

Finally, I encourage my colleagues to withhold their support for the contempt charge because the proceedings are inappropriate at this time. It is my belief that Mr. Solarz is using the hearings to influence the Philippine elections scheduled for early February. This is an improper use of congressional authority. No further action should be taken on this issue until the elections, which were encouraged by our country, are completed. We've asked for clean and fair elections in the Philippines. Let's not interject ourselves into those elections. Let's not try to influence the Philippine electorate—they can decide for themselves, who they want in government.

I want to remind my colleagues that the contempt of Congress charge is an illustration of the power of Congress. This power was granted by the power of the citizens to be used for the best purpose of our country. Manipulating this power will be a serious error and set a precedent that would have far reaching and potentially dangerous applications to congressional authority in the future.

This resolution is not in the best interest of the Congress nor the citizens of our country. I do not want to be a party—nor should this committee and this Congress be a party, to handing mud pies to the opposition in the Philippines. I urge you to oppose this resolution.

TOBY ROTH.

APPENDIX A

TRANSCRIPT OF TESTIMONY IN WHICH WITNESSES REFUSED TO ANSWER

Mr. SOLARZ. We will now proceed.

Mr. Bernstein, with respect to why the President or Mrs. Marcos—excuse me.

I am advised by counsel I should just let you know what the procedure will be.

Yesterday I told you and the other witnesses that their claim had been overruled and they would be ordered and directed to answer the questions I would subsequently put to them.

To give the witnesses the maximum opportunity to consider their decision, we took two further steps, first we took an overnight recess for the witnesses to consider the situation.

Second, last night House counsel provided counsel for the witnesses with our draft questions for today. I included in the record the memorandum of draft questions provided yesterday.

I will now resume each witness in succession. I repeat, since their objection is overruled and they are now ordered and directed to answer the questions, if they refuse to answer they will be subject to contempt of Congress. To keep matters brief, I hope they will, that they will answer, if they determine not to answer they may simply say something short such as privilege, or same reason.

It will be understood that they stand on all the arguments presented by their counsel yesterday, and that these have been overruled for the reasons stated yesterday.

First we will hear from Mr. Ralph Bernstein.

Mr. Bernstein.

* * * * * *

CONTINUED STATEMENT OF RALPH BERNSTEIN

Mr. SOLARZ. With respect to President Marcos, do you know either of them?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you met either of them?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. Did you meet either of them on your 1982 trip to the Philippines?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you provided either with real estate investment advice?

Mr. RALPH BERNSTEIN. No.

Mr. SOLARZ. Pardon?

Mr. RALPH BERNSTEIN. No.

Mr. SOLARZ. No.

Have you provided either of them with financial investment advice?

Mr. RALPH BERNSTEIN. No.

Mr. SOLARZ. No.

Have you drafted leases or mortgages for either?

Mr. RALPH BERNSTEIN. No.

Mr. SOLARZ. Have you located real estate properties for either?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. Privileged.

Have you acquired real estate properties for either?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. Privileged.

From your business activity locating and acquiring real estate properties and so on, do you know if either has any interest in the Crown Building?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. From your business activity, do you know if either has any interest in the Harold Center?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. Privileged.

Do you know the origin of any funds for purchase of any interest in Crown Building or Harold Center?

Mr. RALPH BERNSTEIN. No, as far as I can remember the answer is no.

Mr. SOLARZ. From your business activities do you know any investments by the Marcos family in the United States?

Mr. RALPH BERNSTEIN. Privileged.

Mr. SOLARZ. What position do you hold in Canadian Land Company?

Mr. RALPH BERNSTEIN. At the current time I don't hold any position.

Mr. SOLARZ. Did you ever hold a position?

Mr. RALPH BERNSTEIN. Yes.

Mr. SOLARZ. What was it?

Mr. RALPH BERNSTEIN. Managing Director.

Mr. SOLARZ. Managing Director.

Do you know who the company's officers are?

Mr. RALPH BERNSTEIN. I cannot recall.

Mr. SOLARZ. Do you know who they were at the time you were a managing director?

Mr. RALPH BERNSTEIN. No, I cannot recall.

Mr. SOLARZ. Can you please speak into the microphone?

Mr. RALPH BERNSTEIN. I cannot recall.

Mr. SOLARZ. Do you know who the shareholders of Canadian Land are?

Mr. RALPH BERNSTEIN. I cannot recall.

Mr. SOLARZ. You have no idea?

Mr. RALPH BERNSTEIN. As far as I can recall, I don't have any idea.

Mr. SOLARZ. Absolutely none?

Mr. RALPH BERNSTEIN. No.

Mr. SOLARZ. How did you become a managing director?

Mr. RALPH BERNSTEIN. My brother appointed me a managing director.

Mr. SOLARZ. Pursuant to what authority did he appoint you?

Mr. RALPH BERNSTEIN. I really don't know.

Mr. SOLARZ. He just appointed you, and then for how long were you the managing director?

Mr. RALPH BERNSTEIN. I am not really sure.

Mr. SOLARZ. Are you a director—you are no longer a director of the Canadian Land Company?

Mr. RALPH BERNSTEIN. No.

Mr. SOLARZ. Thank you very much.

Mr. RALPH BERNSTEIN. Thank you.

Mr. SOLARZ. I now call Joseph Bernstein.

* * * * *

CONTINUED STATEMENT OF JOSEPH BERNSTEIN, BERNSTEIN, CARTER AND DEYO, ESQUIRE

Mr. SOLARZ. Mr. Bernstein, with respect to either President Marcos or Mrs. Marcos, do you know either of them?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Can you please speak into the microphone.

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you met either of them?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you ever had any business dealings with either?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you located any real estate properties for either?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you acquired any real estate properties for either?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you provided any real estate or financial advice to either?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you drafted any leases or mortgages for either?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Who appointed you as a director of Canadian Land Company?

Mr. JOSEPH BERNSTEIN. I think it must have been some shareholder resolution but I don't recall.

Mr. SOLARZ. It was a shareholder resolution?

Mr. JOSEPH BERNSTEIN. I am not sure. That is my best guess.

Mr. SOLARZ. Who were the shareholders of Canadian Land Company at the time you were appointed a director?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. When did the shareholders of Canadian Land Company first become shareholders of it?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Why was the name of Lastura NV changed to Canadian Land Company?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Was there any change of ownership or company officials when the name was changed?

Mr. JOSEPH BERNSTEIN. On change of ownership, privileged.

On change of offers, I do not believe so.

Mr. SOLARZ. Are any shareholders Filipino?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Did any money to purchase or renovate the Crown Building come from the Philippines?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Does Imelda Marcos have any interest, direct or indirect interest in Lastura NV or Canadian Land Company?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Does Ferdinand Marcos have any interest, direct or indirect, in Lastura NV or Canadian Land Company?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Have you acted directly or indirectly for any other principal in your capacity as director of Canadian Land Company?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Does Imelda Marcos have any direct or indirect financial interest in the Crown Building?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Does Ferdinand Marcos have any direct or indirect interest in the Crown Building?

Mr. JOSEPH BERNSTEIN. Privileged.

Mr. SOLARZ. Has anyone asked you not to cooperate with our inquiry?

Mr. JOSEPH BERNSTEIN. No, sir.

Mr. SOLARZ. Are you at all concerned if you did cooperate with our inquiry that you might be the subject of physical intimidation?

Mr. JOSEPH BERNSTEIN. I would decline to answer that question.

Mr. SOLARZ. On what grounds?

Mr. LAZARUS. I think the answer is fairly clear, Mr. Chairman.

Mr. SOLARZ. We are now in executive session. I ask the question because the other witnesses that have been subpoenaed before this committee have through counsel told us that they fear there could be threats to their families in the Philippines.

Mr. LAZARUS. Would you repeat the question, please.

Mr. SOLARZ. Do you have any reason to believe that if you were to cooperate before this committee, you or anyone in your family would be the subject of physical intimidation?

Mr. JOSEPH BERNSTEIN. I suspect it is possible.

Mr. SOLARZ. Why?

Mr. JOSEPH BERNSTEIN. I read the newspapers, I suppose it is possible.

Mr. SOLARZ. Who? Is that why you are not cooperating with this committee?

Mr. JOSEPH BERNSTEIN. No, sir.

Mr. SOLARZ. And who—from where would these acts of intimidation come?

Mr. JOSEPH BERNSTEIN. I would think that if—this is totally hypothetical, but if I was identified as being involved in any capacity it could come from either side of the government, opposition just as strongly as current.

Mr. SOLARZ. Is it possible that any of the principals who have declined to identify because of the assertion of the privilege might seek to——

Mr. JOSEPH BERNSTEIN. No, sir.

Mr. SOLARZ. You have no concern that way?

Mr. JOSEPH BERNSTEIN. No, sir.

Mr. SOLARZ. I see.

Mr. GEJDENSON. Will the gentleman yield?

Mr. SOLARZ. Certainly, be happy to yield.

Mr. GEJDENSON. Which government was the gentleman referring to?

Mr. JOSEPH BERNSTEIN. The Government of the Philippines.

Mr. SOLARZ. Do you think there is any threat to the members of this subcommittee or to the chairman as a result of the pursuit of this inquiry?

Mr. JOSEPH BERNSTEIN. I don't think so, but I don't have any knowledge to make that determination.

Mr. SOLARZ. I hope not.

Did the stockholders meet—let me just say that during the recess if I should vanish somewhere in Manila, I trust that the Members will carry on in the spirit——

Mr. GEJDENSON. The minority would be happy to carry on.

Mr. UDALL. At what point could I resign from the subcommittee?

Mr. SOLARZ. Let me say if I do disappear, it may be—I suggest you also find out who accompanied me on this trip.

Mr. SOLOMON. Mr. Chairman, if you disappear, I assure you I had nothing to do with it.

Mr. SOLARZ. Finally, did stockholders meet and ask you to resign as a director of Canadian Land Company?

Mr. JOSEPH BERNSTEIN. I don't know, the official records of the company must have some shareholder resolution. I don't know if stockholders met or anything like that.

Mr. SOLARZ. Why did you resign?

Mr. JOSEPH BERNSTEIN. I was asked to and I provided resignation documents.

Mr. SOLARZ. Thank you very much.

Mr. LAZARUS. If I could just say on the physical safety point, I think that your situation could be different from these people's situation regardless of what they may have said, and I think it is something with which we need to bear in mind.

Mr. SOLARZ. Thank you.

Mr. Deyo.

APPENDIX B

MEMORANDUM OPINION OF GENERAL COUNSEL TO THE CLERK OF THE HOUSE OF REPRESENTATIVES ON ATTORNEY-CLIENT PRIVILEGE

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 11, 1985.

Memorandum to: The Honorable Stephen J. Solarz.

From: Steven R. Ross, General Counsel to the Clerk; Charles Tiefer, Deputy General Counsel to the Clerk.

Subject: Anticipated Claim of Attorney-Client Privilege.

It is anticipated that the Subcommittee will be confronted with a claim of attorney-client privilege during the conduct of today's hearing. This memorandum will discuss several aspects of that claim and will provide the Subcommittee with the views of this office on the relevant Congressional and judicial precedents which the Subcommittee may wish to consider in rendering its determination on the applicability of the asserted privilege.

Rule X(i) of the Rules of the House of Representatives provides the Committee on Foreign Affairs with legislative and oversight jurisdiction over matters related to the international relations of the United States, including the relations of the United States with foreign nations generally, foreign loans, intervention abroad and declarations of war, measures to foster commerical intercourse with foreign nations and to safeguard American business interests abroad, protection of American citizens abroad, various international organizations and other related matters. Rule X(i), Rules of the House of Representatives, reprinted at 678 Constitution, Jefferson's Manual and Rules of the House of Representatives, H.R. Doc. No. 98-277, 98th Cong. 2d Sess. 358 (1985) (Rules of the Ninety-Ninth Congress).

The Rules of the Committee on Foreign Affairs devolve upon the Subcommittee specific responsibility with respect to foreign assistance. The Subcommittee is charged with the jurisdictional responsibility concerning the annual legislative programs of foreign assistance for its region, the ongoing oversight of all foreign assistance activities affecting its region and is required to report to the full Committee, on an annual basis, its findings and conclusions, including specific legislative recommendations, with respect to foreign assistance activities of the United States. Additionally, the Rules of the Committee give the Subcommittee jurisdiction on matters affecting the political relations between the United States and na-

tions within the region, certain aspects of disaster relief, loan and other financial relations within the region, particular responsibility in the area of arms sales, and general elements related to the development of the foreign policy to be pursued with respect to nations within the region. Rule 14, Rules of the Committee on Foreign Affairs, reprinted in Rules Adopted by the Committees of the House of Representatives, Rules Committee Print, 99th Cong.

Pursuant to these jurisdictional grants the Subcommittee has commenced an inquiry into the various allegations that have surfaced in the press and elsewhere with respect to large scale real estate investments purportedly made by or on behalf of the Marcos family. The Subcommittee believes that the nature and extent of real estate investment in the United States by governmental officials in nations receiving vast amounts of American support may be instructive to Congressional consideration of pending and future foreign assistance decisions, as well as other aspects of our relations with the Philippines and the region in general. The desirability of enacting certain mandatory disclosure laws is also under consideration by the Subcommittee. Clearly, the information sought by the Subcommittee's recent subpoenas is pertinent to these valid legislative inquiries.

Counsel for certain of the witnesses have advised the Subcommittee that they do not believe that their clients can comply with a significant portion of the documentary aspect of the subpoenas and have further indicated that they expect to assert a privilege against answering many of the questions which the Subcommittee is likely to put to their clients. By memorandum, and in discussion, counsel for the witnesses have presented the Subcommittee with their legal assertions. Presumably these points will be repeated and supplemented during the course of the Subcommittee's hearing. To assist the Subcommittee in its consideration of the claim of privilege there follows a discussion of the salient points of the assertion of privilege.

Essentially counsel for the witnesses present three arguments. The first is the question of the time afforded to respond to the subpoenas. Secondly, is the claim that the common law privilege of attorney-client secrecy prevents the witnesses from providing the Subcommittee with the information it seeks. Thirdly, it is submitted to the Subcommittee that the potential application of certain disciplinary rules of the bar serve to put the witnesses at risk of disbarment or other disciplinary action, if they reveal client confidences in response to the Subcommittee's subpoena. This office believes that all three grounds proffered do not serve to excuse the witnesses from fully complying with the Subcommittee's subpoena and do not serve as a valid basis for the witnesses to refuse to answer pertinent questions posed by the Subcommittee.

The time which a Congressional committee must afford to someone to comply with its subpoenas is a function of the facts present in each individual case. Although the Congress should not be deterred in obtaining the information that it needs in furtherance of its legislative responsibilities, individuals required to provide this informaiton should be given a reasonable period of time to prepare for and attend a Congressional hearing. In the rare instances in which this question has been given judicial attention the extreme flexibility of a Congressional committee to set the schedule for an individuals appearance has been recognized. Thus in *United States* v. *Kamin*, 136 F. Supp. 791, the court recognized that a one-day notice was sufficient for a witness who came to the hearing and then refused to answer questions. Although the defendant was acquitted on other grounds, the Court specifically held that the one-day notice was sufficient. Less extreme is the Supreme Court's determination in *Wilkinson* v. *United States*, 365 U.S. 399 (1961), that notice of one week was sufficient to compel someone to attend a field hearing. As a general rule, House Committees endeavor to provide individuals with notice of several days to attend a hearing. The time constraints relevant to a production of documents does present different questions. Again, the Subcommittee enjoys a wide degree of latitude in determining whether or not a witness is factually incapable of complying with a document demand. In reaching this conclusion, the reason for delay should be taken into account by the Subcommittee. In this instance, the delay appears to be a function of the self-imposed requirement of multiple review procedures to determine whether or not specific documents are covered by the privilege. Therefore, the Subcommittee's determination of reasonableness as to time may turn, in part, on its determination of the applicability of the privilege claim. We will, therefore proceed to discuss that claim.

It is anticipated that the claim of attorney-client privilege will be asserted with respect to requests for corporate business records and with respect to various business transactions, i.e, real estate purchases, which these witnesses conducted on behalf of other individuals. The nature of the subject matter, relating to real estate transactions rather than the provision of legal services render, the claim of privilege unpersuasive. Claims of attorney-client privilege have been rejected by the judiciary with respect to virtually identical questions in the recent past. Moreover, the general rule is that attorney-client privilege can not be claimed as a matter of right before a legislative committee. This has been the traditional determination by both the House and the Senate and, in fact, parallels the treatment afforded by the English Parliament under the English law of both attorney-client privilege and parliamentary prerogatives.

The attorney-client privilege has developed as a function of common law tracing its roots in the English barrister's code of honor and the notion that an English gentleman would not reveal secrets. As recognized by courts in the United States, the privilege attaches to a client's communications seeking legal advice from a professional legal advisor acting in that capacity, and applies only to communications regarding action in that capacity. "Thus, where the attorney acts as business advisor or collection agent, gives investment advice, or handles financial transportation for his client, the communications between him and his client are not protected by the privilege. In re *Edwin Shapiro*, 381 F. Supp. 21 (N.D. Ill. 1974) (footnotes omitted).

In a recent case, documents subpoenaed from an attorney regarding real estate property purchases. The attorney had represented two undisclosed principals. The subpoena required all the business records of the pertinent real estate company, all the records concerning the purchase and sale of the properties, and "directed(ed) petitioner (that is, the attorney) to testify before the grand jury regarding his knowledge of business affairs of XYZ Realty, Inc., (the pertinent real estate company). In re *Application of John Doe, Esq.*, 603 F. Supp. 1164 (E.D.N.Y. 1985). Among the specific questions that were to be answered in that questioning was one parallel to the key one for the Subcommittee's hearing: "Who founded XYZ; a) How much case was put into the corporation; b) Who funded the corporation." Id. at 1167 n.1. The district court held that no attorney-client privilege applied: the document "categories are unprivileged because they related to business, not legal advice," Id. at 1167, while the questions "appeared to seek answers concerning only business advice when, though perhaps intended to be private, most certainly were not privileged." Id.

The similarity of the claims rejected earlier this year by the judiciary in above-cited case and the claims asserted here make that decision particularly instructive.

Not only is it appropriate for this Subcommittee to determine, as had the court in New York, that business information of this nature can not be cloaked in the protective garb of confidential attorney-client communication, but it is also appropriate for this Subcommittee to reject, as other Congressional subcommittees have the applicability of the attorney-client privilege to legislative proceedings.

As Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, the oracle to be consulted in determining questions of English parliamentary procedure, specifically notes:

"A witness is, however, bound to answer all questions which the committee sees fit to put to him, and cannot excuse himself, for example, on the ground that he may thereby subject himself to a civil action, or because he has taken an oath not to disclose the matter about which he is required to testify, or because the matter was a privileged communication to him, as where a solicitor is called upon to disclose the secrets of his client . . . some of which would be sufficient grounds of excuse in a court of law." Erskine May's Treatise at 746–47, Twentieth Edition (1983).

Consistently, Congressional committees have felt enabled to reject the applicability of claims of attorney-client privilege. Thus in the nineteenth century, notable investigation into the financing of the Union Pacific Railroad and the activities of the Credit Mobiler, the House Committee held Mr. Stewart in contempt notwithstanding his assertion of attorney-client privilege. See *Stewart* v. *Blaine*, 1 MacArthur 453 (D.C. 1874) and Eberling, Congressional Investigations (1928), 349–50.

In recent years, the Subcommittee on Investigations and Oversight of the Committee on Energy and Commerce has on a number of occasions rejected claims of attorney-client privilege. See, Attorney-Client Privilege, Memoranda Opinions of the American Law Division, Library of Congress, Committee Print 98–I, (98th Cong. June 1983). See also Hearings, International Uranium Cartel, before Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess Vol. 1 (1977).

Both the House and the Senate have failed to adopt proposals to specifically incorporate a privilege respecting attorney-client confidences in their Rules. See Sen. Rept. No. 2, 84th Cong., 1st Sess. 27–28 (1954), H.R. Res. 178 (84th Cong., 1st Sess.)

As demonstrated from the discussion above, the House has taken a limited view as to the applicability of attorney-client privilege. It has entertained, as a matter of discretion claims to that effect. However, where the House Subcommittee has determined that the legislature need for the information to facilitate the conduct of the public business requires productions such production has been required. In this situation, the underlying claim is attenuated by the "business" nature of the information sought. It is, therefore, entirely reasonable and consistent with the precedents of the House and the appropriate judicial precedents for the Subcommittee to reject the claim of privilege.

Additionally, counsel for the witness seeks to present a somewhat district argument under the Canons of Ethics applicable to the witnesses as members of the Bar. Essentially, this argument entails the notion that the witnesses would be subject to disciplinary proceedings based on their divulging of client secrets to the committee. The claim is that the Ethics Code only permits disclosure upon a specific court order. The Code actually permits disclosure where required by law or court order. It is designed to assure that a lawyer will take steps to assure that his clients confidence is respected to a proper degree but does recognize that the protection is not absolute. In the Congressional context the ruling by the Subcommittee chair that the privilege will not be accepted is the legal and functional equivalent on a legal requirement or a court order. Failure to answer at that point constitutes a criminal violation. Disclosure at that stage does not violate the Canons of Ethics nor the Bar Code of any jurisdiction.

APPENDIX C

MEMORANDUM OPINION OF GENERAL COUNSEL TO THE CLERK OF THE HOUSE OF REPRESENTATIVES ON VOLUNTARINESS OF WITNESS COMPLIANCE

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, December 11, 1985.

Memorandum to: Subcommittee on Asian and Pacific Affairs.

From: Steven R. Ross, General Counsel to the Clerk; Charles Tiefer, Deputy General Counsel to the Clerk.

Subject: Whether Compliance with Ruling of Subcommittee Chairman is "Voluntary."

Counsel for the witnesses in this investigation has raised the issue that "the witnesses must resolve all uncertainties concerning confidentiality in favor of asserting the privilege . . . because an attorney's voluntary production . . . constitutes a complete and binding waiver of the privilege;" counsel further contends that "Because 'voluntary' disclosure is that which has not been judicially compelled * * * *disclosure pursuant to a congressional subpoena could be considered voluntary.*" Memorandum of Dec. 10, 1985, at 9–10 (emphasis added and citations omitted).[1]

This issue matters particularly because these witnesses will have to decide, if the Chair overrules their objections, whether they must answer, or whether they are still acting voluntarily—and hence can or should press their claims further.

Counsel's contention that disclosure pursuant to Congressional direction is "voluntary" is without merit. It shows a fundamental lack of understanding of the basic parallel between how objections are presented to, and ruled upon, by the judicial and legislative branch proceedings. In the judicial proceeding—or in administrative proceedings, like IRS summonses, enforced through a civil judicial proceeding—a witness who has an objection to providing documents or information may withhold those documents or information, present that objection, and await the ruling of the Court. Depending on one's choice of vocabulary, production pursuant to subpoena or summons prior to that ruling may be considered "voluntary," but once the objection is overruled, and the witness must cease withholding, production and answering clearly are not voluntary.

The procedure in the legislative branch proceedings parallels this, as described by the Supreme Court:

"Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under § 192. Thus, if he raises an objection to a certain question—for example, lack of pertinency or the privilege against self-incrimination—the committee may sustain the objection and abandon the question even though the objection might actually be without merit. In such an instance, the witness' refusal to answer is not contumacious, for there is lacking the requisite criminal intent. Or *the committee may disallow the objection* and thus give the witness the choice of answering or not. Given such a choice, the witness may recede from his position and answer the question. *And if he does not then answer, it may fairly be said the foundation has been laid for a finding of criminal intent to violate § 192.*"

Quinn v. *United States*, 349 U.S. 155, 165–66 (1955) (emphasis supplied). In short, once the Chair in a legislative proceeding overrules the objection, the period when disclosure would be "voluntary" is past, just as surely as that period is past in a judicial proceeding once the Court overrules the objection.

In that regard, it is well to note that such memoranda as the witnesses' law firm has provided, or other legal advice, may well assist the witness in presenting an objection to the Chair. However, once the Chair overrules an objection, compliance is not voluntary; such memoranda do not excuse noncompliance. Again, as the Supreme Court explains,

"There is no merit in appellant's contention that he is entitled to a new trial because *the court excluded evidence that in refusing to answer he acted in good faith on the advice of a competent counsel.* The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense. *Armour Packing Co.* v. *United States*, 209 U.S. 56, 85. *Standard Sanitary Mfg. Co.* v. *United States*, 226 U.S. 20, 49."

Sinclair v. *United States*, 279 U.S. 263, 299 (1929) (emphasis supplied).

In fact, the constitutional imperative that Congress obtain the information it requires is so strong that there is no place for a doctrine that by providing information to Congress when a claim of privilege has been validly overruled, the privilege is waived for some other context. As the D.C. Circuit recently explained, in rejecting the contention that providing documents to Congress would waive the privilege provided by Exemption Five of the Freedom of Information Act:

"We do not find it necessary to explore fully to what extent . . . disclosure might affect the applicability of Exemption Five, under doctrines of waiver . . . for it is evident that the disclosure to the Congressman could not have had that consequence.

"* * * [A]n interpretation [that] every disclosure to Congress would be tantamount to a waiver of all privileges and exemptions [would meant that] executive agencies would inevitably become more cautious in furnishing sensitive information to the legislative branch, a development at odds with public policy which encourages broad congressional access to governmental information. For these reasons, we conclude that . . . [when Congress] actually does receive such information pursuant to [section 5(c) of the act] (whether in the form of documents or otherwise), *no waiver occurs of the privileges and exemptions* which are available to the executive branch under the FOIA with respect to the public at large. Congress, whether as a body, through committees, or otherwise, must have the widest possible access to executive branch information if it is to perform its manifold responsibility effectively. . . . [A waiver rule] would tend to 'dry up' the executive flow of information to the Congress since it would strip information of whatever privilege it might otherwise possess."

Murphy v. *Department of the Army*, 613 F.2d 1151, 1155–56, 1158 (D.C. Cir. 1979).

In sum, a witness who withholds information while presenting his objection, and fortifies that objection with legal arguments, and insists on the objection being overruled and receiving an order from the Chair before providing the information, has done what he can. At that point, the contention that the witness is acting "voluntarily" simply is without merit, for refusing the order of the Chair means that "the foundation has been laid for a finding of criminal intent to violate §192." *Quinn* v. *United States*, supra.

APPENDIX D

MEMORANDUM ON BEHALF OF THE WITNESSES

Memorandum to: Hon. Stephen J. Solarz, United States House of Representatives.

From: C. King Mallory, III, Stuart E. Eizenstat.

Date: December 10, 1985.

WITNESSES' ETHICAL OBLIGATIONS ATTORNEY-CLIENT PRIVILEGE WITH RESPECT TO SUBCOMMITTEE'S SUBPOENAS

We have been retained by Joseph Bernstein, Ralph Bernstein, and William B. Deyo, Jr., in connection with the subpeonas duces tecum that have been issued to them by the Foreign Affairs Committee. This

[1] The single case to which counsel cited, concerning disclosure being "voluntary" when not judicially compelled (a one-sentence footnote in *Chubb Integrated Systems* v. *National Bank of Washington*, 103 F.R.D. 52, 63 n.2 (D.D.C. 1984)), has nothing to do with the Congressional context, says nothing about Congressional subpoenas, and actually does not concern even a judicial contempt situation, but merely a discovery dispute concerning voluntary permission given to opponents in litigation to inspect files. It clearly is without the slightest intention of being considered an obiter dicta about contempt of Congress. It contrasts with the Supreme Court and D.C. Circuit cases discussed below addressing the core realities of Congressional investigation.

memorandum explains why we have advised our clients that they are obligated not to respond fully to the Subcommittee's subpoenas. Although our clients intend to cooperate with the Subcommittee to the extent that they can do so consistent with their professional obligations, they are simply unable to comply completely with the particular subpoenas issued by the Subcommittee without violating those obligations.

Joseph Bernstein and William Deyo are members of the New York law firm of Bernstein Carter & Deyo. Ralph Bernstein is a former employee of the law firm and is now an officer of New York Land Co., a client of the firm.

Joseph Bernstein and William Deyo were served with the subpoenas at their law firm on December 5, 1985; Ralph Bernstein was served yesterday. The subpeonas seek the witnesses' oral testimony and production of "[a]ny and all documents reflecting ownership, and its value" of eleven listed corporations and real properties, as well as "any and all documents concerning purchases or other transactions on behalf of Philippine or Philippine-American principals."

We have been advised that, prior to the issuance of the subpoenas, the Subcommittee staff tried to contact Joseph Bernstein by telephone, on November 25 and 26. Unfortunately, Mr. Bernstein and his brother were in Israel attending their father's burial during the two days in which the contacts were attempted. As far as they know, no attempt was made to contact Mr. Deyo or Mr. Ralph Bernstein until they were served with the subpoenas. In anticipation of receiving the subpoena, which was not formally served upon him until yesterday, Ralph Bernstein voluntarily delayed returning to Israel to attend to his father's affairs in an effort to accommodate the Subcommittee's schedule.

Full compliance with the subpoenas would require the law firm to produce a massive amount of its client files and to answer question concerning the legal advice given to clients with respect to those and other matters. In this connection, Bernstein Carter & Deyo is a law firm formed in 1981 by three attorneys formerly associated with Cahill Gordon and Reindel, Willkie Farr & Gallagher, and Rosenman, Colin, Freund, Lewis & Cohen. These three lawyers had developed well-recognized expertise in the tax and corporate aspects of foreign investment in the United States. A common incident of this type of practice is developing the expertise to accommodate clients' interest in maintaining the confidentiality of their investments. The firm represents clients from many nations in connection with their business in the United States and elsewhere.

Because the subpoenas seek information that was gained during the course of the firm's representation of its clients, the subpoenas seek testimony and documents that the witnesses are duty-bound not to reveal. This obligation is intensified by the legitimate interests of many of the firm's clients in maintaining the confidentiality of both the fact and nature of the firm's representation of them. As with any other law firm, the confidential information gained in the course of their representation extends beyond the clients' identities to include many other aspects of the representation.

The discussion below places particular emphasis upon the confidentiality of the identities of the firm's clients because protecting that confidentiality is critically important to the firm's clients, and because their identities would necessarily be revealed by full compliance with the subpoenas. Moreover, since you have questioned whether the identities of the firm's clients should be considered confidential in connection with the witnesses' testimony, we have endeavored to show why those identities, as well as all information related to the performance of legal services for the firm's clients, are absolutely protected from disclosure in this context.

I. NONDISCLOSURE UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY

There are two sources of the witnesses' duty not to disclose most of the information—including their clients' identities—sought by the subpoenas. The first is the Code of Professional Responsibility, which has been codified in the District of Columbia as Appendix A to the District of Columbia Court Rules, and in New York in 29 McKinney's Consol. Laws of New York, Judiciary Law. Disciplinary Rule 4-101 of the Code, entitled "Preservation of Confidences and Secrets of a Client," prohibits a lawyer from revealing the "confidences" or "secrets" of his clients unless the client consents or unless required to do so by law or court order. DR 4-101(B)(1), (C)(2). "Confidences" and "secrets" are broadly defined to include all information which the client wishes the lawyer to hold confidential, or which could prove embarrassing or highly detrimental to the client if disclosed. The penalties for violating these mandatory rules are severe: the offending lawyer is subject to disqualification, disciplinary action or even disbarment. See *Financial General Bankshares, Inc.* v. *Metzger*, 523 F. Supp. 744, 763 (D.D.C. 1981) (citations omitted).

DR 4-101 has been interpreted in a way that absolutely prohibits the subpoenaed witnesses from disclosing most of the information that the subpoenas seek. The interpretations applicable here are reflected in the opinions issued by the District of Columbia and New York Bars, the most compelling of which is Legal Ethics Committee Opinion No. 124 of the District of Columbia Bar. In that opinion, a copy of which is attached, the bar committee was asked to answer a series of questions concerning a law firm's obligation to reveal its clients' identities during an IRS audit. The opinion held, in the first instance, that "whenever a client requests non-disclosure of the fact of representation, or circumstances suggest that such disclosure would embarrass or detrimentally affect any client, the fact of the firm's representation of that client is a client 'confidence' or 'secret' " accorded the protections of DR 4-101. The opinion also states that any doubt in making these determinations should be resolved in favor of respecting the confidentiality of the client's identity. See also D.C. Bar Legal Ethics Opinion No. 99, January 28, 1981.

Acknowledging that DR 4-101 authorizes disclosure of confidential information "when required by law or court order," Opinion No. 124 noted that the lawyer should not comply with a summons for protected information until all avenues of appeal were exhausted:

"However, even if the IRS does issue a summons, the inquirer's firm may not automatically comply with it. Rather, the firm remains under an ethical obligation to resist disclosure until either the consent of the clients is obtained or the firm has exhausted available avenues of appeal with respect to the summons."

Id. at 207 (footnote omitted); accord Committee on Professional Ethics of the New York State Bar Association, Opinion No. 528 (court orders that are subject to reversal—or modification—on appeal do not mandate immediate compliance with directive to reveal information entrusted to lawyer in confidence). The opinion goes on to state that, only after exhausting available appeals of a court order to reveal the identities of its clients, can the lawyer ethically comply with such an order.

These ethical constraints preclude full compliance with the Subcommittee's subpoenas. The subpoenaed witnesses have a professional obligation to decline to reveal any of their clients' confidences and secrets even in reponse to congressional subpoenas. Because of the nature of the witnesses' representation of their clients and their instructions concerning that representation, those secrets include the very identity of the clients.

These circumstances involve an obvious conflict between the subpoenaed witnesses' professional obligations to their clients and the objectives of the Subcommittee reflected in the broad wording of the subpoenas. Unfortunately, the witnesses are compelled by the ethical constraints discussed above to resolve that conflict by subjecting themselves to a possible contempt citation. In the judicial context, this dilemma would not occur, because a final court order would relieve the law firm of its professional obligation to maintain client confidences and secrets. In the absence of such an order, we respectfully request the Subcommittee to withdraw the issued subpoenas, and to attempt to obtain the information that it seeks from others who are not bound by professional obligations of confidentiality.

II. NONDISCLOSURE UNDER THE ATTORNEY-CLIENT PRIVILEGE

The witnesses are further precluded from complying fully with the subpoenas by the attorney-client privilege. This evidentiary privilege is applicable in the legislative, as well as the judicial, context. See, e.g., *MacCracken* v. *Jurney*, 294 U.S. 125 (1935).

The breadth of the subpoenas and the complexity of the witnesses' legal representation of their clients make it impossible to determine, within the time frame allowed by the Subcommittee, whether all documents and information responsive to the subpoenas are protected from disclosure by the attorney-client privilege. In these circumstances, the witnesses must resolve all uncertainties concerning confidentiality in favor of asserting the privilege on behalf of their clients. This is so because an attorney's voluntary production of privileged documents constitutes a complete and binding waiver of the privilege as to those documents. In re *Grand Jury Investigation of Ocean Contracts*, 604 F.2d 672, 674 (D.C. Cir.), cert. denied, 444 U.S. 915 (1979). Moreover, voluntary production of those documents implies a waiver of the privilege as to all communications on the same subject. *Weil* v. *Investment/Indicators, Research & Management, Inc.*, 647 F.2d 18, 24 (9th Cir. 1981); *Chubb Integrated Systems* v. *National Bank of Washington*, 103 F.R.D. 52, 63 (D.D.C. 1984). Because "voluntary" disclosure is that which has not been judicially compelled, *Chubb*, 103 F.R.D. at 63, disclosure pursuant to a congressional subpoena could be considered voluntary.

This risk of sacrificing the privilege is all the more daunting because it can occur inadvertently.

"This Court cannot * * * conclude that inadvertent disclosure may be grounds to protect the waiver that otherwise occurs upon

voluntary production of documents. We observe, instead, that the weight of authority recognizes that *waiver can occur through inadvertence.*"

Id. at 67 (emphasis added, citations omitted). Thus the hurried or uninformed disclosure of material in response to the Subcommittee's subpoenas could result in the inadvertent waiver of the attorney-client privilege in all other contexts and for all other purposes.

The general rule is that a client's identity is not protected by the attorney-client privilege. *United States* v. *Liebman*, 742 F.2d 807, 809 (3rd Cir. 1984). The weight of authority makes clear, however, that communications regarding a client's motive in seeking legal advice are privileged. In re *Grand Jury Proceedings (Schofield)*, 721 F.2d 1221, 1222 (9th Cir. 1983); *Baird* v. *Koerner*, 279 F.2d 623, 630 (9th Cir. 1960). Where disclosure of a client's identity would ultimately lead to disclosure of the client's motive for seeking legal advice, the client's identity is also privileged. *Salas*, 695 F.2d at 362; In re *Grand Jury Proceedings (Jones)*, 517 F.2d 666, 674-75 (5th Cir. 1975).

In *Jones*, for example, the court recognized that the clients of the subpoenaed attorneys had strong motives for seeking legal advice and for expecting that their names would be kept confidential. In that context, the court held that the attorney-client privilege prevented disclosure of the clients' motive and their identities, because the latter protection was necessary to preserve the confidentiality of the motive. Id.

Since many of the subpoenaed witnesses' clients sought the services of Bernstein Carter and Deyo with the expectation that their motives, as well as their identities, would be maintained in confidence, any information or documents that would reveal identities or motives of clients are protected by the attorney-client privilege. Therefore, the disclosure of the identities of the clients would necessarily reveal their motivations for seeking the services of the firm in violation of the attorney-client privilege.

In a judicial context, the normal procedure for resolving claims of privilege is to submit the issue to a court in camera for its determination. In re *Grand Jury Witness (Salas)*, 695 F.2d 359, 362 (9th Cir. 1982). That option, unfortunately, is not available here, because disclosure to the Subcommittee would be both public and irrevocable.

In addition, the attorney-client privilege attaches to communications regarding transactions in which several of the firm's clients participated and as to which they had a "community of interests." The community of interest doctrine brings within the attorney-client privilege all confidential communications among attorneys and their clients where the clients have identical legal interests with respect to the subject of a communication between the attorney and the client. *United States* v. *Osborn*, 409 F. Supp. 406, 409-10 (D. Or. 1975), aff'd in part, rev'd in part, 561 F.2d 1334 (9th Cir. 1977); *Duplan Corp.* v. *Deering Milliken, Inc.*, 397 F. Supp. 1146, 1174-75 (D.S.C. 1974). To the extent that the subpoena seeks disclosure of confidential documents between clients of the firm, among whom there exists a community of interests, the documents are protected by the attorney-client privilege.

III. CONCLUSION

The sheer volume of documents which must be reviewed in order to comply with the subpoenas precludes full compliance within the unreasonably short time period allowed. There are over 436 file folders, totalling over 70 linear feet of files, which contain in excess of 150,000 pages. It is simply impossible even to examine all of this material, much less to determine in each instance whether each item is protected as a client confidence or secret, or under the attorney-client privilege. The problem is made even more intractable because any voluntary disclosure of privileged documents, even if inadvertent, may constitute a general waiver of all related communications.

With respect to testimony, we frankly anticipate that the witnesses will be able to provide very little information. Specifically, the witnesses will only answer those questions as to which it is plainly apparent that disclosure of confidential information will not result. If there is any uncertainty whether answering the question will disclose a client secret or privileged information, the witnesses will be compelled to refrain from answering.

We reaffirm our clients' interest in cooperating in the investigation and providing the Subcommittee with the information to which it is legally entitled. We hope that you will understand our clients' desire to assist you and the Subcommittee in a manner consistent with their professional and legal obligations and in a manner that does not expose them to professional or pecuniary sanctions.

Mr. FASCELL (during the reading). Mr. Speaker, I ask unanimous consent that the report be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Speaker, by direction of the Committee on Foreign Affairs, I offer a privileged resolution (H. Res. 384) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 384

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Ralph Bernstein to answer questions of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law; and be it further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Joseph Bernstein to answer questions of the Subcommittee of Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] is recognized for 1 hour.

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on House Resolution 384.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Mr. Speaker, for the purposes of debate only, I yield 30 minutes to the gentleman from Iowa [Mr. LEACH]. I yield the remainder of my time for the purposes of debate to the gentleman from New York [Mr. SOLARZ], and pending that, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the approval of House Report 99-462, which concerns proceedings against Ralph Bernstein and Joseph Bernstein. This action is made necessary by the refusal of these two individuals to cooperate with the investigation of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs. The subcommittee was conducting a duly authorized investigation into the holdings in the United States of the former President of the Philippines, Ferdinand Marcos.

Now, let me make it clear that the issue here is the action or the lack of action by these two individuals. Not at issue is what the subcommittee was doing or why it was doing it.

It is quite clear that the subcommittee acted properly, with the full authority to conduct the kind of investigation it was conducting.

The question is whether or not the individuals who were before the subcommittee in the course of this investigation acted properly or improperly by refusing to answer the questions that were put to them.

The committee carefully weighed the situation of the witnesses and the investigatory needs of the Congress of the United States. The subcommittee was duly authorized to conduct its investigation. It had a right to obtain the information requested.

The subcommittee proceeded in a deliberate manner and with appropriate advice and support of the general counsel to the Clerk of the House and the minority counsel of the House, both of whom considered that the claims of the witnesses in refusing to cooperate were not well taken. The full Committee on Foreign Affairs approved this report by a strong bipartisan vote of 21 to 2.

As the committee report indicates in its conclusion, the witnesses in essence are seeking to preserve an arrangement by which they have received hundreds of thousands of dollars a year for keeping secret their real estate investment services for foreign clients. Congress cannot accept that arrangement as a constraint on its investigatory authority.

The committee has repeatedly attempted to gain the voluntary cooperation of the witnesses in order to

carry out its work. Unfortunately, until this moment, such cooperation has not been forthcoming, and the House must now act.

With House approval of this report, the Speaker of the House will then certify this report to the U.S. attorney for the District of Columbia who will begin legal proceedings against these two individuals.

Now, I want to say that I have seen a good many of these questions arise in this body in the last 30 years. I do not know of any one of them that was as carefully and properly and legally handled as this one. And I cannot recall where more consideration was given to the issue of the individuals involved and the propriety of their claims.

Both attorneys for the majority and the minority gave full advice at every step of the way. I am convinced, from personal knowledge and examination of the record, that every due process was exercised. And you will hear more about that. These people had the full opportunity for legal counsel and legal advice and, in addition to that, were given every opportunity, up until right this moment, to prevent this contempt by simply providing information which the committee requested.

So what is at issue, then, Mr. Speaker, very simply, is whether the Congress of the United States will be thwarted in carrying out its duly constituted responsibilities. If the claim as alleged by the two defendants in this matter is permitted, it would thwart the investigation of the entire Congress of the United States by saying that this is the way you can avoid anytime any interrogation by making the claims which these gentlemen make. The issue before us is that they refused improperly to answer the questions under a duly constituted investigation by the Congress of the United States. Reluctantly, but necessarily, we cannot do anything but proceed to carry out our duty, and our duty is to proceed with this contempt citation.

Mr. SOLARZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the issue before the House today is not whether we approve or disapproved of Mr. and Mrs. Marcos. It is not whether we believe the Marcoses are honest or corrupt. It is not whether we believe the recent elections in the Philippines were fair or were fraudulent. It is not whether we believe the Marcoses should or should not be given asylum in the United States. It is not whether the Subcommittee on Asian and Pacific Affairs had or did not have the right to conduct this investigation.

The only issue before us today is whether Ralph and Joseph Bernstein were justified in their refusal to cooperate with our committee by declining to answer the questions we had put before them or whether, by refusing to cooperate with the committee, they engaged in a contempt of the Congress.

Those who believe they were justified in their right to refuse to answer the questions we put to them should vote against this resolution. Those who believe they were not justified should vote for it.

Mr. Speaker, although I speak for a committee that felt strongly about the matter and reported out this resolution with an overwhelming bipartisan vote of 21 to 2, I must say that it is with great regret that I have brought this contempt resolution to the floor of the House. I never wanted to cite the Bernstein brothers for contempt. In my 12 years in the Congress, this is without question the most unpleasant duty I have had to perform. But I felt that there was no other way to vindicate the right of our committee to obtain information to which it was constitutionally and legislatively entitled, and to also vindicate the right of the Congress as a whole to fulfill its legislative and constitutional responsibilities, but to move this resolution forward, in view of the contemptuous refusal on the part of the Bernstein brothers to cooperate with our committee by answering the questions which we had legitimately put before them.

From the outset last fall, the interest of the Subcommittee on Asian and Pacific Affairs has simply been to get the facts regarding allegations that Ferdinand Marcos of the Philippines, who was then the President of that country, and his wife, Imelda, own hundreds of millions of dollars' worth of real estate in the United States. The strong bipartisan support for our investigation should have convinced the witnesses to answer our questions. Unfortunately, Ralph and Joseph Bernstein, the real estate developers for the Marcoses, have refused to respect the authority of the House of Representatives to investigate financial matters in our own country.

I believe, therefore, we have no other choice than to turn the matter over to the Justice Department.

Let me first explain the background of our investigation. The Subcommittee on Asian and Pacific Affairs, as you all know, is responsible for studying all matters affecting our foreign relations with the Philippines, including the approximately $250 million a year we provide that country in foreign assistance.

Last summer and fall, a series of articles appeared in newspapers throughout our country alleging that President and Mrs. Marcos had acquired American real estate, including four New York City commercial properties with an estimated value of $350 million.

□ 1200

Questions arose as a result of these articles as to how President Marcos, on an annual salary of $5,700 a year was able to amass such extensive real estate holdings in the United States. These questions were of particular importance in light of the legislation we had enacted in the foreign-aid authorization bill in which we made it clear that the willingness of the Congress to authorize additional aid to the Government in the Philippines in the future would depend to some extent on the progress of that Government in policing and eliminating corruption.

I might add that the recent events in the Philippines have reinforced our need for answers to those questions. The new Philippine Government may well claim that the Marcos' real estate holdings were paid for with funds taken from the Philippine people, and may seek to recover those assets. Considering the amount the Marcoses took out of the Philippines, that issue is very likely to arise.

Clearly it will be an important and sensitive test in the foreign relations between the United States and the Philippines. We cannot afford the luxury of imagining that the issue will become less pressing. In fact, it will be more pressing than ever now that the Government of the Philippines, which until now denied that Marcos had that wealth and hoped the issue would go away, may now actively seek to push the matter as a test of American fairness.

On December 3, the Subcommittee on Asian and Pacific Affairs voted to subpoena witnesses in our investigation of the Marcos' hidden wealth in the United States, among them, Ralph and Joseph Bernstein. The newspaper articles which had triggered our investigation had indicated that the Bernsteins, who are copresidents and owners of a real estate development company call the "New York Land Company," which developed the commercial properties in question, had been the real estate developers for the Marcoses.

In the hearings, the Bernsteins decided to completely stonewall our investigation. They refused to answer even the most elementary questions regarding their relationship with the Marcoses. Questions such as "Do you know either of the Marcoses? Have you met either of the Marcoses? Have you located or acquired any real estate property for the Marcoses?"

It is clear that if the Bernsteins had been willing to answer these questions and others the subcommittee put before them, we would have received valuable information. Instead, we have been forced to investigate around the Bernsteins, which we have laboriously done.

Obviously, this has deprived us of valuable inside information, known only to the developers themselves. When the Bernsteins refused to answer our questions, both the subcommittee and the full committee felt we had no alternative but to report out a contempt resolution for them, which we did by an overwhelming bipartisan vote of 21 to 2.

Now, I know that there may be some questions on the part of some of our colleagues about the extent to which this investigation and the contempt proceedings were handled fairly and on a bipartisan basis. Let me say that this was a completely impartial and bipartisan investigation. There was no question here of the majority holding back or not cooperating with the minority in the investigation.

On the contrary, from the very beginning the minority on the subcommittee has been a full partner and has pursued the matter vigorously. The subcommittee's votes to issue the subpoenas and to report this contempt resolution were overwhelming and bipartisan. At the full committee, it was reported out by a vote of 21 to 2.

I think it is also important to note that the subcommittee solicited and received bipartisan legal advice on the matter. We received testimony and advice from the general counsel to the Clerk of the House, Mr. Steven Ross, who represents the House in litigation and in matters like contempt.

We also received the testimony and advice of Hyde Murray, the Republican counsel of the House who serves the Republican leader, Mr. MICHEL. Both Hyde Murray and Mr. Ross advised us that our questioning was entirely proper and that the Bernsteins should be held in contempt for refusing to answer.

As a second matter, we proceeded with the maximum possible fairness to the witnesses. The day before the hearings, I, together with the ranking minority member of the subcommittee, Mr. LEACH, met for over 3 hours with the attorneys of the Bernsteins and we heard what they had to say. They acknowledged our right to conduct the investigation and to subpoena their clients. They asked us "however" if we would subpoena someone else and get the information from them. But when we asked them who we should subpoena as an alternative to the Bernsteins in order to obtain this information, they were unable to give us any helpful indication.

Then, on the very first day of the hearings, we patiently spend all day questioning the Bernsteins and hearing their viewpoint, even though they were refusing to provide the information. We did not hold them in contempt at that time. At their request, we recessed for another day in order to give them an opportunity to consider what to do overnight. We even gave them a list of the questions which we would be putting to them again on the second day of the hearing.

All that, however, was to no avail. Not through any fault of ours, but because the witnesses decided they would continue to resist. The Bernsteins have raised the attorney-client privilege as an argument for not cooperating with us. I think it is important to note here that such claims of privilege have been made and have been overruled on numerous occasions by congressional committees in the past. There is nothing unprecedented about what we are doing here today.

Occasionally, even after the claim of the privilege has been overruled, witnesses have still refused or failed to provide the information and have been held in contempt by the Congress. One such case entitled "Jurney versus MacCracken" went all the way to the Supreme Court which upheld the congressional contempt order. There is, therefore, clear precedent for the House overriding assertions of the privilege and even citing witnesses for contempt when they have unjustifiably asserted it.

The Bernsteins' arguments were thoroughly rebutted in advice we received from Mr. Ross, Mr. Murray, and the Library of Congress. I will submit memorandums for the RECORD on this point, and I will leave to my very able and distinguished colleagues on the subcommittee, Mr. TORRICELLI, the burden of making a more complete case with respect to the inapplicability of the attorney-client privilege in these proceedings.

STEPHEN GILLERS,
NEW YORK UNIVERSITY
LAW SCHOOL,
New York, NY

MEMORANDUM

To: Congressman Stephen J. Solarz.
From: Stephen Gillers.
Subject: Contempt resolution against Joseph Bernstein and Ralph Bernstein.
Date: February 19, 1986.

SUMMARY AND INTRODUCTION

You have asked me to comment on the legitimacy of the assertion of the attorney-client privilege by Joseph Bernstein, a member of the New York bar, and Ralph Bernstein, who is not a lawyer. You have also asked me to comment on the propriety of a contempt citation against the Bernsteins as a means of testing the validity of the assertion of the privilege.

In my view, the Bernsteins had no basis to assert an attorney-client privilege in response to the questions posed to them by the House Subcommittee on Asian and Pacific Affairs. I further believe that there was no basis in the lawyer's ethics code for a refusal to answer the Subcommittee's questions. Finally, it is my view that the only way available to the House of Representatives to test the validity of the assertion of privilege is to uphold the vote of the House Committee on Foreign Affairs and refer the matter for prosecution. I explain by reasons for each of these conclusions below.

MY QUALIFICATIONS

I am professor of law at New York University Law School. I teach evidence and professional responsibility. A good portion of each course concerns the attorney-client privilege and the separate duty of confidentiality imposed on lawyers by the profession's ethics code.

I served three years on the Departmental Disciplinary Committee of the New York State Supreme Court, Appellate Division (First Department), which is charged with investigating, and conducting hearings on, allegations of lawyer misconduct in Manhattan and the Bronx. I also served three years on the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York. This Committee issues opinions on ethical issues in response to lawyers making inquiry.

I am author of several articles in the area of professional ethics and co-author of a casebook entitled Regulation of Laywers: Problems of Law and Ethics (1985). I am also author of a book entitled The Rights of Lawyers and Clients.

DISCUSSION

The questions posed by the Bernsteins' assertion of the attorney-client privilege and by the assertion of an ethical duty not to reveal secrets and confidences of a client are listed below with my answers.

"Does the privilege apply in Congress?"

Congress is obligated to observe constitutional privileges, such as the privilege against self-incrimination. It is not obligated to honor subconstitutional privileges created by statute or common law. While it has been suggested that in criminal prosecutions the attorney-client privilege may to some extent be of constitutional dimension, this is not a criminal prosecution. Nor do any of the decisions that suggest a relationship between the privilege and the Constitution address situations even remotely like this one. See generally Weinstein et al., Evidence 1468-77 (1983).

Congress has the power to defeat assertion of a statutory or common law privilege even though the privilege would be recognized in court. As I read the record of the proceedings, however, the Committee wishes the prosecutor to proceed "on the primary ground . . . that this claim of privilege would not have been upheld even in a court." (Committee Report, pp. 14-15.) Congress is of course free to recognize statutory or common law privileges to the same extent that a court would do so. Since, in my view, the Bernsteins' assertion of the privilege was improper even under traditional legal standards, I will confine the balance of my analysis to those standards without discussing the power of Congress to ignore claims of subconstitutional privilege.

"What would the Bernsteins have the burden of proving in order to invoke the privilege in a court on these facts?"

The analysis here assumes the privilege as it applies in a federal court where jurisdiction is founded on a federal claim. The New York State privilege would not apply in such a case. United States v. Kovel, 296 F.2d 918 (2d Cir. 1961), and similarly does not control the scope of the privilege before Congress.

In order to successfully invoke the attorney-client privilege against the revelation of an oral or written communication, the person claiming it, or his lawyer on his behalf, would have the burden of proving that the communication was:

(a) for the purpose of receiving legal advice;

(b) made to a lawyer, or to an agent of the lawyer whose job was to assist the lawyer in rendering a legal service;

(c) relevant to the purpose of getting legal advice;

(d) made in confidence; and

(e) made by the client or his agents and not a third person.

The Committee's Report reveals that the Bernsteins made no effort to prove of these essential preconditions to the existence of the privilege. In a court, the holder of a claimed privilege must prove the truth of each of the preconditions for the assertion of the privilege. United States v. Landof, 591 F.2d 36 (9th Cir. 1978). An assertion of the privilege is not proof. Saying "privileged" is not proof. "Conclusory . . . assertions" do not allow the court to review the legitimacy of a claim of privilege, and have been found insufficient to establish its existence. In re Grand Jury Proceedings, 750 F.2d 223 (2d Cir. 1984).

Furthermore, this burden must be met for each communication. The fact that the privilege existed for "conversation one" or "document one" does not mean it existed for "conversation two" or "document two." United States v. Jones, 696 F.2d 1069 (4th Cir. 1982).

Counsel for the witnesses seem to argue that there was no way to establish the proof of the preconditions for assertion of the privilege without publicly revealing protected information. A moment's thought, however, would suggest that this simply cannot be true. For example, an assertion under oath that the reason for a representation was to defend a client in litigation or to prepare a contract, if believed, satisfies the precondition that the communication be for the purposes of legal advice and does not reveal information the privilege protects. The failure to make such a statement under oath suggests that it could not truthfully be made.

The trouble with the position argued by counsel for the witnesses is that it makes it impossible for the House to test the validity of the assertion of a privilege. It makes it impossible to examine the facts upon which a witness relies in refusing to answer. The witness would be the final arbiter of his own assertion of the attorney-client (or presumably any another) privilege.

In any event, counsel for the witnesses also assert that in a court the facts supporting the privilege could be offered without fear that privileged information would be compromised. This, they write, could be done by submitting "the issue to a court in camera." Let us momentarily assume that counsel's original contention is correct and that the preconditions for the assertion of the privilege cannot be demonstrated at the hearing without compromising confidential information. Congress, by voting a contempt citation, will give counsel the "in camera" hearing they wish and at which they say they can establish the preconditions for the assertion of the privilege. A judge will hear all of their evidence and rule.

Professor Dershowitz does not seem to dispute any of this. His characteristically careful memorandum says only that (a) the privilege applies in Congressional hearings; (b) "assertion" of it in the current proceeding was "proper;" (c) the privilege belongs to the client, not the lawyer; and (d) a lawyer has a separate ethical duty to protect client confidences and secrets. I can accept each of these positions for purposes of the current analysis.

With regard to (a), we are assuming that the privilege applies to the same extent as it would apply in a court. With regard to (b), even if in the first instance the "assertion" of the privilege was "proper," the important question is whether the privilege, once asserted, should be upheld as a matter of law. Professor Dershowitz does not appear to take a position on that issue. Indeed, he could not since it appears that he has not been told the underlying facts that would determine whether the claim of privilege should be upheld.

Statements (c) and (d) are simple statements of general principle. Neither principle supports the Bernsteins. The fact that the privilege belongs to the client does not mean it was properly invoked. The existence of an ethical duty to protect a client's information is totally irrelevant, as I discuss below.

Professor Dershowitz also advocates recourse to other sources of the same information. As a policy matter, I too would favor a decision to seek information from nonprivileged sources rather than from privileged ones where that is possible. But that begs the question, which is: Is the information in the Bernsteins' possession privileged information? I say it is not and, therefore, that there is no reason why the House should search for other sources of the same information, any more than it would do so in the case of other ordinary witnesses.

"Is the identity of a client privileged?"

Almost never. There are a few extraordinarily rare exceptions in which a client's identity has been protected. It is required, at the very least, either (a) that the client's very purpose in going to a lawyer have been to protect his identity, as in Matter of Kaplan, 8 N.Y. 2d 214, 168 N.E. 2d 660 (1960) (protecting identity of client who, in effort to expose official corruption, gave lawyer information for the lawyer to provide to the authorities); or (b) that the government already know everything necessary to establish a client's guilt of a crime except the client's name, which it then seeks to learn from counsel. In re Grand Jury Proceedings, 517 F. 2d 666 (5th Cir. 1975); *Baird* v. *Koerner*, 279 F.2d 623 (9th Cir. 1960). In either event, the holder of the claimed privilege has the burden of proving the presence of the narrow preconditions before the privilege will protect identity.

Furthermore, the privilege is inapplicable if the client is using the attorney's aid to commit a crime or fraud (whether or not the attorney is aware of it). *United States* v. *Horvath*, 731 F.2d 557 (8th Cir. 1984). The government will be able to defeat an otherwise valid claim of privilege by introducing prima facie evidence of a criminal or fraudulent purpose. *Id.* This rule is simply an incident of the general rule that the privilege applies only where the purpose of seeking counsel is to get *legal* advice, and not where the client's purpose is to facilitate a legal wrong. In re Grand Jury Proceedings, 680 F. 2d 1026 (5th Cir. 1982). The crime or fraud exception to the privilege is not limited to crimes and frauds in the United States.

The Bernsteins have not proved that the narrow conditions for protection of a client's identity exist here. In a court of law, therefore, on this record, the assertion of the privilege to protect the clients' identity would be overruled and the witnesses required to answer on pain of contempt.

"Can Ralph Bernstein, who is not a lawyer, assert the privilege?"

Not unless his communications with the clients or the clients' agents were under the direction and control of the clients' lawyer and in order to enable the lawyer to furnish legal services to the clients. If communications with Ralph Bernstein were intended to further other goals of the clients, or to enable the clients to obtain nonlegal assistance from Ralph Bernstein—for example in connection with business investments or real estate purchases—they are not privileged even though the same information may have separately been made available to a lawyer in order to obtain legal counsel. In re Horowitz, 482 F.2d 72 (2d Cir. 1973). United States v. Kovel, *supra*.

Once again, it was incumbent on Ralph Bernstein to demonstrate these preconditions to his assertion of the privilege. The record is bare of any such demonstration. In a court of law, Ralph Bernstein would be ordered to answer the subcommittee's questions on pain of contempt.

"What is the effect of the Lawyer's Code of Professional Responsibility on Joseph Bernstein?"

Joseph Bernstein, but not Ralph Bernstein, is obligated to observe the Disciplinary Rules (DRs) of the Code of Professional Responsibility as adopted in New York, and in so far as he is validly performing a legal service in another jurisdiction, the ethical standards in that other jurisdiction.

Joseph Bernstein, as the agent for his client, cannot voluntarily reveal "confidences" or "secrets." DR 4-101, Code of Professional Responsibility. A "confidence" is information protected by the attorney-client privilege, which means it will have come from the client or his agents. A "secret" is information the lawyer has gained from other (third-party) sources in connection with the professional relationship. A secret is not protected by the privilege. While a secret must not be revealed voluntarily, unless for the client's benefit, it must be revealed if requested by a body with subpoena power, such as Congress.

Joseph Bernstein's claim that revealing secrets or confidences in response to a Congressional order to do so would put him in violation of the Code of Professional Responsibility is frivolous. To begin with, the ethical duty to protect confidences and secrets is expressly excepted when revelation is required by law. DR 4-101(C)(2). An order to answer a question, coming from a body with legal power to issue the order, imposes a legal duty that overrides the ethical duty.

Furthermore, even in New York the Code of Professional Responsibility is subservient to the law of New York. In re Weinstock, 40 N.Y. 2d 1, 351 N.E. 2d 647 (1976). It necessarily follows that the New York ethics code is subservient to federal law. Even if Congress is prepared, as a matter of grace, to let Mr. Bernstein test the legality of the claim of privilege under traditional evidentiary standards, information Mr. Bernstein may have received from sources other than his clients or the clients' agents (secrets) is outside the privilege and totally unprotected by it. Since the court has no power to protect secrets, there was no basis for Joseph Bernstein, much less Ralph Bernstein, to refuse to reveal information about the clients obtained from third parties.

"How can the House test the validity of the assertion of the privilege?"

Only by citing the Bernsteins for contempt and letting a judge decide whether the assertion of the privilege and the witnesses' refusals to answer were legally proper. Otherwise, the Bernsteins become the judge of their own assertion. It would be inconsistent for the House to afford the

Bernsteins' clients the protection of the privilege to the extent a court would recognize it, and then not to do the act that will make a court test possible.

CONCLUSION

The Bernsteins' claim of privilege is without foundation in law on the record of the proceedings before the Subcommittee. It is remote in the extreme that the Bernsteins can prove in a court of law the foundational facts necessary to support their enormously broad assertion of privilege. The assertion of an ethical duty to refuse to reveal the requested information is frivolous. The assertion of a legal privilege not to reveal information about a client gained from third parties is also frivolous. The right of the House to insist on answers must be tested in court. Bringing that test requires a contempt citation.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 19, 1986.

To: Office of the Clerk of the House. Attention: Charles Tieffer.

From: American Law Division.

Subject: Comments on Dershowitz Memorandum.

During the course of closed hearings involving the investigation of allegations of major investments in the United States by Philippines President Ferdinand Marcos and his wife, Imelda, the Subcommittee on Asian and Pacific Affairs of the House Committee on Foreign Affairs called two witnesses, Ralph Bernstein and his brother Joseph Bernstein, said to be key figures in a scheme designed to shield the Marcos' holdings from public view.[1] Ralph Bernstein is a nonlawyer who works extensively in real estate investment. Joseph Bernstein is a lawyer who assists in that endeavor. Examination of the Bernsteins on December 11 and 12, 1985, established that they were the owners of New York Land Co., which acted as the managing agent for two properties identified as part of the Marcos' holdings. But the witnesses refused to answer questions directed to their real estate investment work with respect to those properties or the identity of the persons for whom the work was done. Their refusal to give the information was based primarily on a claim of attorney-client privilege.

The Bernsteins appear to have had ample time and opportunity to consider and appraise their claim of privilege. They were served with subpoenas which notified them of the subject matter of the hearing several days before they were to appear to testify and although they were required to produce specified documents, production was waived to a future date by agreement. Both were represented by counsel at the hearing. Their counsel were afforded the opportunity to present their objections to providing the requested information prior to and during the hearing, and were informed as to the legal basis of the Subcommittee's objection to their claim of privilege both orally and in writing. Counsel responded to those objections before and during the hearings with extensive written and oral arguments. Finally, the hearing was adjourned overnight to allow the witnesses and their counsel further opportunity to consider their positions.

The Subcommittee provided the Bernsteins with a list of the questions they would be asked the next day. The questions sought to ascertain whether they knew the Marcoses or had engaged in any business activities on behalf of or with the Marcoses. After being advised of the consequences of their failure to answer, the Bernsteins declined to answer the questions most pertinent to the inquiry and were found in contempt of the Congress by the Subcommittee by a 6-3 vote on December 12. On December 17, following several hours of debate, including arguments presented by counsel on behalf of the Bernsteins, the full Committee voted 21-2 to report a contempt resolution for Joseph and Ralph Bernstein to the House. At no time during the proceeding did the Bernsteins attempt to establish that the services about which they were being questioned were legal rather than business in nature. They simply asserted a broad claim of privilege. The House is expected to take up the resolution of contempt during the week of February 24.

On January 27, 1986, Professor Alan M. Dershowitz presented the full Committee with a memorandum entitled "Legal Obligations to Preserve Client Confidences—Joseph Bernstein, Ralph Bernstein, and William Deyo" (Dershowitz Memo) in support of the contemnors' claim of privilege. Based upon his review of the subpoenas served on the Bernsteins, the two legal memoranda dated December 11, 1985 from the General Counsel to the Clerk of the House to the Subcommittee Chairman, legal memoranda from the Bernsteins' Washington, D.C. counsel, and the transcript of the December 11-12 hearing, Professor Dershowitz opines that the legal and ethical obligations of the Bernsteins "were to resist disclosing any information that was arguably a client 'confidence' or 'secret'." [2] This, in his view, absolved them of any obligation to reveal "the identity of their clients and facts about the transactions executed on their behalf." [3] Disclosure would be required "[o]nly if after exhausting all legal remedies they are still compelled to do so by a court of law." [4] In view of the severe consequences of the contempt process, Professor Dershowitz urges "the Committee to pursue all reasonably available alternative sources of information." [5]

More specifically, the Dershowitz Memo asserts that (1) Congress has no authority to exercise any discretion in entertaining claims of attorney-client privilege "despite anachronistic statements and actions referred to in the General Counsel's memoranda"; [6] (2) the privilege was properly invoked at the hearing because it is possible that the "disclosure of identity or the fact of representation would itself reveal confidential information relating to the client's reasons for seeking the attorney's advice," and that the advice being sought was legal advice about business transactions and the business advice given was incidental to the legal advice; [7] and (3) that the ethical duty of a lawyer to protect client "confidences" and "secrets" is broader than the scope of confidential communications protected by the attorney-client privilege, and that under Canon 4 and Disciplinary Rule 4-101 of the American Bar Association's Code of Professional Responsibility, which has been adopted by the New York State Bar Association, such confidences and secrets "do *not* have to be communicated by the client, and the lawyers' duty to preserve them is *not* destroyed if third persons learn of them." [8] As a consequence, it was proper for the Bernsteins to decline to answer "until all avenues of appeal are exhausted." [9]

You have asked for our comments on the Dershowitz Memo. As a preliminary matter it must be noted that the task of commentary is made difficult by the poverty of any citation of authority for any of the statements or assertions of law or fact. Although Professor Dershowitz had the benefit of legal memoranda from both sides, reviewed the transcript of the hearing, and had consultations with the Bernsteins and their other counsel, he rests his opinion solely "upon my extensive familiarity with the law governing attorney-client privilege and legal ethics." [10] The effect is to place the burden on the Committee, and a commentator, to establish the non-applicability of the privilege, a burden traditionally and without exception borne by a claimant of the protections of the privilege. Moreover, we hesitate to engage in a time consuming process of deconstruction of portions of the memorandum which may appear inaccurate, misleading or unsound simply because of the absence of citation of fact or authority which might be readily supplied by an expert in the field and inadvertently missed by a commentor. We will, therefore, take a safer course and present only summary discussions of the prevailing case law, practice, and theory in the areas raised by the Dershowitz Memo: applicability of the privilege in congressional hearings, disclosure of client identity and fees, the scope of the business advice exception, and the ethical duty of attorneys to preserve client "confidences" and "secrets."

1. *The Attorney-Client Privilege in the Congressional Forum:*

Although the Committee's contempt report makes it abundantly clear that its decision rests primarily on its judgment that the claim of privilege would have been rejected by a court,[11] Professor Dershowitz chooses to treat its secondary ground—that acceptance of a claim of attorney-client privilege rests in the discretion of a congressional committee regardless of whether a court would uphold the claim—as his initial object of examination. He asserts that support for the claimed prerogative rests on "anachronistic statements and actions" and that its acceptance would destroy the privilege (". . . no client would ever tell a lawyer anything in confidence." [12]). The contemporary relevance of the prerogative and its discrete use, however, do not support such a critique. As with the legislature's inherent authority to investigate, the discretion to entertain claims of privilege traces back to the model of the English Parliament.[13] The rare instances of its exercise by Congress have been consistent in their rejection of the applicability of the privilege.[14] But no court has ever questioned the assertion of the prerogative, and both Houses of Congress have rejected opportunities to impose the attorney-client privilege as binding general rules for committee investigations.[15] Under contemporary congressional experience, a delicate balancing test to ensure its fair application has been employed. Thus the exercise of committee discretion turned on "weighing [of] the legislative need against any possible injury" to one asserting the privilege and the application of this test has involved painstaking examinations of potential detriment and relevant judicial precedents.[16]

This exercise appears simply reflective of the widely divergent nature of the judicial and legislative forums. The attorney-client privilege is a product of a judicially developed public policy designed to foster an effective and fair adversary system. The courts view the privilege as a means to foster client confidence and encourage full disclosure to an attorney. It is argued that free communication facilitates justice by

promoting proper case preparation.[17] It is also suggested that frivolous litigation is discouraged when, based on full factural disclosure, an attorney finds that his client's case is not a strong one.[18] Of critical importance here is the understanding that the role of attorney-client privilege is designed for, and properly confined to the adversary process: the adjudicatory resolution of conflicting claims or individual obligations in a civil or criminal proceeding. But the necessity to protect the individual interest in the adversary process if far less compelling in an investigative setting where a legislative committee is not empowered to adjudicate the liberty or property interests of a witness. This is the import of those cases which have recognized that "only infrequently have witnesses . . . [in congressional hearings] been afforded procedural rights normally associated with an adjudicative proceeding." [19] Indeed, the suggestion that the investigatory authority of the legislative branch of government is subject to non-constitutional, common law rules developed by the judicial branch to govern its proceedings is arguably contrary to the concept of separation of powers. It would, in effect, permit the judiciary to determine congressional procedures and is therefore difficult to reconcile with the constitutional authority granted each House of Congress to determine its own rules.[20] Moreover, complete, untempered importation of the privileges and procedures of the judicial forum is likely to have a paralyzing effect on the investigatory process of the legislature.

Finally, the assertion that the denial of the privilege in the congressional setting would destroy the privilege elsewhere appears greatly overstated in light of experience and reason. Parliament's rule has not impaired the practice of law in England nor has its limited use here inflicted any apparent damage on the practice of the profession. Congressional investigations in the face of claims of executive privilege or the revelations of trade secrets have not diminished the general utility of these privileges nor undermined the reasons they continue to be recognized by the courts. Moreover, the assertion implies that current law is an impregnable barrier to disclosure of confidential communications when in fact the privilege is, of course, an exception to the general rule of disclosure and, as will be shortly seen, is riddled with qualifications and exceptions, and has been subject as well to the significant current development of the waiver doctrine. Thus, there can be no absolute certainty that communications with an attorney will not be revealed.[21].

2. *The Attorney-Client Privilege: Disclosure of Client Identity, Fee Arrangements and Business Advice:*

The Dershowitz Memo acknowledges the disclosability of client identity, fee arrangements, and communications regarding business advice but presents the exceptions to these disclosure rules as if their mere assertion is sufficient to invoke the privilege. Moreover, the Memo makes no attempt to relate these exceptions to the actual circumstances of this proceeding.

Although the privilege today is seen to rest on the theory that encouraging clients to make the fullest disclosure to their attorneys enables them to act more effectively, justly and expeditiously, and that these benefits outweigh the risks posed by not allowing full disclosure in court,[22] even its leading proponent, Dean Wigmore, conceded the unverifiability of the assumption and advised that its use be strictly limited.

"Its benefits are all indirect and speculative, its obstruction is plain and concrete . . . It is worth preserving for the sake of a general policy; but it is nonetheless an obstacle to the investigation of truth. It ought to be strictly confined within the narrowest possible limits consistent with the logic of its principle." [23]

The courts have heeded Wigmore's admonition. The Sixth Circuit recently observed:

"Since the attorney-client privilege may serve as a mechanism to frustrate the investigative or fact-finding process, it creates an inherent tension with society's need for full and complete disclosure of all relevant evidence during implementation of the judicial process. See: *In re Grand Jury Proceedings (Jones),* 517 F.2d 666, 671-72 (5th Cir. 1975) (the purpose of the privilege—to suppress truth—runs counter to the dominant aims of law") . . . . These competing societal interests demand that application of the privilege not exceed that which is necessary to effect the policy considerations underlying the privilege, i.e., "the privilege must be upheld only in those circumstances for which it was created." *In re Walsh, supra,* 425 U.S. 403, 96 S. Ct. at 1577 ("it applies only where necessary to achieve its purpose.") As a derogation of the search for truth, the privilege is to be narrowly construed. *See: United States* v. *Weger,* 709 F.2d 1151, 1154 (7th Cir. 1983); *Baird* v. *Koerner,* 279 F.2d 623, 631-32 (9th Cir. 1960); *United States* v. *Pipkins,* 528 F.2d 559, 562-63 (5th Cir. 1976)." [24]

One important manifestation of the judicial policy of strict confinement is the universal recognition that the burden of establishing the existence of the privilege rests with the party asserting the privilege.[25] Moreover, blanket assertions of the privilege have been deemed "unacceptable" [26] and are "strongly disfavored." [27] The proponent must conclusively prove each element of the privilege. The Seventh Circuit explained this requirement as follows:

"This court . . . [has] specifically disapproved blanket assertions of attorney-client privilege. . . . The burden is on the party claiming the privilege to present the underlying facts demonstrating the existence of the privilege. . . . This is not to say that the party must detail the contents of each communication, for that would indeed violate the privilege. But the party must supply the court with sufficient information from which it could reasonably conclude that the communication: (1) concerned the seeking of legal advice; (2) was between a client and an attorney acting in his professional capacity; (3) was related to legal matters; and (4) is at the client's instance permanently protected.[28]

Thus a claimant must reveal specific facts which would establish that the relationship was one of attorney and client. Conclusory assertions are insufficient.[29]

A further manifestation of the judicial proclivity to confine the scope of the privilege is the general rule requiring disclosure of the fact of employment, the identity of the person employing him or the name of the real party in interest, the terms of the employment, and such related facts as the client's address, occupation or business and the amount of the fee and who paid it.[30] The courts have reasoned that the existence of the relation of attorney and client is not a privileged communication. The privilege pertains to the subject matter and not to the fact of the employment as attorney. The Second Circuit in *In re Shargel* explained the rationale as follows:

The "Absent special circumstances, disclosure of the identity of the client and fee information stand on a footing different from communications intended by the client to explain a problem to a lawyer in order to obtain legal advice. To be sure, the fact of consultation and the payment of a fee may be preconditions to seeking legal advice, and we would be less than candid not to concede that the lack of a privilege against disclosure of the fact of an attorney-client relationship may discourage some persons from seeking legal advice at all. Nevertheless, a general rule requiring disclosure of the fact of consultation does not place attorneys in the professional dilemma of cautioning against disclosure and rendering perhaps ill-formed advice or learning all the details and perhaps increasing the perils to the client of disclosure.

"Where no such dilemma is created for the lawyer, information is not protected by the privilege even though the client may strongly fear the effects of disclosure, including incrimination. Professionally competent and informed advice can be rendered by an attorney even though he or she must disclose that a fee was a gem suspected to have been recently stolen, currency with certain serial numbers, or a sum far in excess of the client's reported income."

"It seems evident to us that a broad privilege against the disclosure of the identity of clients and of fee information might easily become an immunity for corrupt to criminal acts. *See* McCormick, *Evidence* sec. 90 at 187 (2d ed. 1972) ("One who reviews the cases in this area will be struck with the prevailing flavor of chicanery and sharp practice pervading most of the attempts to suppress the proof of professional employment."). Such as shield would create unnecessary but considerable temptations to use lawyers as conduits of information or of commodities necessary to criminal schemes or as launderers of money. The bar and the system of justice will suffer little if all involved are aware that assured safety from disclosure does not exist.[31]

The courts have recognized three exceptions to the general rule that the identity of a client is not privileged: (1) "The name of the client will be considered privileged matter where the circumstances of the case are such that the name of the client is material only for the purpose of showing an acknowledgement of guilt on the part of such client of the offenses on account of which the attorney was employed."[32] This exception may be overcome by a showing that the legal representation was secured in furtherance of present or intended continuing illegality, as where the legal representation itself is part of the conspiracy.[33] (2) The identity of a client is not privileged where disclosure of the identity would be tantamount to disclosing an otherwise protected confidential communication.[34] (3) Disclosure of a client's identity is not required where it would supply the "last link" in an existing chain of incriminating evidence likely to lead to the client's indictment.[35]

Finally, the case law has consistently emphasized that one of the essential elements of the attorney-client privilege is that the attorney be acting as an attorney and that the communication be made for the purpose of securing legal services. The privilege therefore does not attach to incidental legal advice given by an attorney acting outside the scope of his role as attorney. "Acting as a lawyer encompasses the whole orbit of legal functions. When he acts as an advisor, the attorney must give *predominantly* legal

advice to retain his client's privilege of nondisclosure, not solely, or even largely, business advice."[36] The court in *SCM Corp.* v. *Xerox Corp.* pertinently discusses the process of sorting out matters that have both business and legal components:

"The mere mention of business considerations is not enough to compel the disclosure of otherwise privilege material . . . Here it is not clear that the decisions were the type in which business personnel defer to the recommendation of legal staff. Licensing decisions may contain a legal component, but are not inherently dependent on legal advice; they are essentially business decisions. Legal advice should remain protected along with "nonlegal considerations" discussed between client and counsel that are relevant to that consultation, but when the ultimate decision then requires the exercise of business judgment and when what were relevant nonlegal considerations incidental to the formulation of legal advice emerge as the business reasons for and against a court of action, those business reasons considered among executives are not privileged. They are like any other business evaluations and motivations and do not enjoy any protection because they were alluded to by conscientious counsel. To protect the business components in the decisional process would be a distortion of the privilege. The attorney-client privilege was not intended and is not needed to encourage businessmen to discuss business reasons for a particular course of action. . . . "[37]

In order to ascertain whether an attorney is acting in a legal or business advisory capacity the courts have held it proper to question either the client or the attorney regarding the general nature of the attorney's services to his client, the scope of his authority as agent and the substance of matters which the attorney, as agent, is authorized to pass along to third parties.[38] Indeed, invocation of the privilege may be predicated on revealing facts tending to establish the existence of an attorney-client relation.[39]

Applying these guiding principles to the instant circumstances, the Committee would appear, contrary to the Dershowitz Memo, to have a substantial and well supported basis for concluding that a court faced with the same factual pattern would reject the claim of privilege. The Bernsteins simply have made no effort to carry their burden of persuasion. The hearing record is devoid of any factual support that its relation with its undisclosed clients was one of attorney and client. In fact, the scant evidence provided—their ownership of the New York Land Co. which manages two of the suspect properties—points in the direction of a business relation alone and stands unrebutted. The questions posed sought information about acquaintanceship with the Marcoses, the fact of meetings, and of real estate investment and other business activities. The refusals to answer were based on blanket assertions of privilege. No evidence was presented or claim made that the questions fell under any of the limited exceptions to the general client and fee disclosure requirements.

Indeed, the Subcommittee's inquiries were well within boundaries of similar questions found by courts not to run afoul of the privilege. Thus in *In re John Doe, Esq.*[40] the court enforced two subpoenas against an attorney who represented two undisclosed principles in real estate property purchases. The subpoena required all the business records of the subject real estate company, all the records concerning the purchase and sale of the properties, and "direct[ed] petitioner [the attorney] to testify before the grand jury" regarding his knowledge of the business affairs of XYZ Realty, Inc., the subject real estate concern].[41] Among the specific questions to be answered in that questioning was one parallel to the key question posed to the Bernsteins: "Who funded XYZ?; (a) How much cash was put into the corporation; (b) Who funded the corporation?"[42] The district court found that petitioner had failed to meet his burden of establishing the burden and that, moreover, the privilege was inapplicable because some of the documents "relate to business not legal advice," and others to "petitioner's fee arrangements with his clients."[43] The questions "appeared to seek answers concerning only business advice which, though perhaps intended to be private, most certainly were not privileged."[44]

In *United States* v. *Davis*[45] the court ordered disclosure of a variety of documents found to be records of either financial or business transactions between an attorney and his client (Items 1-4, 10); records of transactions evidencing that the attorney was acting as his client's business advisor, or his agent for receipt or disbursement of money or property to or from a third party (Items 5-8); and federal and state tax returns (Items 13-14). The subpoena described the documents as follows:[46]

"1. Records of any loans made by you to the above-designated subjects during the period January 1, 1972 through December 31, 1977, such loan records to include, but not limited to, the following information: a) Date of the loan. b) Amount of the loan. c) Form in which the loan was made. d) Purpose of the loan. e) When the loan was repaid. f) Form in which the loan was repaid. g) Amounts and dates of repayment.

"2. Records of any loans made by the above-designated subjects to you during the period January 1, 1972 through December 31, 1977, such loan records to include, but not limited, to the following information: a) When the loan was made. b) Amount of the loan. c) Form in which the loan was made. d) Purpose of the loan. e) When the loan was repaid. f) Form in which the loan was repaid. g) Amounts and date of any and all repayments.

"3. Records of any cash gifts made during the above noted period by you to the above-designated subjects, such records to include, but not limited to, the following: a) Amount of the cash gift. b) When the cash gift was made. c) Identity of individual or individuals present when the gift was made.

"4. Records of any cash gifts made to you during the above noted period by the above-designated subjects, such records to include, but not limited to, the following: a) Amount of the cash gift. b) Date of the cash gift to you. c) Identity of individual or individuals present when the gift was made.

"5. Records showing the dates and amounts of any money or property received by you or placed under your custody or control, or received by or placed under the custody or control of a member of your law firm for or on behalf of the above-designated subjects during the period January 1, 1972 through December 31, 1977.

"6. Records showing the dates and amounts of any disbursements of money or property made by you, or made at your direction, or made by or at the direction of a member of your law firm, for or on behalf of the above-designated subjects during the period January 1, 1972 through December 31, 1977.

"7. Records of any real or personal property you or your law firm assisted the above-designated subjects in acquiring, holding or disposing of during the period January 1, 1972 through December 31, 1977, such records to include but not limited to the following: a) Stocks, bonds, certificates of deposit, cashier checks, money orders or other securities. b) Loans made by the above-designated subjects to others than yourself. c) Loans made to the above-designated subjects. d) Real estate. e) Airplanes, boats, yachts, automobiles and/or other personal property. f) Bank checking or savings accounts. g) Escrow accounts or funds.

"8. Records pertaining to the establishment and maintenance or other transactions with any trust fund related to the above-designated subjects, such records to include but not limited to the following: a) Establishment and maintenance of the trust. b) Funds and properties flowing into and out of the trust. c) Federal and state income or other tax returns or reports prepared and/or filed. d) "Accounting records."

* * * * *

"10. Records showing the dates and amounts of all compensation paid to you or paid to your law firm by the above-designated subjects during the period January 1, 1972 through December 31, 1977."

* * * * *

"13. Retained originals or copies of any Federal or state income tax returns of the above-designated subjects.

"14. Retained copies or originals of any other state or Federal reports or forms including but not limited to franchise tax returns, sales tax returns, and/or personal property inventories of the above-designated subjects.

The district court in *In re Arthur Treacher's Franchisee Litigation*[47] found the following questions appropriate to ascertain whether or not the privilege was being invoked properly.

"3. Who was present at that meeting? (Benefield deposition at p. 120).

"4. Were other members of the Arthur Treacher's franchisee association present? (Benefield deposition at p. 120).

"5. What was the purpose of this meeting? (Benefield deposition at p. 121).

"6. Was the purpose to seek legal advice from the attorneys at Weil, Gotshal? (Benefield deposition at p. 121).

"7. How many people were present at this meeting? (Benefield deposition at p. 122).

"8. How long did the meeting last? (Benefield deposition at p. 123).

"9. On what date did the meeting occur? (Benefield deposition at p. 123).

"12. What members of Arthur Treacher's franchisee association board were present? (Benefield deposition at p. 124).

"13. Were any persons present who were not members of the board of Arthur Treacher's franchisee association present? (Benefield deposition at p. 124).

"15. Did you attend any meetings prior to March of 1980 for which attorneys from Weil, Gotshal were present? (Benefield deposition at p. 126).

"21. Who was at this meeting [most recent meeting of Arthur Treacher's Franchisee Association]? (Nadel deposition at p. 71).

"22. What was the purpose of the meeting? (Nadel deposition at p. 72).

"24. Was the purpose of the meeting to seek legal advice? (Nadel deposition at p. 72).

"25. Were any persons present who were not members of the Arthur Treacher's

Franchisee Association board of directors? (Nadel deposition at p. 72).

"26. Were any persons present who were not members of the Arthur Treacher's Franchisee Association at this meeting? (Nadel deposition at p. 72).

"41. Did anyone say "I would like your legal opinion on such and such an issue?" (Henahan deposition at p. 152, August 25, 1981).

"42. Did anyone say "I'm going to give you the following facts on which you can give me legal advice?" (Henehan deposition at p. 152, August 25, 1981)" [48].

In sum, then, it could be strongly argued that a court would have rejected the claims of privilege of the Bernsteins had they been presented in a judicial forum.

3. *The Ethical Duty to Preserve Client Confidences:*

The Dershowitz Memo asserts that Canon 4 and Disciplinary Rule 4-101 (DR 4-101) provide an additional basis for the Bernsteins' refusal to answer. Those rules, which have been adopted by the New York Bar Association, require lawyers to preserve client "confidences" and "secrets." Violation of these precepts, which concededly are broader than the scope of the judicially recognized attorney-client privilege, could subject attorneys to possible censure, suspension or disbarment unless they exhaust all avenues of appeal.[49]

The attempt to engraft rules onto the law of confidentiality, thereby creating two contradictory bodies of law covering the same subject matter, is a matter of some controversy in the profession.[50] It can be argued that at the very least it causes confusion; and at worst it would appear to distort the role of a lawyer by putting him in a separate category, and freeing him from responsibilities of disclosure which must be assumed by other citizens.

In any event, there appear to be at least two lines of argument that would resolve the issue here. DR 4-101 authorizes disclosure of confidential information "when required by law or court order." A proper understanding of the congressional contempt process reveals that the Bernsteins are now "required by law" to answer to questions posed. Under 2 U.S.C. (1982), the contempt of Congress is complete when a committee rejects all claims of privilege and demands that a witness respond. The obligation of law attaches at that time. The criminal trial that may follow is not brought to require testimony or the production of documents—no such order will issue from that court proceeding. Rather, the criminal proceeding is brought to vindicate the prerogatives of the Congress.[51] Thus, the "required by law" proviso can be said to have been met and would certainly be an arguable defense to any possible disciplinary proceeding.

Moreover, DR 4-101(c)(4) provides that "a lawyer may reveal . . . [c]onfidences or secrets necessary . . . to defend himself or his employees against an accusation of wrongful conduct." In *Application of Solomon Friend,*[52] the court allowed an attorney to turn over to a grand jury documents as to which his former corporate client asserted privilege and other documents which had been held privileged by other judges in order to assist him in attempting to exculpate himself from a *potential* indictment. The court noted that "Although, as yet, no formal accusation has been made against Mr. Friend, it would be senseless to require the stigma of an indictment to attach prior to allowing Mr. Friend to invoke the exception of DR 4-101(c)(4) in his own defense." [53] Similarly, in *Meyerhofer* v. *Empire Fire & Marine Ins. Co.,*[54] the court stated:

". . . . DR 4-101(c)(4) recognizes that a lawyer may reveal confidences or secrets necessary to defend himself against "an accusation of wrongful conduct." This is exactly what Goldberg had to face when, in the original complaint, plaintiffs named him as a defendant who willfully violated the securities laws.

"The charge, of knowing participation in the filing of a false and misleading registration statement, was a serious one. The complaint alleged violations of criminal statutes and civil liability computable at over four million dollars. The cost in money of simply defending such an action might be very substantial. The damage to his professional reputation which might be occasioned by the mere pendency of such a charge was an even greater cause for concern.

"Under these circumstances Goldberg had the right to make an appropriate disclosure with respect to his role in the public offering. Concomitantly, he had the right to support his version of the facts with suitable evidence."[55]

Under the present circumstances, it would seem that Joseph Bernstein might persuasively argue that he would be similarly entitled to the benefit of the exception to the disciplinary rule in order to mitigate the stigmatizing effect which he may feel that continued publicity about the contempt proceeding may have on his standing before the bar as well as the potentially diminished effectiveness that may result in the performance of his public duties.

4. *Conclusion:*

An analysis of the case law, practice and experience with respect to the invocation of the attorney-client privilege which have been raised by the Dershowitz Memo suggests that the Subcommittee had a substantial basis for rejecting the assertions of privilege by the Bernstein brothers on the ground that it was likely that no court would have allowed its invocation. The record at the hearing shows that the contemnors made no attempt to shoulder their burden of persuasion that their claim of privilege was proper. They made no proffers of specific fact to demonstrate the establishment of the attorney-client relation nor did they claim any of the limited exceptions to avoid such a proffer.

MORTON ROSENBERG,
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American Law Division.
FEBRUARY 19, 1986.

FOOTNOTES

[1] The following documents were used as the basis for factual assertions in this memorandum: H.R. Report No. 99-462, "Proceedings Against Ralph Bernstein and Joseph Bernstein"; the transcript of the Subcommittee's hearing of December 11-12, 1985; and copies of the original subpoenas to Joseph and Ralph Bernstein.

[2] Dershowitz Memo, at 7.

[3] *Id.*

[4] *Id.*

[5] *Id.* Professor Dershowitz makes no attempt to suggest what those alternative sources of information would be.

[6] *Id.*, at 3-4.

[7] *Id.*, at 4.

[8] *Id.*, at 4-5 (emphasis in original).

[9] *Id.*, at 5.

[10] *Id.*, at 3.

[11] H.Rept. No. 99-462 at 14-15.

[12] Dershowitz Memo at 3-4.

[13] See Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament,* 746-47 (20th ed. 1983). May's Treatise has been relied on as a guide to parliamentary and congressional investigatory authority. See, *e.g., McGrain* v. *Daugherty,* 273 U.S. 135, 161 & note 15 (1927).

[14] See H. Rept. No. 99-462 at 13 & notes 12-14.

[15] See, Sen. Rep. No. 2, 84th Cong., 1st Sess. 27-28 (1954); House Subcomm. on Oversight and Investigations, Comm. on Energy and Commerce, Attorney-Client Privilege, Memoranda Opinions of the American Law Division, Library of Congress, 24-24 (Comm. Print 1983) (CRS Memoranda).

[16] Hearings on the International Uranium Cartel Before the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 60, 123 (1977); see also CRS Memoranda, *supra* note 15, at 1-2, 27-36, 108-115.

[17] See, *e.g., Upjohn* v. *United States,* 449 U.S., 382, 389 (1981).

[18] *Id.*

[19] *Hannah* v. *Lurch,* 363 U.S. 420, 425 (1960); see also, *United States* v. *Fort,* 443 F. 2d 670 (D.C. Cir. 1970), cert. denied, 403 U.S. 932 (1971) (rejecting contention that the constitutional rights to cross-examine witnesses applied to a congressional investigation).

[20] U.S. Const., art. I, sec. 5, cl. 2.

[21] In addition to the disclosure rules discussed in the next section, see discussions of difficulties in corporate confidentiality and the development of the doctrine of waiver, in CRS Memoranda, *supra* note 15 at 26-32, 102-107.

[22] *Fisher* v. *United States,* 425 U.S. 391 (1976).

[23] 8 Wigmore, *Evidence,* sec. 2291 at 557-58 (3d ed. 1940).

[24] 3In re Grand Jury Investigation No. 83-2-35, 723 F.2d 447, 451 (6th Cir. 1983). See also, *In re Shargel,* 742 F.2d 61, 62 (2d Cir. 1984); *U.S.* v. *Lawless,* 709 F.2d 485, 487 (7th Cir. 1983); *U.S.* v. *Goldfarb,* 328 F.2d 280 (6th Cir.) *cert, denied* 370 U.S. 976 (1964).

[25] *See e.g.: In re Grand Jury Investigation No. 83-2-35,* 723 F.2d 447, 450-51 (6th Cir. 1983); *U.S.* v. *Lawless,* 709 F.2d 485, 487 (7th Cir. 1983); *In re Grand Jury Witness (Salas),* 695 F. 2d 359, 362 (9th Cir. 1982); *In re Walsh,* 623 F.2d 489, 493 (7th Cir.), *cert. denied,* 449 U.S. 994, 101 S. Ct. 531, 66 L. Ed. 2d 291 (1980); *Liew* v. *Breen,* 640 F.2d 1046, 1049 (9th Cir. 1981); *United States* v. *Stern,* 511 F.2d 1364, 1367 (2nd Cir. 1975); *United States* v. *Landof,* 591 F.2d 36, 38 (9th Cir. 1978); *In re Grand Jury Empaneled February 14, 1978 (Markowitz),* 603 F.2d 469, 474 (3d Cir. 1979); *United States* v. *Hodgson,* 492 F.2d 1175 (10th Cir. 1974); *United States* v. *Tratner,* 511 F.2d 248, 251 (7th Cir. 1975); *United State* v. *Demauro,* 581 F.2d 50, 55 (2d Cir. 1978); *United States* v. *Ponder,* 475 F.2d 37, 39 (5th Cir. 1973); *United States* v. *Bartlett,* 449 F.2d 700, 703 (8th Cir. 1971), *cert. denied,* 405 U.S. 932, 92 S. Ct. 990, 30 L. Ed. 2d 808 (1972); *In re Application of John Doe, Esq.,* 603 F. Supp. 1164, 1166 (E.D.N.Y. 1985); *In re Grand Jury Subpoena December 18, 1981,* 561 F. Supp. 1247, 1251 (E.D.N.Y. 1981).

[26] *SEC* v. *Gulf and Western Industries, Inc.,* 518 F. Supp. 675, 682 (D.D.C. 1981).

[27] *In re Grand Jury Investigation No. 83-2-35,* 723 F.2d 447, 454 (6th Cir. 1983); *U.S.* v. *Lawless,* 709 F.2d 485, 487 (7th Cir. 1983); *In re Grand Jury Witness (Salas),* 695 F.2d 359, 382 (9th Cir. 1982); *United States* v. *Davis,* 636 F.2d 1028, 1044 n. 20 (5th Cir. 1981); *U.S.* v. *Cromer,* 483 F.2d 99, 102 (9th Cir. 1973); *Colton* v. *United States,* 306 F.2d 633, 639 (2d Cir. 1962).

[28] *FTC* v. *Schaffner,* 626 F.2d 32, 37 (7th Cir. 1980).

[29] *J.P. Foley & Co.* v. *Vanderbuilt,* 65 FRD 523, 527 (S.D.N.Y. 1974).

[30] *In re Shargel,* 742 F.2d 61, 62 (2d Cir. 1984); *In re Grand Jury Investigation No. 83-2-35,* 723 F.2d 447, 451-52 (6th Cir. 1983); *In re Grand Jury Proceedings in Matter of Freeman,* 208 F.2d 1571, 1575 (11th Cir. 1983); *In re Grand Jury Proceedings (Robert Twist, Sr.),* 689 F.2d 1351, 1352 11th Cir. 1982); *Colton* v. *United States,* 306 F.2d 633, 637-38 (2d Cir. 1962), *cert. denied,* 371 U.S. 951 (1963); *United States,* v. *Pape,* 144 F.2d 778, 782 (2d Cir.), *cert. denied,* 323 U.S. 752 (1944).

[31] 742 F.2d at 63-64.

[32] *Baird* v. *Koesner,* 279 F.2d 623, 633 (9th Cir. 1960).

[33] *In re Grand Jury Subpoenas Duces Tecum,* 695 F.2d 363, 365 n. 1 (9th Cir. 1982).

[34] *In re Grand Jury Investigation No. 83-2-35,* 723 F.2d 447, 453 (6th Cir. 1983).

[35] *In re Grand Jury Proceedings (Pavlick),* 680 F.2d 1026 (5th Cir. 1982) (*en banc*).

[36] *Zenith Radio Corp.* v. *Radio Corp. of America,* 121 F. Supp. 792, 794 (D. Del. 1954) (emphasis supplied).

[37] 70 FRD 508, 517 (D. Conn. 1976).

[38] *Colton* v. *United States*, 306 F.2d 633, 636, 638 (2d Cir. 1962); *United States* v. *Tellier*, 255 F.2d 441 (2d Cir. 1958); *J.P. Foley & Co., Inc.* v. *Vanderbilt*, 65 FRD 523, 526-27 (S.D.N.Y. 1974).

[39] *In re Arthur Treacher's Franchise Litigation*, 92 FRD 429, 435 (E.D. PA 1981); *J.P. Foley & Co., Inc.* v. *Vanderbilt*, 65 FRD 523, 527 (S.D.N.Y. 1976).

[40] 603 F. Supp. 1164 (E.D.N.Y. 1985).

[41] *Id.* at 1167.

[42] *Id.* at 1167 n. 1.

[43] *Id.*

[44] *Id.* See also *In re Grand Jury Subpoena (Arnold McDowell)*, 566 F. Supp. 752 (D. Minn. 1983) requiring attorneys to produce documents relating to real estate transactions performed for clients including "file notes regarding a real estate transaction, including a description of what is to be included in the sale of property and the location of the property."

[45] 636 F.2d 1028 (5th Cir. 1981).

[46] 636 F.2d at 1033-34 n. 3.

[47] 92 FRD 429 (E.D. Pa 1981).

[48] *Id.* 92 FRD at 432-33.

[49] Dershowitz Memo at 6.

[50] See, *e.g.*, Subin, The Lawyer As Superego: Disclosure of Client Confidence to Prevent Harm, 70 *Ia. L.R.* 1091 (1985), describing the controversy and criticizing this development (Subin).

[51] *In re Chapman*, 166 U.S. 661, 668 (1897). If the Bernsteins are convicted and serve their sentence and still have not responded to the original questions posed, the subcommittee may call them again, ask the same questions and, upon further refusals to respond, can initiate another contempt proceeding.

[52] 411 F. Supp. 776 (S.D.N.Y. 1985).

[53] 411 F. Supp. at 777 note.

[54] 497 F.2d 1190 (2d Cir. 1974).

[55] 497 F.2d at 1195. See Subin, *supra* note 50, at 1134-1144 approvingly discussing *Meyerhofer's* self-defense rationale (". . . the client's right to confidentiality in his communications may yield to the attorney's right to self-defense, if charged by a third party with complicity in the client's activities.").

There have been a number of critics who have expressed concern in the past that the subcommittee investigation was primarily aimed at influencing the outcome of the elections in the Philippines. Let me make it clear that that was not the case. Our hearings were the result of articles that appeared in the American press last summer and fall, and the decision to proceed with the investigation was made before Mr. Marcos called the snap Presidential election in the Philippines.

Indeed, at the time we began the hearings, we had no hard evidence that the allegations were accurate, and if it had turned out they were inaccurate, I have no doubt Mr. Marcos would have used that in order to buttress his argument that these allegations concerning his hidden wealth in the United States were without justification.

We have pursued this matter simply because we are interested in establishing the right of our committee and the Congress as a whole to obtain this kind of information. If the House does not turn over such witnesses to the Department of Justice, we could be creating a precedent that could potentially cripple the capacity of the Congress to fulfill its constitutional and legislative responsibilities, and I therefore respectfully, albeit with great regret, ask my colleagues to vote in favor of this contempt resolution.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask unanimous consent to place in the RECORD immediately following my statement a statement from the gentleman from New York [Mr. SOLOMON].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. LEACH of Iowa. Mr. Speaker, I rise in support of the report of the Committee on Foreign Affairs regarding the refusals of Joseph and Ralph Bernstein to answer certain questions of the Subcommittee on Asian and Pacific Affairs, and resolving that the Speaker certify that report to the U.S. Attorney for the District of Columbia, for the Bernsteins to be proceeded against according to the law. At the appropriate time, I shall move to divide the question.

The resolution before us today was approved by the Committee on Foreign Affairs on December 17, 1985, by identical rollcall votes of 21 to 2 for both Joseph and Ralph Bernstein. Under section 192 of title 2 of the U.S. Code, "Every person who having been summoned as a witness * * * to give testimony or to produce papers upon any matter under inquiry * * * willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment * * * for not less than 1 month nor more than 12 months." Under section 194, whenever an individual so summoned fails to testify, and a statement regarding that failure is reported to the Speaker, it is the duty of the Speaker to certify that statement to the appropriate U.S. attorney who is to bring the matter before a grand jury.

In spite of the overwhelming bipartisan support for these resolutions, a number of questions have lingered regarding the basis on which the House is proceeding on these contempt citations.

Congress' investigatory powers under the Constitution and the law are second only to its legislative mandate and prevail over privileges which exist in the practice of law or elsewhere. Although there has been no definitive judicial judgment on the subject of the applicability of the attorney-client privilege before Congress, it is clear from the broad constitutional and legal powers vested in Congress, from congressional precedents in investigations in the last century and this, from Congress' refusal to enact legislation which would recognize the attorney-client privilege, and from authoritative British parliamentary procedure that Congress has broad discretion in deciding whether it will accept or reject claims of attorney-client privilege in conducting its business.

It is understandable that some Members of this body may have reservations regarding the case being brought against the Bernsteins today. The Bernsteins have retained highly respected counsel and have communicated their concerns regarding these House proceedings to a number of the Members. Nevertheless, on the basis of counsel from the general counsel to the Clerk of the House and from the counsel to the minority leader, I am persuaded that the House has an obligation to pursue the matter before us if it is to protect the rights and responsibilities of this institution.

Some may properly have concerns about actions by this body which they fear may have the effect of undermining such important common law privileges as that protecting the attorney-client relationship. Nevertheless, in spite of Congress' broad discretion to override claims of attorney-client privilege, I believe the case before us stops short of presenting a test case on the applicability of the attorney-client privilege before Congress.

While the attorney-client privilege is an ancient and important part of our judicial system, it is not an absolute privilege covering all situations and circumstances. It is important to recognize first of all that the questions posed by the subcommittee to Joseph and Ralph Bernstein focused on business matters relating to alleged real estate investments by the Marcos family rather than matters of legal advice. As the Members of this body know, the attorney-client privilege pertains only to communications between a client and an attorney regarding matters of legal advice. A recent court case in the eastern district of New York affirms this important distinction. In the case of *In re Application of John Doe, Esq.*, the court held that certain real estate business documents belonging to an attorney were not protected because they related to business rather than legal advice. Further, in the case of *In re Shapiro*, in the northern district of Illinois, the court ruled that communications between a client and his attorney, where the attorney is acting as a business rather than legal advisor, are not privileged. In light of these judicial precedents, Congress must not allow the precedent to be set whereby the attorney-client privilege is permitted to be used as a total shield to prevent Congress from finding out anything regarding any matter.

It is important to note as well that the subcommittee, as a matter of discretion, declined to cite for contempt of Congress a third individual, William Deyo, who similarly claimed the attor-

ney-client privilege when responding to certain questions from the subcommittee. It appeared to the subcommittee that, unlike the Bernsteins', Mr. Deyo's knowledge regarding matters under investigation by the subcommittee appeared to be derived from the performance of strictly legal services and could, in fact, be given to the committee by his associates whose knowledge was derived from business as well as legal relationships. Thus, the subcommittee, exercising its discretion, declined to challenge the claim asserted by Mr. Deyo.

Finally, it should not be overlooked that one of the two individuals subject to the resolution before us today, Ralph Bernstein, is not an attorney, although he did work for a period for the law firm with which his brother Joseph is associated.

A second question or concern raised by some relates to the requirements of the code of professional responsibility for the bar which have been enacted into law in the State of New York, where Joseph Bernstein practices. The Bernsteins have raised the specter of being sued or of possible disbarment or other sanction if they voluntarily disclose what they claim are client confidences to the subcommittee. However, the bar code allows attorneys to disclose such information where the law or a court order so requires. Given the requirements of sections 192 and 194 of title 2 of the United States Code, which I cited earlier, once the chairman of the subcommittee had ordered the two Bernsteins to respond to the questions, they were under a nonvoluntary legal obligation to do so and could respond consistent with the requirements of the bar code that they not do so simply on a voluntary basis.

Balanced against the constitutional and civil libertarian considerations raised in the case before us today are the legislative responsibilities of this Congress. While at first glance the subcommittee's investigation into the alleged investments in the United States of the Marcos family would not appear overly relevant to Congress, and while economic conflicts of interest are unfortunately the norm, rather than the exception, in the vast majority of countries in the world, the subcommittee initiated this investigation at this particular time because the size and scope of abuse of power in the Philippines appeared to be extraordinary by any standard. Some reports have put the Marcos family wealth in a category which few, if any, American families rival. Evidence that the subcommittee has unearthed to date points to a small fraction of this fortune—a quarter billion dollars worth of "walking around money" for the First Lady of the Philippines, according to one critic—being invested in prime New York City real estate.

Given the recent economic decay in the Philippines and the alarming increase in the leftist insurgency feeding upon this decay, the issue of capital flight from the Philippines under the former Marcos government deserves to be explored to the fullest extent possible and an accounting made for its relationship to the millions of dollars of United States aid. From the outset of the subcommittee's investigation, no one, not even counsel to the Bernsteins, has questioned the subcommittee's legislative purpose in conducting this inquiry.

It may not be a happy event for a congressional committee to investigate the private investments of a foreign head of state while in office—particularly when the country involved has close and important geo-strategic ties with the United States. There are, however, policy implications for the Congress if it becomes apparent that a country to which we give aid was run at the time by a family which has been allocating the resources of the nation's land and treasury to its own personal use and which, in effect, looted the capacity of the country to achieve responsible economic growth and advance the welfare of its people. Corruption breeds cynicism and the poverty of opportunity for the masses breeds revolution. Any government that enriches itself while fleecing the pockets of its own citizenry will never be able to ensure domestic stability or meet its international commitments.

The results of the recent Philippine election and the dramatic events of the last several days underscore the breakdown in the moral authority of the Marcos regime and its capacity to command popular support and respect.

Yet, in spite of the fact that the Marcos family may have aggrandized itself while in power, I believe Congress has an obligation to apply the most rigorous standards of fairness and legality in the conduct of its investigation. The investigatory authority of the Congress is so broad that as the ranking minority member of the Subcommittee on Asian and Pacific Affairs, I have been as concerned with its potential coercive abuse as with the substance of the subcommittee's investigation. The dangers of slipping into a McCarthyism of the left are every bit as grave a threat as that of the right.

Wary of these dangers, the Subcommittee proceeded with great care, giving the witnesses ample opportunity to reconsider positions taken. In the final measure, the committee conservatively chose to cite the individuals named in the resolution before us primarily because of their involvement as heads of a real estate investment company, rather than as alleged legal advisors to the Marcos family.

The tests for a proper discovery process, including the tests of legislative purpose, time for complying with the subpoenas, and due process in conducting the hearings were carefully met.

Finally, I'd like to briefly address the request of the Bernsteins' counsel that the House delay consideration of the contempt citations until an advisory opinion can be obtained from the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York as to their clients' obligations to respond to the subcommittee's questions. While I have no objection to the Bernsteins' effort to elicit the advice of the bar in this matter, and would have preferred Congress to delay consideration to receive such advice, it must be pointed out that the Congress cannot be subject to the rulings of a committee of a professional association. The law makes it quite clear that witnesses summoned to appear before Congress face penalties if they refuse to answer questions. Counsel for the Bernsteins made a stronger case in requesting delay based upon the confusion and emotiveness of recent events in the Philippines. I had hoped the Bernsteins would indicate to the committee a reconsideration of intent to cooperate based on these events, but no such indication was given. While I personally would have preferred delayed consideration of the issue before us today, I have no choice but to stand by the committee's recommendations.

Mr. Speaker, it is my hope that the subcommittee will continue its investigation into the alleged investments of the Marcos family in the United States. The issues confronting the Congress continue to be of profound international significance and should not be ignored. For example: Should American taxpayers in the future be asked to support a foreign government hall-marked by corruption? Were U.S. foreign aid dollars which became fungible parts of a foreign treasury returned directly or indirectly to our shores as investments of a private citizen? Is the international monetary crisis in part caused by the flight of corrupted capital from the developing world to safe havens like the United States? Are American laws regarding the disclosure of foreign ownership of property in the United States being fully observed? Isn't political integrity the linchpin of effective government of any size or philosophical foundation? Can we afford to associate ourselves with morally bankrupt regimes and still protect our long-term national security interests? What happens to the investments in the United States of corrupt regimes when they finally fall?

The subcommittee's inquiry was well founded in legislative purpose. Joseph and Ralph Bernstein demonstrated a contempt of Congress by refusing to

71-059 O-87-2 (Pt. 3)

cooperate with that inquiry. However, I would like to emphasize again, and I'm sure the distinguished chairman of the Subcommittee shares this perspective, that the subcommittee prefers to seek information and not punitive actions against these witnesses. They hold the keys to their potential incarceration in their pockets. We continue to hope that Joseph and Ralph Bernstein will cooperate with the subcommittee in its search for the truth in this investigation. In the meantime, I urge my colleagues to support the contempt citations before us to protect the legislative powers and responsibilities of this institution. In this regard, however, as they are individuals of differing circumstances, I demand division of the question.

□ 1210

The SPEAKER pro tempore. The gentleman's rights will be protected. The question will be divided.

Mr. RUDD. Mr. Speaker, will the gentleman yield for a question?

Mr. LEACH of Iowa. I am pleased to yield to the gentleman from Arizona.

Mr. RUDD. Mr. Speaker, I thank the gentleman for yielding.

The question is I think just for clarification for purposes of this citation or contempt citation proceedings, what was the purpose of the original inquiry that was being made by the committee which led to the contempt citation?

Mr. LEACH of Iowa. The purpose of the original inquiry was to look into, among other things, the reason for the decay in the financial infrastructure of the Government of the Philippines. The Philippines, as the gentleman may know, has had a declining GNP for the last 3 or 4 years. It is a country to which we give a quarter of a billion dollars a year in aid of one kind or another. One of the causes of the decay, it came to be the belief of the subcommittee, was the capital flight from the Philippines, a great measure of which was the personal wealth of the government in power; so at issue became whether the United States should, for instance, support a government that had lost the moral capacity to govern.

Mr. RUDD. Well, would the gentleman say that he had reason to believe, when the gentleman says personal wealth of the government in power, he is talking about the personal wealth of Ferdinand Marcos, I presume.

Mr. LEACH of Iowa. Yes, I am.

Mr. RUDD. But what jurisdiction would we have over determining the personal wealth of one individual, even though he might be President of another country? It seems to me it is out of the boundaries of the jurisdiction which the committee could assume.

Mr. LEACH of Iowa. Well, I think the gentleman has a fair question. The point I think is frankly one of degree. We all know in many countries of the world there is a bit of a conflict between economics and politics and heads of foreign states do by and large become wealthier after a while in office.

In the case of the Philippines, we have a situation where the head of the country amassed what appears to be a fortune rivaling that of the Rockefeller family, a fortune that it appears to have undercut the ability of the Philippine Government to manage its own affairs.

I must say from the perspective of the United States, we have strategic interests in the Philippines. We also have concerns about a Communist insurgency and it appeared to members of the committee that the fact that there was enormous capital flight and that a great deal of that capital flight was corrupted capital meant that the Government of the Philippines would have a very difficult time meeting not only its obligations to its people, but also its international commitments, and one of the very important ones of which is to the United States of America.

Mr. RUDD. Well, I thank the gentleman. Let me just proceed if I might for one moment, if the gentleman will continue to yield.

Mr. LEACH of Iowa. I am happy to continue to yield.

Mr. RUDD. The Constitution, despite what some Members of Congress I think feel, clearly provides the President of the United States the sole responsibility to establish foreign relation policy and our relationship with other countries.

What I am thinking is that when we start talking about the personal wealth of an individual, even though he might be President of another country, it seems to me that the committee is reaching far in order to assume jurisdiction over something that should be left clearly to the administration of our country to proceed on, at least without some kind of an indication from the administration that they would like to have an inquiry like this made by the legislative branch of the government. I do not know how to direct myself toward that problem. Maybe the gentleman has an explanation of that.

Mr. LEACH of Iowa. Well, I think the gentleman raises a fair question. I would only say that it appeared to the committee that it was the size of the problem more than the particularity of the situation; that is, we do not want to investigate all heads of all states.

Second, I think the gentleman would acknowledge that there is some shared responsibility in the foreign affairs arena. After all, it is the responsibility of Congress and in this case the committee of jurisdiction to oversee the foreign aid of the United States of America. In that sense, we have to make very weighty decisions on what amounts and what kinds of foreign aid should be given to the Philippines and whether that aid should be given, for example, directly through a government where it appears that the Treasury is being kept for private ends or whether we should give it through private organizations and individuals in the Philippines.

I would also stress that in this instance before us, counsel to the two individuals that this committee is considering or that Congress is considering citing for contempt never challenged the legislative jurisdiction of the subcommittee, nor the appropriateness of the inquiry.

Mr. RUDD. Well, my purpose in all this, I do sit on the Appropriations Committee and I am vitally interested, although I do not sit on that particular subcommittee, in how we make expenditures abroad, as does everybody in America have this same interest. The gentleman's committee is an authorizing committee and the general rule of thumb I think is that the 18 authorizing committees make requests that cannot be complied with the appropriating committee and have not been historically. As a matter of fact, the appropriating committee provides perhaps a third of the amount requested by the authorizing committees historically. That is just a kind of general rule of thumb.

So that the question about whether the inquiry should be made about this, whenever we do make inquiries, that information eventually will come to the appropriating committee and the appropriating committee will make the decision on whether or not those sums are available so that they can be spent abroad.

That is the purpose I am making this request. It seems to me that the committee may have reached far, at least in the way it was publicized, which does not seem to me to be able to really give us the time that we need without being rushed into it to look at this thing cautiously, carefully, and decide whether we are intervening to a far greater extent than we should be with the publicity attached, to come to a good, careful, logical conclusion, to provide for us the information we have in recognizing a government.

As far as I am concerned, my only interest in this operation is to assure that our country on behalf of the citizens of our country will have available to them a viable, friendly government, and anything that does not meet that criteria for me is wrong for our people, So that is why I am proceeding carefully and cautiously, because whatever happens in another country is their business, but we are interested only as far as I am concerned in having a viable, friendly government to deal

with, and anything that is not that is going to be viable and friendly to the Soviet Union, which is our enemy.

Mr. LEACH of Iowa. Well, I appreciate the gentleman's concerns and would only in one brief rebuttal suggest that the question of viability was what was at stake here. Many people had come to the conclusion that with the graft in the Philippines, the viability of that Government was in doubt.

Mr. SOLOMON. Mr. Speaker, let me say at the outset that I sincerely hope that throughout this debate the Members will always keep in mind a clear distinction between what is really at stake in this issue as opposed to what is not at stake. I hope that Members will cast their votes on the basis of their own carefully drawn conclusions about the legal merits and implications of this case. If we can all bear that in mind, I shall be satisfied that we have done our proper duty as Members of Congress—and should this matter go from here into the Federal courts, I am confident that we can expect an eventual decision that will be fair to all concerned.

Let me also take this opportunity, just as an aside, to say that what is not at stake in this issue today is a need to make value judgments about the Marcos administration. History will be making such judgments on its own. I make this point to say that some of the objections I have raised in the past to the subcommittee's inquiries into allegations of hidden wealth and secret investments by the Marcos family concerned the timing of the investigation—that its actual purpose was to influence the outcome of the election in the Philippines. But I must say to my friend from New York, the chairman of the subcommittee, a Member for whom I have great respect, that he underestimated Ferdinand Marcos. I contended all along that the purpose of the hearings in December was to discredit Marcos. It turns out now that we all underestimated his own capacity to discredit himself.

But getting back to the real issue, Mr. Speaker, I do take this matter very seriously. Whatever the intentions of the subcommittee may have been, the procedures used to extract testimony from Joseph and Ralph Bernstein, the failure to recognize their claims to attorney/client privilege, and the eventual decision citing them for contempt of Congress were wrong in my opinion. This whole episode—from start to finish—has been much more reminiscent of the old star chamber procedures than of our own American system of justice.

Last July the Justice Department issued a series of guidelines to be followed by U.S. attorneys throughout the country in cases concerning the issuance of subpoenas for information relating to the representation of clients—in other words, cases affecting the attorney/client privilege. I will not read all of the guidelines, but listen to just a few:

All reasonable attempts shall be made to obtain information from alternative sources before issuing a subpoena to an attorney for information relating to the representation of a client.

There must be reasonable grounds to believe that a crime has been or is being committed . . . the subpoena must not be used to obtain peripheral or speculative information.

All reasonable attempts to obtain the information from alternative sources shall have proved to be unsuccessful.

Subpoenas shall be narrowly drawn and directed at material information regarding a limited subject matter and shall cover a reasonably limited period of time.

I wish I could stand here today, Mr. Speaker, and tell you that the subcommittee followed these guidelines in its treatment of the Bernstein brothers. Unfortunately, each of these guidelines was violated by the subcommittee. In a few moments, I will consider the assertion that has been make that the authority of Congress to investigate American citizens goes beyond the well-defined authority possessed by the executive and judicial branches of Government. And it really is upon that assertion that this whole case has been brought here to the floor.

But before going into that, let me try to convey some sense of the atmosphere that attended the subcommittee's deliberations. The subcommittee assumed for itself the dual roles of both investigator and judge. Due process of law demands better treatment—in short, due process demands an impartial decisionmaker. The Supreme Court has consistently refused to uphold contempt convictions by judges who were not in a position to make a neutral and unbiased decision on a contempt charge.

When the subcommittee is both investigator and judge, the witness is inhibited from fully revealing the basis for his claim of privilege. For this reason, and because of the subcommittee's drive to advance its investigation, the subcommittee is encouraged to overrule his claim. Members who are unsure whether or not a privilege is properly invoked have little alternative under the present system except to vote for contempt. Only if the witnesses are cited for contempt, indicted, and tried can we obtain a definitive judicial ruling on the applicability of a privilege. Frankly, we must find a better way of resolving such questions.

Mr. Speaker, the Bernstein brothers were served with a subpoena that was so sweeping in nature as to require them to turn over to the subcommittee 436 file folders of documents—adding up to over 150,000 pages of material. The Bernsteins had less than 1 week to sort through all of this material and prepare for their appearance before the subcommittee.

At 9:10 p.m. on December 11, 7 hours after the hearing began, the Bernsteins' counsel asked for a recess until the following day so that the witnesses could get some dinner and some rest. Chairman SOLARZ finally acceded to the request, but not before making the public observation that he found the witnesses—quote—"uncooperative." And that very next day, the chairman was quoted in the San Jose Mercury-News as saying that the Bernstein brothers—quote—"made a stonewall look like a hula-hoop." On December 13 the Detroit Free Press quoted an unnamed aide to Chairman SOLARZ as using the term "hogwash" to describe the assertion of privilege made by the Bernsteins. And that same day, the chairman was quoted in the Wall Street Journal as saying that the Bernsteins were attempting to—quote—"obstruct the subcommittee." He added that the Bernstein brothers were engaged—quote—"In a game of legislative chicken—who blinks first?"

Mr. Speaker, such comments may be within bounds for a prosecutor or an advocate, but if a judge made these statements about a judicial proceeding his ability to ajudicate impartially would be open to serious question. I submit that consideration of good faith claims of privilege and the initiation of criminal contempt proceedings do not involve a game of chicken. The stakes are much higher than that. But such a statement is typical of the pressurized, biased atmosphere in which the Bernsteins were summoned to give testimony.

Turning now to the larger issue of whether or not the House of Representatives possesses the inherent right to overrule that attorney/client privilege, I would like read two portions of a memorandum that was sent to the subcommittee by Prof. Alan Dershowitz of the Harvard Law School. He is, as we all know, perhaps the foremost civil liberties lawyer in the United States today.

Professor Dershowitz writes:

I firmly believe that Joseph Bernstein / and/ Ralph Bernstein * * * acted quite properly in the hearing in invoking the attorney/client privilege and principles of legal ethics in declining to answer specific questions put by members of the subcommittee.

He later amplifies this point by making this statement—and please listen to this very closely:

It cannot be the law—and it is not the law, despite some anachronistic statements and actions referred to in the general counsel's memoranda—that Congress may compel disclosure of precisely the same substantively privileged information that neither the judiciary nor the executvie may compel.

Let me repeat that:

It cannot be the law—and it is not the law * * *—that Congress may compel disclosure of precisely the same substantively privileged information that neither the judiciary nor the executive may compel.

When Professor Dershowitz referes to "anachronistic statements and actions referred to in the general counsel's memoranda" I assume he must be thinking about the frequent citations made by House counsel to a book known as "Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament." This volume has been described by the general counsel as a guide to parliamentary and congressional investigatory authority, applying precedents and procedures from the English Parliament to our own American Congress.

Let me just say that I have tremendous respect for all of the legal counsels, Republicans and Democrats alike, who advise the officers and Members of the House on complex legal issues that relate to the proceedings in this body. But I must take issue with what has been asserted in this particular case.

First, I would respectfully suggest that a significant majority of American public opinion is under the impression that we said goodbye to the English Parliament on July 4, 1776.

Second, I would further suggest that the evolution of the English parliamentary system has at certain times permitted the English Parliament to assume some judicial responsibilities or functions alongside its legislative role.

By contrast, the separation of powers doctrine expressed in the American Constitution prohibits our Congress from assuming any kind of judicial role, except in specifically defined cases such as impeachment proceedings.

Third, I would refer the Members to the case of Kilbourn versus Thompson, on which the Supreme Court issued a ruling in 1881. Let me read from the Court's decision:

The right of the House of Representatives to punish citizens for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices.

Finally, I would suggest, Mr. Speaker, with all due respect to our general counsel and his associates, that there may be occasions when the general counsel's institutional responsibility to promote and broaden the powers of the House, including its investigative powers, comes into conflict with the rights of American citizens, including their right to protect themselves from an unwarranted extension of congressional power.

Let me just conclude, Mr. Speaker, by saying that I have tried to express as plainly and directly as I can the issues and principles that I believe are at stake in the vote we will be taking in a few minutes.

I believe the contempt resolutions before the House today represent an abuse of congressional power. In light of the inherent bias in our contempt procedures, a decision to cite the Bernstein brothers for refusing to divulge client confidences will chill the attorney/client relationship. Anyone seeking legal advice on a subject that may later be of interest to a Member of Congress will think twice before confiding in his lawyer.

If the House acts today, I believe the Federal courts will eventually throw out the citations because the attorney/client privilege does apply in this instance and because due process rights have been violated. Especially in light of the sensitivities about compelling an attorney to testify about his clients—sensitivities recognized in the Justice Department guidelines and elsewhere—we should proceed most cautiously and with the highest regard for procedural protections, civil rights, and civil liberties. In its haste to grab the headlines, the subcommittee charged ahead with little consideration for the consequences.

I say the time has come to put a halt to the unwarranted persecution of two American citizens. The methodology employed by the subcommittee is all out of proportion compared to its desired end. I can only hope that if the House acts today and approves these resolutions that the Federal courts will quickly put this matter to right.

That concludes my statement, Mr. Chairman. But I would like to reiterate that Ferdinand Marcos is not the issue before us today. As every Member knows, I supported giving foreign aid to his government and I defended his administration from time to time. But certainly no American can endorse or condone the conduct of his government during the recent election. As I watched that election being stolen, I withdrew my support for further American assistance to his government and I came to the inescapable conclusion that he must step down from office, for the good of his own country as well as ours.

The life and political career of Ferdinand Marcos are not being judged in the court of world opinion. What this House is being asked to judge today is whether or not two American citizens are justified in claiming a right or privilege in a congressional inquiry—a matter completely different than the question of how Ferdinand Marcos is to be remembered by history. I again ask that the Members keep this distinction in mind as they cast their votes.

Mr. LEACH of Iowa. Mr. Speaker, at this point I reserve the balance of my time for further debate on the issue.

Mr. SOLARZ. Mr. Speaker, I yield 12 minutes to my very good friend and distinguished colleague, the gentleman from New Jersey [Mr. TORRICELLI].

Mr. TORRICELLI. Mr. Speaker, today I rise not only as a Member of this Congress, but also as one who is proud to claim a membership in the bar of my State and in the courts of our country.

I do not rise to discuss the policy involved in the hearings or the motivations or their purposes, but rather to review our rights as an institution and our obligations as Members of this Congress.

I do not rise to discuss the question of whether or not an attorney-client privilege exists.

I believe for purposes of discussion that it should and it does, and in fact for purposes of my analysis, I apply the highest standards of the Federal courts in the use of that privilege, although by any measure I think it is clear that may not be necessary. Nevertheless, for purposes of this analysis let us review the privilege as it would exist if firmly established by the highest standards.

There are several questions which are most pertinent. First, have the Bernsteins met their burden? Have they met their burden in establishing the privilege?

Second, does the privilege go so far as to protect the very identity of a client?

Third, can a nonlawyer in association for some purposes with a lawyer assert the privilege?

Fourth, what is the effect of the lawyer's code of professional responsibility in this instance?

Finally, if questions remain concerning the application of privilege, how can it best be tested and better defined in this instance and for the future?

Let us examine each of these issues individually.

First, have the Bernsteins met their burden in establishing the privilege? Even under the strictest standards of the Federal courts of our country, in order to invoke the privilege one must establish several things; most importantly, that it was used for the purpose of receiving legal advice, not merely any communication, any request, but legal advice.

□ 1225

Second, that advice is relevant to the purpose of a legal issue. The record is clear, the questions were refused to be answered. The privilege was claimed with regard to issues with no legal bearing and entirely of a business nature.

Let us look at the record. Questions to Joseph Bernstein by Mr. SOLARZ: "Have you ever had any business dealings with either?" The inference being President or Mrs. Marcos.

Answer: "Privileged."

Question by Mr. SOLARZ: "Have you located any real estate properties for either?"

Answer: "Privileged."

Question by Mr. SOLARZ: "Have you ever acquired any real estate properties for either?"

Answer: "Privileged."

Question by Mr. SOLARZ: "Have you provided any real estate or financial advice to either?"

Answer: "Privileged."

Ralph Bernstein's answers are no different.

Question by Mr. SOLARZ: "Have you located real estate properties for either?"

Answer by Ralph Bernstein: "Privileged."

Question by Mr. SOLARZ: "Have you acquired real estate properties for either?"

Answer: "Privileged."

In fact, Mr. Speaker, the record is clear that the Bernstein brothers, each of the Bernstein brothers refused to answer questions relating to entirely business matters, and in some instances, went so far as to not only refuse to answer questions relating to business matters in their firm, but business matters entirely of a nature in their roles as members of the board of directors or their participation in private corporations.

I refer again to the record of the committee. Joseph Bernstein answers questions by Mr. SOLARZ as follows:

"Who were the shareholders of Canadian Land Co. at the time you were appointed a director?

Joseph Bernstein answers: "Privileged."

He further answers to questions: "When did the shareholders of Canadian Land Co. first become shareholders of it?"

Answer: "Privileged."

Further question: "Are any of the shareholders Filipino?"

Answer: "Privileged."

Further question: "Have you acted directly or indirectly for any other principal in your capacity as director of Canadian Land Co.?"

Answer: "Privileged."

The answers from Ralph Bernstein were no different. Mr. SOLARZ inquires: "From your business activity, do you know if either has any interest in the Herald Center?"

Answer from Ralph Bernstein: "Privileged."

Mr. SOLARZ further inquires: "From your business activities, do you know any investments by the Marcos family in the United States?"

"Privileged."

On this first issue, the record is clear. Not only was the privilege claimed improperly by any standard of the Federal courts, and certainly by this institution, it was claimed to matters relating to business activities through their firms, but clearly from the role of both Bernstein brothers when acting as directors and investors in private corporations.

The second question, the identification of clients, does the privilege under the highest standards of the Federal court ever relate or apply to the identification of clients by name? Under Federal standards, almost never, except when the purpose of seeking legal advice was to protect identity, and everything is known except to the identity of the person in question. But it must be established under the precedents of our courts, and as to this institution, it must be established by the holder that it exists, and it cannot be applied where the purpose is to facilitate a legal wrong. In no instance, if the inquiry is of a legal wrong and withholding that name would frustrate the investigation can it be denied.

Therefore, there is clearly contempt when, as the record of this committee establishes under questions from Mr. SOLARZ, Joseph Bernstein would answer with respect to either President Marcos or Mrs. Marcos: "Do you know either of them?"

Answer: "Privileged."

"Have you met with either of them?"

"Privileged."

Ralph Bernstein's answers with respect to President Marcos: "Do you know either of them?"

"Privileged."

"Have you met with either of them?"

"Privileged."

"Did you meet either of them on your 1982 trip to the Philippines?"

"Privileged."

The record, therefore, on this second question is also clear. The privilege was not claimed where everything was known but an identity. It very well might have been used in an instance when we were trying to establish a legal wrong, and this would have frustrated an investigation.

Third, the third issue in the possible use of this privilege, its use and application by a nonlawyer, because both of the Bernstein brothers were not members of the bar. It is clear under the highest standards of the Federal court that a nonlawyer in association with an attorney, when acting as this agent and giving proper legal advice can use the privilege. But that is not what happened here.

I refer again to the record of the committee. In those instances of Ralph Bernstein, when giving advice, was not acting as a legal adviser for an agent of a member of the bar, and his brother, who was an attorney.

Question by Mr. SOLARZ: "With respect to President Marcos, do you know either of them?"

Answer by Ralph Bernstein: "Privileged."

Question: "Have you met either of them?"

Answer by Ralph Bernstein: "Privileged."

"Have you located real estate properties for either?"

Answer: "Privileged."

"Have you acquired real estate properties for either?"

Answer: "Privileged."

And finally, question by Mr. SOLARZ: "From your business activity, locating and acquiring real estate properties and so on, do you know if either has any interests in the Crown Building?"

"Privileged."

Simply, therefore, on this third issue of the application of the privilege, Ralph Bernstein was acting not in any way in a legal capacity, not providing legal advice, not acting as an agent for an attorney in giving that legal advice, but purely in a business nature outside of the activities of legal advice or of a law firm and improperly took a privilege.

Fourth, effect of the lawyer's code of responsibility which might restrict the release.

Mr. Speaker, there may be a need here to clarify the rights of the parties in these circumstances. There have been, in fact, in this House few precedents on the extent of a privilege in these instances. But this House must remember the only way to test this privilege, the only way to define its limits, the only way to go on from today is to vote for this contempt, to find contempt so that the courts might hear this issue.

I believe, Mr. Speaker, if we fail today, fail to find contempt, we will be establishing a poor precedent for the future of this institution. In fact, we will set out a clear trial for those who would violate the laws of our country. Merely run your investments or your money through someone who is a member of the bar, for any purpose, and this institution will be unable to exercise its policy judgments or to do investigations to find great wrongs.

□ 1235

That would be a precedent we would greatly regret in the future, and I strongly urge that this House find contempt today.

Mr. LEACH of Iowa. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I rise in support of this resolution. When the committee initially passed a contempt citation, I spoke loud and clear that I opposed the resolution. I opposed it for one reason: The middle of the Philippine election, in my opinion, was not an appropriate time for the U.S. Congress to pass a resolution which centered on the activities of one of the candidates. It would have interfered with the election process in the Philippines; which I think to some degree we did.

I consider this to be meddling in the domestic affairs of a sovereign state. You see, I feel that the Philippines and the Philippine people are a free and independent nation, and not a colony of the United States.

My statements, then, were based on the fact that the contempt citation would be brought to the floor before the election took place in the Philippines. Now the elections are over; now is the time to proceed with an investigation into the misuse of U.S. foreign aid money.

We have seen a great many changes in the Philippines in a relatively short period of time. It is a positive development that Mr. Marcos has left this crisis-torn nation peacefully. The election results were clear. The Philippines people spoke and their choice has been inaugurated.

I ask my colleagues to support this resolution. I want to proceed with an investigation that involves U.S. foreign aid money. If individuals have significant information, have any information of abuse of this money, then I think the U.S. Congress has a right to know. After all, we spend billions, borrow billions, spend it overseas in the area of foreign aid.

Congressman SOLARZ, our chairman, stated that the reason that he was engaged in these hearings was to let the Congress know of fraud and waste and U.S. foreign aid, and we applaud that, Mr. Chairman.

Yes; I agree it is a laudable goal. Our subcommittee, if our chairman is true to his word, will report on this issue to the Congress. The Congress desperately needs to know if there is fraud, waste, and abuse in foreign aid. So Chairman SOLARZ can ferret out this waste in foreign aid, I hope that we vote yes on this resolution.

In a joint appearance or debate in New York, the chairman, Mr. SOLARZ, and myself—the chairman said this, and I took down his words, I think correctly: He said, "When it comes to waste in foreign aid, I am a veritable tiger to ferret it out." That's Mr. SOLARZ.

Let us unleash this tiger so Congress can have the facts. Our chairman has an obligation to report, and he is on record that he is going to report, on waste and abuse in foreign aid, to tell us of the waste and abuse that is taking place in foreign aid.

A majority in the U.S. Congress borrows billions to give it in the area of foreign aid at a time we have record $200 billion deficits. We are borrowing money; we are putting a tremendous burden on our taxpayers to give money overseas, and the American people have a right to know if there is abuse and waste in foreign aid.

Let us remember this day and let us refer to it often. Let us unleash this tiger from New York, and let us get the facts.

Mr. LEACH of Iowa. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, before I refer to my prepared statement, I want to preface this debate with just one comment. Mr. SOLARZ was eminently fair in the manner in which he proceeded to conduct these hearings. He took great time to see that all the witnesses had adequate time and adequate counsel, and he was, in my judgment, very kind in the manner in which he conducted the hearings.

Today, however, of the 60 minutes allocated to this debate, the opposition will have received less than 8 minutes. I will receive, hopefully, 5 minutes; Mr. BURTON of Indiana, 2, and I think another Member possibly 1, of the 60 minutes. That, to me, mars the fairness of the proceedings which preceded this debate today, and I have some problems even proceeding with my statement because I cannot adequately make a case.

Mr. SOLARZ. Will the gentleman yield?

Mr. DYMALLY. I yield to the gentleman.

Mr. SOLARZ. I will speak very fast, because I do not want to eat up the gentleman's limited amount of time; but as he may know, we had previously arranged——

Mr. DYMALLY. Is the gentleman doing this on his time?

Mr. SOLARZ. No; on the gentleman's time.

Mr. DYMALLY. No; I am sorry, Mr. SOLARZ.

Mr. LEACH of Iowa. Will the gentleman yield for a happier note?

Mr. DYMALLY. Yes.

Mr. LEACH of Iowa. We do have 3 additional minutes that we can offer the gentleman.

Mr. DYMALLY. Will you give me 8 minutes, then?

Mr. LEACH of Iowa. That is correct.

Mr. DYMALLY. Thank you very much.

The SPEAKER pro tempore. The gentleman is recognized for 3 additional minutes, leaving 3 minutes.

Mr. DYMALLY. I thank the Chair. I thank the gentleman from Iowa [Mr. LEACH] for his generosity. Were it not for his generosity, I doubt seriously if I would have had any time at all to speak on this issue.

Mr. Speaker, I rise reluctantly, very reluctantly, to oppose the resolution citing Joseph Bernstein and his younger brother, Ralph, for contempt of Congress. I have a great deal of respect of the subcommittee's chairman, my friend, Mr. SOLARZ, the tiger from New York.

My quarrel is not with the good faith of the chairman or the Subcommittee on Asian and Pacific Affairs, but with the timing in the procedures which have brought this resoluton before the House. I am afraid that an unintended and unnecessary byproduct of a valuable and important investigation into what was a very oppressive Philippine Government may set a dangerous precedent that could undermine an essential bulwark to civil liberties here in the United States.

I have strong doubts that the subcommittee has a compelling need for the testimony from the Bernsteins any longer. After the committee approved the contempt citations in December, the subcommittee conducted further and very successful hearings. If the subcommittee does not need information, Mr. Speaker, then the sole purpose of these contempt proceedings may appear to be punitive. I am gravely concerned about the kind of use of our contempt powers, especially in response to a good faith claim of attorney-client privilege.

Justice Department guidelines flatly forbid Government prosecutors from even issuing grand jury subpoenas to attorneys for testimony about client matters without first exploring alternative sources. It concerns me that this body could appear to act in a manner less sensitive than the Department of Justice to the civil libertarian importance of attorney-client confidentiality.

Action on these resolutions today is also premature and inappropriate because in a relatively short period of time, citations for contempt may be totally unnecessary in another sense.

Today, Mr. Speaker, February 27, 1986, the ethics committee of the Association of the Bar of the City of New York will meet and determine whether it will provide guidance to the law firm of Bernstein, Carter & Deyo as to what the ethical obligations of Joseph and Ralph Bernstein are in regard to the questions they felt unable to answer.

The Bernsteins have committed themselves to abide by the guidance of the bar committee, whatever that guidance provides. Thus, if the bar committee determines that the Bernsteins are not ethically obligated to withhold information, the Bernsteins have said that they will come forward and answer the questions posed by the subcommittee. Then there will be no reason for House action on the contempt citations at all.

In other words, why not hold these hearings Monday or Tuesday or—why not postpone these deliberations or final vote until after the bar has rendered a decision and the Bernsteins have an opportunity to come before us and purge themselves?

By rusing forward like this, I fear that the Congress risks creating the perception that we are acting with undue speed, which is having the effect of preventing the Bernsteins from seeking the guidance of the bar and even denying them an opportunity to purge themselves of contempt in a manner consistent with their ethical obligations to their clients.

Joseph Bernstein, a lawyer with an advanced degree in tax law from the New York University Graduate School of Law, is a senior partner in the New York City law firm of Bernstein Carter & Deyo. According to the testimony at the subcommittee's hearing, the firm was founded in 1981, when Bernstein and two other attorneys left a major New York firm to start their own law practice emphasizing the specialty they had developed in foreign investment in the United States. The practice has grown tremendously, and the firm now represents clients from several nations in connection with tax and corporate law aspects of business activities both in the United States and in other countries. Ralph Bernstein, the younger of the two brothers, worked under Joseph's direction as a nonattorney employee of the law firm. He was 23 years old when he joined the firm, just 1 year out of college.

I believe the attorney-client privilege does and should apply in Congress, just as it applies before the courts and Federal agencies. The attorney-client privilege is the oldest and most fundamental of the privileges recognized in our common law. It protects from disclosure all confidential communications between a lawyer and a client made in the course of giving or seeking legal advice.

As the Supreme Court recently recognized in Upjohn versus United States, the purpose of the privilege is to quote "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." End quote.

□ 1245

The privilege can only serve this purpose if it applies universally—in Congress as well as before courts and administrative bodies. Only then will clients have necessary assurance that

the confidences they impart to their attorneys will be preserved.

Memorandums submitted to the committee by two eminent authorities review the relevant authorities and set out this argument in detail. The first is a memo prepared by James Hamilton on behalf of the American Civil Liberties Union. Mr. Hamilton was assistant chief counsel to the Senate Watergate Committee and the author of an authoritative text on the investigative powers of Congress. The second memo was prepared by Harvard Law School Prof. Alan Dershowitz, a nationally recognized expert on legal ethics and civil liberties. Both authors conclude that witnesses testifying before Congress do and should have the attorney-client privilege available to them as a matter of right. I ask unanimous consent that these two memos be printed in full following my statement.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. DYMALLY. Ironically, the legislative history of the contempt of Congress statute, 2 U.S.C. 192-194, makes clear that not only must Congress respect assertions of the attorney-client privilege, but members have a duty to stop witnesses from breaching the privilege:

> It is not the privilege of the witness; it is the privilege of the client * * *. [I]t would be the duty of the House or Committee to interpose the objection, and stop the witness, if he or she were a swift witness, and about to testify * * * against the client.—Remarks of Senator Toucey, the Congressional Globe, January 23, 1857, p. 441.

Mr. Speaker, when the Bernsteins appeared before the subcommittee, the subcommittee's counsel asserted that the Congress is not obligated to respect the attorney-client privilege. Counsel also dismissed the particular reasoning on the basis of which Mr. Dershowitz and the Bernsteins' counsel advised that answering the subcommittee's questions could violate their obligations to clients. The subcommittee deferred to our counsel's legal analysis, without questioning it.

Counsel to the subcommittee is an excellent professional. But his obligation—like the Bernsteins'—was to his client. His client was the subcommittee, and his function was to facilitate the subcommittee's investigation, not to give a judicious evaluation of the obligations those witnesses might believe that they had to their clients.

But, Mr. Speaker, I don't believe any truly neutral observer or a court could dismiss so casually the conerns of the Bernsteins and their counsel. According to Professor Dershowitz, "a client's identity may be privileged if disclosure of identity or the fact of representation would itself reveal confidential information relating to the client's reasons for seeking the attorney's advice." Furthermore, while business related or real estate advice is not covered by the attorney-client privilege, "confidential communications between attorney and client are privileged if the client seeks legal advice regarding business transactions." Bar disciplinary rule DR 4-101, which is in effect in New York, also prohibits lawyers, under penalty of discipline, from revealing client "confidences" and "secrets."

The subcommittee in effect told the Bernsteins that these authorities may be the law in New York, and in the courts generally, but they are not the law in the Congress, and that the penalty for good faith disagreement is a contempt proceeding and possible criminal penalties.

The Bernsteins' assertions of privilege are all the more understandable in view of the time pressures they faced. They had little time to consider the questions posed by the subcommittee.

Professor Dershowitz' conclusion bears emphasis:

> The legal and ethical obligations of Joseph and Ralph Bernstein * * * were clear. They were to resist disclosing any information that was arguably a client "confidence" or "secret." In the context of their practice, this included the identity of their clients and facts about transactions executed on their behalf * * * Only if after exhausting all legal remedies they are still compelled to disclose should they do so.

In sum, Mr. Speaker, it is understandable that the Bernsteins responded as they did. They responded as you and I would wish our own lawyers to respond if they were called to testify before Congress about our legal affairs. The number of questions in which they asserted privilege were not great, considering the great number of questions they were asked.

Frankly, Mr. Speaker, it is difficult to know for an absolute certainty whether the privilege applies, because of the procedures currently employed in the House. The subcommittee seeking the information is the body expected to rule on the claims of privilege. The witness is naturally constrained from fully explaining the basis of his claim of privilege, for fear that the explanation would itself reveal client confidences. There is no way for the subcommittee to review evidence in camera as judges do to evaluate a claim of privilege by one of the parties in a court proceeding. Here, the subcommittee is both the judge and the other party. And under current practice, there is no judicial forum or other impartial arbitrator to rule on claims of privilege before contempt proceedings are initiated. Even now the House does not have before it a truly adequate basis for ruling on these claims of privilege, and that disturbs me a great deal.

In light of the vital importance of the attorney-client privilege to our system of justice, the Congress should be very cautious about citing for contempt those who are asserting the privilege. Committees should make every effort to obtain any necessary information from alternative sources. In this instance, Mr. Speaker, while the subcommittee initially needed testimony from the Bernsteins, it is apparent that this need no longer exists. There is simply no need for the House to generate a confrontation between our policy favoring confidential attorney-client relationships and investigative powers of Congress.

In approving the contempt citations on December 17, the committee believed, based on the best prognosis the subcommittee was able to provide at the time, that the contempt citations were absolutely necessary to pry information from the Bernsteins, and that without them, the subcommittee's investigation would grind to a halt. At the time the issue was presented to the committee, the ability of the Congress to conduct an important investigation seemed very much at stake.

Events subsequent to the committee's December 17 vote have cast grave doubt, however, on the continued importance of the Bernstein's testimony. On February 3, after the subcommittee's additional hearings, my friend Chairman SOLARZ, summarized at some length in the CONGRESSIONAL RECORD the "ton of evidence" his investigation had uncovered from "people intimately involved in the purchasing, financing, and management of these properties," including "direct eyewitness testimony." He concluded:

> The evidence that our Subcommittee has obtained makes it clear that the coverup did not work and that we now have the facts and the knowledge and we know the truth, which is that the Marcoses own these properties.

It is clear, Mr. Speaker, that the House cannot rely on the committee's earlier recommendation on the contempt citations. The fundamental basis for the committee's action in December no longer exists. Happily, the Bernstein's obligation to protect client confidences did not impede the investigation. In fact, the investigation was an ovewhelming success. It appears that the subcommittee no longer has the same compelling need for the testimony from the Bernsteins.

The upside down posture of this situation is underscored by the guidelines recently adopted by the Department of Justice for subpenas compelling lawyers to testify about their clients before grand juries. Under the Department's guidelines:

> All reasonable attempts shall be made to obtain information from alternative sources before issuing a subpoena to an attorney for information relating to the representation of a client * * *"

Even when the alternative sources prove unproductive, the guidelines require Government prosecutors to make "all rasonalbe attempts * * * to voluntarily obtain information from an attorney before issuing a subponena" and then to issue a "narrowly drawn" and "limited" subpoena only after balancing "the public's interest in the fair administration of justice and effective law enforcement and [the] individual's right to the effective assistance of counsel." Under no circumstances should the "information sought * * * be protected by a valid claim of privilege." These guidelines are attached to the memo from Professor Deshowitz that I've been discussing.

Here, we have the cart before the horse. The subcommittee issued broad subpoenas to lawyers first. Then, when other sources appeared, the subcommittee went on to explore them, with great success. Now, when the information is no longer necessary to the investigation, we are asked to punish the lawyers for protecting client confidences.

Mr. Speaker, the House is called upon today to perform a grave mission. It is acting as the most powerful grand jury in the world. It has the power to initiate criminal proceedings

against specific citizens. This power should be used sparingly, fairly and with utmost consideration for procedural protections and civil liberties. As Justice Frankfurter has observed, "The history of liberty has largely been the history of observance of procedural safeguards." The House should be even more cautious than usual when it seeks information from a lawyer about his clients, to avoid undermining the unique attorney-client relationship.

If the House approves these citations today, it will fall short of these high standards. There is no need to consider these citations today. The House is rushing headlong into a completely unnecessary confrontation with traditions of attorney-client privilege and civil rights and civil liberties.

Mr. Speaker, Mr. SOLOMON and I today are introducing the Attorney-Client Privilege Act of 1986. This legislation would confirm and clarify that under existing law, the attorney-client privilege and other recognized privileges are available to witnesses testifying before Congress, and provide an impartial judicial forum for adjudicating whether or not a privilege is properly asserted in any given instance.

This issue is both critically important and timely. The attorney-client privilege is the oldest and most fundamental of the privileges recognized in our common law. It protects from disclosure all confidential communications between a lawyer and client made in the course of giving or seeking legal advice. As the Supreme Court recently recognized in the Upjohn case, the purpose of the privilege is "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." Other recognized privileges, such as the ones protecting communications between spouses, or communications with members of the clergy, serve equally important ends.

These privileges can only serve their policy purposes if they apply universally—in Congress as well as before courts and administrative bodies. Yet some Members of Congress have asserted recently that there is no attorney-client privilege available to witnesses before Congress. Such an assertion has no basis in law or policy, and it is, frankly, very frightening to this Member and many others concerned with civil rights and civil liberties.

The risks to our system of justice may be illustrated by reference to the recent action of the Subcommittee on Asian and Pacific Affairs to cite two brothers, Joseph and Ralph Bernstein for contempt of Congress. Joseph Berstein is a partner in the New York law firm of Bernstein Carter & Deyo, and Ralph Bernstein was an employee of the firm. Among other things, the firm specializes in giving confidential legal advice to foreign citizens wishing to invest in the United States.

During the course of the subcommittee's lengthy hearings on December 11 and 12, 1985, the Bernsteins were asked certain questions that called upon them to disclose confidences of clients of the law firm. They invoked the attorney-client privilege and declined to answer these specific questions, arguing that they were required by the laws of the State of New York to resist disclosure of client confidences and secrets, even to the point of risking contempt proceedings. They invoked the attorney-client privilege in good faith, on advice of counsel that they must do so. The subcommittee voted to hold the Bernsteins in contempt, and the full committee quickly followed suit. If the House sustains this action, the Bernsteins face criminal penalties of up to a year in jail merely for asserting the privilege and trying as best they could to comply with their legal and ethical obligations.

The committee's report (H. Rept. No. 99-462) devotes over three pages to a detailed argument that the attorney-client privilege does not apply in Congress. The extensive citations refer not to definitive court decisions holding the privilege inapplicable, however, but only to previous, untested assertions that the privilege is unavailable and to anachronistic practices of the British Parliament. This is bootstrapping, not legal argument.

In fact, the attorney-client privilege and other recognized privileges are available to witnesses testifying before Congress. This is clear from the legislative history of the contempt of Congress statute, 2 U.S.C. 192-194, and from other authorities summarized in a memorandum prepared for the ACLU by James Hamilton, Esq., a former assistant chief counsel to the Senate Watergate Committee.

Ironically, the legislative history makes clear that not only must Congress respect assertions of the attorney-client privilege, but Members have a duty to stop witnesses from breaching the privilege:

> It is not the privilege of the witness; it is the privilege of the client * * *. (I)t would be the duty of the House or Committee to interpose the objections, and stop the witness, if he or she were a swift witness, and about to testify * * * against the client.—Comments of Senator Toucey, January 23, 1857, the Congressional Globe, p. 441.

The threats to civil liberties inherent in the posture of the Subcommittee on Asian and Pacific Affairs are all the more acute in view of the procedures now employed to evaluate claims of privilege. Under present practice, a witness must refuse to answer questions and risk being found in contempt of Congress in order to get a judicial determination of the validity of the asserting of privilege. There is no recognized procedure for getting the judicial determination earlier, so that the witness can receive fair, impartial, and authoritative guidance before placing himself in jeopardy of criminal sanctions. This procedure is fundamentally unfair—it encourages some lawyers to capitulate and divulge protected client confidences. And when other lawyers conscientiously adhere to their legal and professional obligations to protect client confidences, those conscientious lawyers are put in personal, financial, and emotional peril in contempt of Congress proceedings.

Three respected members of the House Foreign Affairs Committee recognized the fundamental unfairness of these procedures in separate views filed with the committee report on the Bernstein matter:

> Indeed, this case demonstrates the urgency of a need for the Congress to take measures to avoid the unproductive and unfair dilemma in which we and these witnesses find ourselves. Appropriate committees should expedite development of legislation or other measures sufficient to establish an orderly and fair procedure for securing judicial resolution of contested claim of privileges in Congessional proceedings.—*See* Separate Views of Hon. Lawrence J. Smith and Additional Views of Hon. Howard L. Berman and Hon. Mel Levine.

Mr. Speaker, we are pleased to introduce such important and timely legislation today. Our bill, the "Attorney-Client Privilege Act of 1986" clarifies once and for all that the attorney-client privilege and other recognized privileges apply in Congress and supplies the needed impartial judicial procedures. A more detailed summary of the bill follows:

SUMMARY EXPLANATION OF THE ATTORNEY-CLIENT PRIVILEGE ACT OF 1986, FEBRUARY 14, 1986

The purpose of this legislation is to confirm the original intent of the contempt of Congress statute that the attorney-client privilege, as well as other recognized privileges, are available to witnesses testifying before Congress, and to provide an impartial judicial forum for adjudicating whether or not a privilege is properly asserted in any given instance.

Penalties for contempt of Congress are governed by 2 U.S.C. §§ 192-194. Section 192 makes it a criminal offense for a subpoenaed witness "willfully" to refuse to testify or produce documents in Congressional investigations. Under § 194, if the refusal is reported to either House of Congress and that House approves the contempt citation, the matter is certified to the appropriate U.S. attorney for presentation to a grand jury. Section 193 eliminates one common law privilege before Congress—the privilege to refuse to testify to any fact that "may tend to disgrace [the witness] or otherwise render him infamous." The legislative history of § 193 demonstrates, however, that the attorney-client privilege and other common law privileges were to remain available to witnesses testifying before Congress.

The "Attorney-Client Privilege Act of 1986" codifies this original intent. First, the bill amends § 193 to provide explicitly that recognized privileges are available to witnesses testifying before Congress, with the exception of the one anachronistic privileges eliminated by the existing § 193. Privileges available to witnesses would include those recognized in under any source of law, including the Constitution or federal or state statutory or common law, including evidentiary or disciplinary rules of courts. Examples of such privileges include the attorney-client, husband-wife, clergy, and trade secrets privileges, as well as others.

Second, the bill amends § 194 to provide fair procedures for evaluating witnesses' claims of privilege before Congress. If a witness refuses to testify or produce documentary materials on the basis of privilege, the witness cannot be indicted for contempt of Congress under § 194 unless the Congressman or Senator presiding over the hearing first obtains a court order compelling the witness to testify, and the witness continues to refuse.

MEMORANDUM REGARDING THE APPLICABILITY OF THE ATTORNEY-CLIENT PRIVILEGE BEFORE CONGRESSIONAL COMMITTEES

(By James Hamilton)

On [1] December 12, 1985, the House Foreign Affairs Subcommittee on Asian and pa-

[1] Member, Ginsburg, Feldman and Bress, Chartered, Washington, D.C.; formerly Assistant Chief

cific Affairs voted contempt citations against a New York attorney and his brother (who had worked at the attorney's law firm) for refusing to answer questions concerning the business dealings in the United States of Philippine President Ferdinand Marcos and his wife. In so doing, the Subcommittee overruled a claim the information sought was protected by the attorney-client privilege. On December 17, the full Foreign Affairs Committee determined to send the contempt citations to the House floor.

The Committee and the Subcommittee had before them a December 11, 1985 opinion by the General Counsel to the Clerk, Steven Ross, which contended that "the general rule is that attorney-client privilege cannot be claimed as a matter of right before a legislative committee." Rather, Mr. Ross asserted that "the applicability of attorney-client privilege" is a matter of discretion" with a committee. This position, in my view, likely would not be upheld by a court; it is, moreover, ill-conceived, dangerous public policy.[2]

Proponents of the view that the privilege's applicability depends on a committee's discretion advance three arguments:

(1) The power of Congress to investigate is a constitutional power [3] that outweighs the attorney-client privilege, which derives from the common law.[4]

(2) The privilege is designed only to protect the adversary process, but a congressional inquiry is merely investigatory and is non-adversarial, and the privilege thus has little or no purpose in this setting.[5]

(3) Congressional committees, as well as the British Parliament, traditionally have concluded that the privilege is not a matter of right, but rests on legislative discretion.[6]

There are, however, serious flaws in these contentions.

To begin, the notion that the attorney-client privilege depends on legislative discretion flies in the face of the basic policy underlying that privilege. The privilege, the Supreme Court recently has said, exists principally to encourage frank communications from client to lawyer. In *Upjohn* v. *United States*, 449 U.S. 383, 389 (1981), the Court stated:

"[The privilege's] purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer being fully informed by the client."

If Congress may compel an attorney to reveal his client's secrets, "fair and frank communication" from client to attorney will surely suffer.

Upjohn also provides a telling answer to the claim that the privilege should apply only in an adversary context. The Court observed (at 393) that:

"[I]f the purpose of the attorney-client privilege is to be served, the attorney and client must be able to predict with some degree of certainty whether particular discussions will be protected. An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all."

If "full and frank communication" is to prevail, the client must be able to "predict" that the privilege will pertain in all circumstances. To say that a client's confidences will be safeguarded only in a judicial context, but must be revealed in a legislative setting, undermines the very purpose that *Upjohn* emphasizes.

Many congressional committees—e.g., the Senate Watergate Committee—have recognized that the attorney-client privilege is generally a matter of right.[7] History, therefore, teaches an uncertain lesson and the fact that a few congressional committees, or the British Parliament, have viewed the privilege as within their discretion is not conclusive.

Perhaps more significant is that witnesses have a right to counsel before virtually all congressional bodies.[8] The Standing Rules of the House, for example, provide that witnesses at a hearing may have counsel present to advise them as to their constitutional rights. See Rule X 12. Inherent in the right to counsel, it would seem, is the right to have communications with counsel protected by the attorney-client privilege. Thus, Congressional rules tacitly may recognize the privilege, at least in some contexts.

The Constitution gives each house the authority to make its own rules. U.S. Constitution article I, § 5, clause 2. Rules allowing witnesses to have counsel—and implicitly the right to communicate with counsel in confidence—thus have constitutional underpinnings.

An argument can even be made that the Due Process Clause of the Fifth Amendment requires that the privilege be recognized by a legislative committee. In *Hannah* v. *Larche*, 363 U.S. 420, 442 (1960), the Supreme Court said:

"'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts . . . [W]hen governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtained in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding are all considerations which must be taken into account."

Were it shown that the general practice of committees is to respect the privilege, a violation of the privilege by a committee might well contravene due process.

If there is a constitutional right that protects attorney-client communications before legislative committees, the argument that Congress' constitutional investigatory power outweighs the attorney-client privilege, which has only a common-law origin, loses its foundation. In any event, it is problematic whether a constitutional right to probe must always prevail over a common-law privilege.

Grand juries undoubtedly have a constitutional right to investigate. *E.g., United States* v. *Nixon*, 418 U.S. 683, 709 (1974); *Branzburg* v. *Hayes*, 408 U.S. 665, 687–688 (1972); *Nixon* v. *Sirica*, 487 F.2d 700, 712 (D.C. Cir. 1973). But the attorney-client privilege indisputably protects against a grand jury inquiry. *E.g., In re Sealed Cases*, 676 F.2d 793, 806 (D.C. Cir. 1982); *In re Special Grand Jury No. 81-1*, 676 F.2d 1005, 1008–1009 (4th Cir. 1982). The Supreme Court has held in the grand jury context that "'the public . . . has a right to every man's evidence,' *except* for those persons protected by a constitutional, *common-law*, or statutory privilege." *Branzburg* v. *Hayes*, *supra*, 408 U.S. at 688 (emphasis added). Why, then, should Congress' constitutional power of investigation not yield to a valid claim of attorney-client privilege?

Moreover, like a congressional investigation, a grand jury's role is investigative; its proceedings are not adversarial in nature. *E.g., United States* v. *Hyder*, 732 F.2d 841, 844 (11th Cir. 1984); *United States* v. *Ruyle*, 524 F.2d 1133, 1135 (6th Cir. 1975). Yet the attorney-client privilege applies as a matter of right to proceedings before a grand jury. It consequently is difficult to accept the argument that the privilege does not similarly apply to congressional investigations because such proceedings are non-adversarial.

There is no case definitively holding that the privilege generally applies to federal legislative proceedings. The most recent case commenting on the attorney-client privilege assumes that this is the case. *United States* v. *Keeney*, 111 F. Supp. 233, 234–235 (D.D.C. 1953), *reversed on other grounds*, 218 F.2d 843 (D.C. Cir. 1954). *But see Stewart* v. *Blaine*, 1 MacArthur 453 (D.D.C. 1874).

Nonetheless, for the reasons elaborated, a federal court forced to rule directly on the issue probably would honor the attorney-client privilege in a situation where it normally would apply. The likelihood of this result would increase if the proceeding against the obdurate witness is a criminal contempt of Congress prosecution under 2 U.S.C. § § 192, 194, and the witness' liberty turns on ruling. This, of course, is the traditional fashion by which Congress tests a refusal to answer a question [9] and is the situa-

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Counsel, Senate Watergate Committee; author, "The Power to Probe; A Study of Congressional Investigations," Random House 1976, Vintage Books 1977. This memorandum responds to a request by the American Civil Liberties Union for a statement of my views on the topic at issue.

[2] Since I may not be apprised of all relevant facts, this memorandum takes no position as to whether the privilege is apposite in the specific circumstances involved.

[3] See, e.g., *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). *Accord Eastland v. United States Servicement's Fund*, 421 U.S. 491, 504–05 (1975); *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *Watkins v. United States*, 354 U.S. 178, 187 (1957).

[4] See, e.g., 8 J. Wigmore Evidence § 2290 at 543 (J. McNaughton rev. ed. 1961); *Upjohn v. United States*, 449 U.S. 383, 389 (1981).

[5] See, e.g., Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, 98th Congress, 1st Sess., Attorney-Client Privilege (Comm. Print June 1983).

[6] See, Id.; Uranium Cartel Hearings, 1977; before the Subcomm. on Oversight and Investigations, House Committee on Interstate & Foreign Commerce, 95th Cong., 1st Sess., Vol. 1, 123 (1977) (statement of Chairman John Moss); *Jurney v. McCracken*, 294 U.S. 125 (1935); T. Taylor, Grand Inquest 237 (1955).

[7] See Senate Select Committee on Presidential Campaign Activities, Legal Documents Relating to Senate Committee Hearings, June 28 1974, Vol. I at 119; 1 J. Wigmore Evidence § 4k at 295–296 (Tillers rev. ed. 1983).

[8] See Manual on Senate Committee Rules and Procedures, prepared by Office of Senate Legal Counsel, Feb. 1981, at 73.

[9] See J. Hamilton, "The Power to Probe: A Study of Congressional Investigations" (1976) at 85–97; J. Hamilton and John C. Grabow, A Legislative Proposal For Resolving Executive Privilege Disputes

tion that would result in present circumstances if the House eventually sends contempt citations to a United States Attorney.

It would, however, be unwise for a committee to push the matter to a court test. Rather, legislators should recognize that the attorney-client privilege has valid goals and serves useful purposes and should honor the privilege where the circumstances indicate that it normally would be applied.

ALAN M. DERSHOWITZ,
HARVARD LAW SCHOOL,
Cambridge, MA.

MEMORANDUM

To: Members of the House Committee on Foreign Affairs.
From: Alan M. Dershowitz.
Date: January 27, 1986.
Subject: Legal obligations to preserve client confidences—Joseph Bernstein, and William Deyo.

INTRODUCTION AND SUMMARY

I have been retained by Joseph E. Bernstein, Ralph J. Bernstein, William B. Deyo, Jr. and the law firm of Bernstein, Carter & Deyo to provide legal advice and consultation in connection with the subpoenas duces tecum, dated December 4, 1985 ordering these three individuals to appear before the Subcommittee on Asian and Pacific Affairs to give testimony and produce documents concerning the interests of certain clients of the law firm.

I was retained because of my experience regarding the legal and ethical obligations of lawyers to preserve their clients' confidences and secrets. I have been on the faculty of the Harvard Law School for 21 years, where I have taught courses on legal ethics, and related subjects. I have also been retained as special counsel in several major cases involving issues of attorney-client privilege. I have been asked by the subpoena respondents to summarize my principal conclusions for Members of the Committee, in view of the possibility that the Committee or the full House may be asked in the near future to take further action against the respondents.

Having reviewed the transcript of the Subcommittee's December 11-12, 1985 hearing, and other relevant materials, I firmly believe that Joseph Bernstein, Ralph Bernstein and William Deyo acted quite properly in the hearing in invoking the attorney-client privilege and principles of legal ethics in declining to answer specific questions put by Members of the Subcommittee. I am quite confident that the attorney-client privilege does and should apply in Congressional hearings, and that this privilege and the ethical rules governing the practice of law require lawyer/witnesses in these circumstances to decline to answer questions or produce documents that reveal client confidences and secrets.

The lawyer has no discretion in this matter—he must invoke his clients' privileges. Unfortunatley, in the present context, this duty requires the witnesses to subject themselves to possible criminal sanctions for contempt of Congress. Especially in light of the personal and financial hardships involved in this grossly unfair procedure for resolving claims of privilege, the Committee should make every effort to obtain the information it seeks from alternative, non-lawyer sources first, before forcing lawyer/witnesses to accept the hardships associated with this procedure.

DISCUSSION

1. Background

The subpoenas served upon Joseph and Ralph Bernstein and William Deyo directed them to appear before the Subcommittee on Asian and Pacific Affairs and to produce documents from their files relating to certain corporations, properties, and legal transactions. Jospeh Bernstein and William Deyo are partners in the law firm of Bernstein Carter & Deyo, and Ralph Bernstein was an employee of the firm in 1981 and 1982.

When these witnesses appeared before the Subcommittee on December 11 and 12, they were able to answer many of the Subcommittee's questions, but they declined to answer several specific questions calling for information about contact with specific individuals, facts about legal representation, and facts about specific corporations and transactions. The witnesses clearly set forth the grounds for their refusal to answer, namely that the answers would reveal confidences and secrets of clients of the Bernstein Carter & Deyo firm. The Subcommittee voted to seek criminal penalties against Joseph and Ralph Bernstein for contempt of Congress, and the full Committee quickly followed suit. The Committee may soon consider whether to seek House floor action on the contempt citations.

I was retained soon after the Committee approved its contempt citations to provide the respondents and their law firm advice and consultation on the extent of their legal and ethical obligations to withhold client confidences and secrets. I have reviewed the record of this proceeding, insofar as it has been made available by the Committee, including:

1. The subpoenas served on the respondents;

2. Two memoranda dated December 11, 1985 to the Subcommittee Chairman from the General Counsel to the Clerk of the House;

3. A letter and a memorandum dated December 10, 1985 to the Subcommittee Chairman and a memorandum dated December 16 to the full Committee from the respondents' Washington, D.C. counsel; and

4. A transcript of the Subcommittee's December 11-12 hearing, including the questions the respondents declined to answer.

I have also consulted extensively with the respondents, members of their law firm, and the respondents' Washington, D.C. counsel about the legal issues involved. While I have not reviewed documents in the respondents' law firm files, I have consulted with them about document production. My opinion is based upon these materials and consultations and upon my extensive familiarity with the law governing attorney-client privilege and legal ethics.

2. Attorney-client privilege

The attorney-client privilege protects from disclosure all confidential communications between attorney and client made in the course of seeking or giving legal advice. Generally, an attorney may not testify in a civil or criminal proceeding about matters covered by the privilege. The modern policy basis for the privilege is to encourage the full and frank communication between a lawyer and client that is necessary for individuals to participate meaningfully in our legal system.

I would urge three important points on the Committee in considering the respondents' claims of privilege. First, I am confident that the privilege does apply in Congressional hearings, and that it should apply. Nothing in the Subcommittee's December 11 memos from the General Counsel to the Clerk of the House pursuades me to the contrary.

When a client discloses a confidence to his or her attorney in the course of seeking legal advice, that client exacts an obligation from that lawyer to keep that confidence secret from everyone: from the courts, from the executive, from the press, from friends, and from Congress. If there were any exceptions—and here I refer not to substantive exceptions as to what is covered, but rather exceptions as to whom it may be disclosed—the privilege would be rendered meaningless. If the purported Congressional exception were to be recognized, no client could ever tell a lawyer anything in confidence, without fear that it could be forceably disclosed to Congress (and thus to the public, to legal adversaries, and to the courts). It cannot be the law—and it is not the law, despite some anachronistic statements and actions referred to in the General Counsel's memoranda—that Congress may compel disclosure of precisely the same substantively privileged information that neither the judiciary nor the executive may compel.

The second point I would like to emphasize is that the witnesses' assertions of the attorney-client privilege here are quite proper, despite the general rule in applying the privilege that it does not prevent disclosure of the client's identity or prevent disclosure of communications relating to business advice. There are well recognized exceptions to the general rule; a client's identity may be privileged if disclosure of identity or the fact of representation would itself reveal confidential information relating to the client's reasons for seeking the attorney's advice. And confidential communications between attorney and client are privileged if the client seeks legal advice regarding business transactions, or if the attorney provides business advice incidentally in the course of providing legal advice.

I understand that many of the clients of Bernstein Carter & Deyo are foreign nationals who wish to invest money in the United States with the advice of legal counsel, on a confidential basis. It was thus quite proper for members of the firm, and their former employee, to invoke the privilege in the hearing to protect the identities of their clients, the fact of their representation, and confidential communications, even though the firm's legal advice ultimately concerned business transactions.

Finally, I would emphasize that the privilege is the *Client's* privilege, not the lawyer's. The lawyer has no discretion in the matter. He must invoke the attorney-client privilege in every instance in which it arguably applies and litigate the privilege on behalf of his client until he has exhausted all available appeals.

3. Duty to protect client secrets

The ethical duty of a lawyer to preserve client "confidences" and "secrets" is even broader in scope than the evidentiary attorney-client privilege.

The New York State Bar Association has adopted Canon 4 and the accompanying "disciplinary rule" (DR 4-101) of the American Bar Association's Code of Professional

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Precipitated By Congressional Subpoenas, 21 Harvard Journal on Legislation 145 (Winter 1984). Unlike the Senate, the House has no explicit statutory authority allowing it to seek a civil remedy for disregard of committee subpoenas or orders to answer by persons who are not federal employees. See 28 U.S.C. 1364.

Responsibility, which require lawyers to preserve client "confidences" "secrets." DR 4-101(A) defines a "confidence" to be "information protected by the attorney-client privilege." A "secret" is defined more broadly to include "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

Thus, since Joseph Bernstein and William Deyo are members of the New York State Bar, they are required by law to preserve client confidences falling within the attorney-client privilege and to preserve broadly-defined client "secrets." If these individuals violate the precepts of DR 4-101, they are subject to public censure, suspension or disbarment in the State of New York. I might add that DR 4-101 has been the basis for disciplinary action against lawyers in New York in recent years.

It is well recognized that the scope of the client "confidences" and "secrets" that must be protected under DR 4-101 is broader than the scope of confidential communications protected by the attorney-client privilege. Unlike the communications protected by the evidentiary privilege, "confidences" and "secrets" protected by DR 4-101 do not have to relate to legal advice, they do not have to be communicated by the client, and the lawyer's duty to preserve them is not destroyed if third persons learn of the "confidence" or "secret." Advisory opinions of ethics committees of the American Bar Association and several states have held that DR 4-101 requires lawyers to withhold such information as the identify or name of the client, the fact of representation, and such personal information as the client's address, phone number, social security number, date of birth and race. Business-related information, such as the records of a client trust fund or the list of shareholders of a client corporation may also be "secrets" protected by DR 4-101.

In the context of the practice of the Bernstein Carter & Deyo law firm, client identities, the fact of representation, and facts about transactions executed on a client's behalf may all be properly regarded as client "confidences" and "secrets." As in the case of the attorney-client privilege, the witnesses quite properly invoked DR 4-101 in declining to answer questions calling for this information. It may be noted that DR 4-101 provides that a lawyer must "use reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client." Thus, it was quite proper for Ralph Bernstein to decline to answer, even though he is not a member of the bar. The witnesses must decline to provide client confidences and secrets to the Subcommittee until their clients consent or until all avenues of appeal are exhausted.

4. Alternative sources available to the committee

Given that Joseph and Ralph Bernstein and William Deyo are legally and ethically bound to withhold client confidences and secrets from the Committee—to the point of risking criminal prosecution for contempt of Congress—it is particularly appropriate for the Committee to use all reasonably available alternative sources for the information it seeks before forcing the witnesses to accept this personal and financial burden.

Even the U.S. Department of Justice, in enforcing the civil and criminal laws of the United States, recognizes and respects the attorney-client relationship, and authorizes subpoenas to be served on lawyers only when absolutely necessary. New Guidelines adopted by the Department on July 18, 1985 (attached to this memo) impose both substantive and procedural limitations on the issuance of subpoenas to attorneys for information relating to the representation of a client. Under the Department Guidelines:

"All reasonable attempts shall be made to obtain information from alternative sources before issuing a subpoena to an attorney for information relating to the representation of a client * * *."

Even when alternative sources prove unproductive, the Guidelines require government prosecutors to make "all reasonable attempts . . . to voluntarily obtain information from an attorney before issuing a subpoena" and then to issue a "narrowly drawn" and "limited" subpoena only after balancing "the public's interest in the fair administration of justice and effective law enforcement and [the] individual's right to the effective assistance of counsel." All subpoenas issued to lawyers seeking information about clients must be expressly authorized by the Assistant Attorney General of the Criminal Division.[1]

Arguably, Committees of Congress should be even more cautious about issuing subpoenas to lawyers. Generally, such Committees are not investigating asserted violations of the law. More importantly, in the Congressional context, unlike the litigation context giving rise to the Department Guidelines, attorneys resisting disclosures in good faith must apparently subject themselves to criminal prosecution to obtain a definitive court determination on the applicability of the privilege. The Committee must not only consider the policy in favor of a confidential attorney-client relationship as the Department did, but also the fundamental lack of fairness in forcing attorney/witnesses to accept this burden and the attendent personal and financial risks.

CONCLUSIONS

The legal and ethical obligations of Joseph and Ralph Bernstein and William Deyo at the Subcommittee hearing were clear. They were to resist disclosing any information that was arguably a client "confidence" or "secret." In the context of their practice, this included the identity of their clients and facts about transactions executed on their behalf. The issues should be tested in court, even if that requires them to be held in contempt. Only if after exhausting all legal remedies they are still compelled to disclose should they do so. In light of the grave consequences of the commonly utilized procedure for resolving claims of privilege in Congress, I would join the respondents and their Washington, D.C. counsel in urging the Committee to pursue all reasonably available alternative sources of information before forcing the respondents to accept the burdens of a contempt of Congress proceeding.

ALAN M. DERSHOWITZ.

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[1] States have also taken steps to control prosecutors wishing to compel testimony from lawyers. In Massachusetts, the Supreme Judicial Court has adopted a new disciplinary rule PF 15 prohibiting a prosecutor from issuing a subpoena to an attorney without prior judicial approval "in circumstances where the prosecutor seeks to compel the attorney/witness to provide evidence concerning a person who is represented by the attorney/witness." Supreme Judicial Court Rule 3:08, PF 15 (October 1, 1985).

U.S. DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR U.S. ATTORNEYS,
Washington, D.C., July 18, 1985.

To: Holders of U.S. attorneys' Manual title 9.

From: United States Attorneys' Manual Staff Executive Office for United States Attorneys, Stephen S. Trott, Assistant Attorney General, Criminal Division.

Re: Policy With Regard to the Issuance of Subpoenas to Attorneys for Information Relating to the Representation of Clients.

Note: 1. This is issued pursuant to USAM 1-1.550; 2. Distribute to Holders of Title 9; 3. Insert at end of USAM titel 9.

Affects: USAM 9-2.160.

Purpose: This bluesheet implements guidelines concerning Issuance of Subpoenas to Attorneys for Information Relating to the Representation of Clients.

The following is a new section to follow 9-2.161: 9-2.161(a) Policy With Regard to the Issuance of Grand Jury or Trail Subpoenas to Attorneys for Information Relating to the Representation of Clients.

Because of the potential effects upon an attorney-client relationship that may result from the issuance of a subpoena to an attorney for information relating to the representation of client, it is important that the Department exercise close control over the issuance of such subpoenas. Therefore, the following guidelines shall be adhered to by all members of the Department in any matter involving a grand jury or trial subpoena:

A. In determining whether to issue a subpoena in any matter to an attorney for information relating to the representation of a client, the approach must be to strike the proper balance between the public's interest in the fair administration of justice and effective law enforcement and individual's right to the effective assistance of counsel.

B. All reasonable attempts shall be made to obtain information from alternative sources before issuing a subpoena to an attorney for information relating to the representation of a client, unless such efforts would compromise a criminal investigation or prosecution or would impair the ability to obtain such information from an attorney if such attempts prove unsuccessful.

C. All reasonable attempts shall be made to voluntarily obtain information from an attorney before issuing a subpoena to an attorney for information relating to the representation of a client unless such efforts would compromise a criminal investigation or prosecution or would impair the ability to subpoena such information from the attorney if such attempts prove unsuccessful.

D. No subpoena may be issued in any matter to an attorney for information relating to the representation of a client without the express authorization of the Assistant Attorney General of the Criminal Division.

F. In approving the issuance of a subpoena in any matter to an attorney for information relating to the representation of a client, the Assistant Attorney General of the Criminal Division shall apply the following principles:

(1) In a criminal investigation or prosecution, there must be reasonable grounds to believe that a crime has been or is being committed and that the information sought is reasonably needed for the successful completion of the investigation or prosecution. The subpoena must not be used to obtain peripheral or speculative information;

(2) In a civil case, there must be reasonable grounds to believe that the information

sought is reasonably necessary to the successful completion of the litigation.

(3) All reasonable attempts to obtain the information from alternative sources shall have proved to be unsuccessful;

(4) The reasonable need for the information must outweigh the potential adverse effects upon the attorney-client relationship. In particular, the need for the information must outweigh the risk that the attorney will be disqualified from representation of the client as a result of having to testify against the client;

(5) Subpoena shall be narrowly drawn and directed at material information regarding a limited subject matter and shall cover a reasonably limited period of time; and

(6) The information sought shall not be protected by a valid claim of privilege.

These guidelines on the issuance of grand jury or trial subpoenas to attorneys for information relating to the representation of clients are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, not do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

Mr. DYMALLY. Mr. Speaker, I ask the gentleman from Iowa for just 1 minute more so that I may conclude.

Mr. LEACH of Iowa. I apologize to my distinguished colleague, but the claims on time have been taken on this side of the aisle.

Mr. DYMALLY. Then may I ask my good friend from New York for 1 minute of his remaining 2 minutes?

Mr. SOLARZ. I would dearly like to yield my friend the time, but I have already committed at least 1 minute to his colleague from California [Mr. BERMAN] for the purposes of engaging in a colloquy to establish the legislative history. And in view of some of the allegations made by my friend, I need at least 1 minute to sum up. So it is with great regret that I have to say to my distinguished colleague that I am not in a position to yield any of the 120 seconds remaining to me.

Mr. DYMALLY. I thank the gentleman for his consideration.

I want the record to note that I was denied the opportunity to make my case before the Congress.

The SPEAKER pro tempore. The time of the gentleman from California [Mr. DYMALLY] has expired.

The Chair recognizes the gentleman from Iowa, [Mr. LEACH].

Mr. LEACH of Iowa. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. BURTON].

The SPEAKER pro tempore. The gentleman from Iowa will then have 1 minute remaining.

Mr. BURTON of Indiana. I thank the gentleman for yielding.

I would just like to say that I have followed with great interest this entire debate of the Marcos investigation before the committee and it is my conclusion that Mr. SOLARZ and his colleagues have been after Mr. Marcos for well over a year and they have been successful. But this legislation before us is not about the misuse of foreign aid, in my opinion; it is not about the lawyer-client privilege; it is about Mr. Marcos and I say to my colleague from New York who has done yeoman service in this area: Enough is enough. A pound of flesh has been extracted from Mr. Marcos. He is gone. I do not think tarring and feathering him and hanging him up by his heels like Mr. Mussolini and shot through the head and dragging him through the streets on the back of a fire engine is going to avail anybody anything. So I just want to say to my colleagues that it is time to bring this to an end. Mrs. Aquino is the leader of the Philippines. We should work with her and try to help solve the myriad of problems over there. Mr. Marcos is gone. He is in exile. We should leave him alone.

Mr. SOLARZ. Enough is enough.

Mr. LEVINE of California. Mr. Speaker, I am pleased that Chairman SOLARZ and Mr. BERMAN agreed that Congress will not proceed in this matter relying on the assertions that no attorney-client privilege exists before the Congress.

I would like to add my strong view that the attorney-client privilege does apply in Congress, and that it should apply, as a matter of right. Attorney-client confidences are absolutely fundamental to our system of justice. Further, the privilege must apply everywhere if it is to succeed in its essential purpose of encouraging frank exchanges between lawyer and client.

If the privilege did not apply in Congress, persons in need of legal advice on a controversial subject could hesitate to confide in their attorneys, for fear that the attorney could be hauled before one of the many subcommittees in Congress with subpoena power and exhorted under pain of criminal contempt proceedings to repeat the client's confidences. As HOWARD BERMAN and I said in our additional views in the committee report, "A confidence can only be secure against disclosure if it is secure everywhere, in every forum where an attempt might be made to extract it."

I am concerned about the present practice in the House for considering claims of privilege. Under present practice, an attorney/witness risks contempt of Congress proceedings for each and every assertion of attorney-client privilege. No judicial forum is available to determine the applicability of the privilege. Rather, the subcommittee that is seeking the information must rule on the claim, and only if the witness is cited by the House and indicted can he obtain a judicial review of this determination. Of course, if the witness is wrong, the penalty may be a jail term. This procedure inherently chills good faith assertions of privilege.

I am voting for this contempt resolution, as I did and many others did in the committee, because the general counsel and the subcommittee staff advised us that the privilege was improperly invoked by these witnesses in refusing to answer these particular questions. Voting for contempt is the only way to get a judicial resolution on the applicability of the privilege.

I believe this case demonstrates the urgency of a need for the Congress to take measures to avoid the unproductive and unfair dilemma in which we and these witnesses find ourselves.

Once the Bernstein matter is behind us, appropriate committees should expedite development of legislation or other measures sufficient to establish an orderly and fair procedure for securing judicial resolution of contested claims of privilege in congressional proceedings.

The SPEAKER pro tempore. The gentleman from Iowa has 1 minute remaining.

Mr. LEACH of Iowa. Mr. Speaker, I yield to close debate to the distinguished gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I raise the point of order that a quorum is not present.

The SPEAKER pro tempore. The Chair does not entertain that point of order at this time.

PARLIAMENTARY INQUIRY

Mr. BEREUTER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BEREUTER. Mr. Speaker, it is my understanding that the Constitution demands that a quorum be present when the House of Representatives conducts business and my understanding is that a quorum has not been established for today.

The SPEAKER pro tempore. Under rule XV, clause 6 of the rules of the House, the Chair cannot entertain the gentleman's point of order at this time.

The Chair recognized the gentleman from Iowa [Mr. LEACH] and the gentleman from Iowa yielded 1 minute to the gentleman from Nebraska.

The gentleman from Nebraska [Mr. BEREUTER] is recognized for 1 minute.

Mr. BEREUTER. Mr. Speaker and my colleagues, and I particularly would like to address my colleagues on the minority side of the aisle, I ask you to set aside questions of timing regarding whether or not the hearing should have been held before the election. I ask you to set aside questions about timing on the debate hearing on these contempt proceedings. Forget who is on each side of this issue. The important point here today is the prerogatives and authority of the House. You owe it to your sucessors in this Congress to vote for this contempt procedure today.

It is essential that you do. We have been advised on a bipartisan basis by the counsel, minority and majority, that we have followed proper rules of procedure. Set aside your feelings about Marcos. The proper vote to protect the prerogatives of this House is

to vote "aye." I urge you to do that today.

Mr. SPEAKER pro tempore. The time of the gentleman has expired.

The gentleman from New York [Mr. SOLARZ] has 2 minutes remaining to close.

Mr. SOLARZ. Mr. Speaker, I yield 1 minute to my distinguished colleague from California [Mr. BERMAN].

Mr. BERMAN. I thank the Speaker and I thank the gentleman for yielding.

Initially I might say that I wish this body had a procedure similar to that of the other body to adjudicate some of these matters in a fashion short of the ultimatum that must be presented by virtue of what has happened because there is no other alternative.

But I rise to ask the gentleman a question and seek to engage him in a colloquy.

I ask the chairman of the subcommittee, Mr. SOLARZ: Several of us have deep concerns regarding the proper use of the attorney-client privilege and the values that that privilege represents. In certifying these contempts to the U.S. attorney, is the House taking the position that attorney-client privilege can never be invoked before a House committee?

Mr. SOLARZ. Let me assure the gentleman from California who supported the contempt resolution in the full committee that to vote for these contempt citations all that is necessary is to determine, as we on the subcommittee and the full committee did, that the specific claim advanced by the Bernsteins was not valid. Now there are those who have questioned the House's historic position.

The SPEAKER pro tempore. The time of the gentleman from California [Mr. BERMAN] has expired.

The gentleman from New York [Mr. SOLARZ] is recognized for his final 1 minute.

Mr. SOLARZ. I will use part of my time to complete this. There are those who have questioned the House's historic position that the consideration of claims of attorney-client privilege is a matter of discretion for the House. That question need not be reached here today. We have instructed the U.S. attorney to rely on the ground that the Bernsteins' claim of privilege would not have been sustained in a judicial proceeding. The Members of the House may rely on this instruction.

Mr. Speaker, in conclusion let me just say that the only issue before us is whether we can uphold the right of the Congress to obtain information which it needs to fulfill its constitutional and legislative responsibility. This has nothing to do with Mr. Marcos; it has everything to do with the ability of the Congress to fulfill its responsibility. We cannot relinquish that power to a private group like the Association of the Bar of the City of New York. We have to make that determination ourselves. And if we vote for contempt this afternoon it will go to the U.S. district court where a judicial determination will be made with respect to the propriety of our action.

Therefore, I call upon all my colleagues to uphold the right not only of our committee but of the Congress as a whole to obtain information to which we are legally and legislatively entitled and to cite the Bernstein brothers for contempt for willfully refusing to furnish information.

The SPEAKER pro tempore. The time of the gentleman from New York [Mr. SOLARZ] has expired.

Mr. SOLARZ. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

Mr. LEACH of Iowa. Mr. Speaker, I renew my demand for a division.

The SPEAKER pro tempore. The Clerk will report the first part of the resolution.

The Clerk read as follows:

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Ralph Bernstein to answer questions of the Subcommittee on Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law;

The SPEAKER pro tempore. The question is on the first part of the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LEACH of Iowa. Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 352, nays 34, answered "present" 1, not voting 47, as follows:

[Roll No. 34]

YEAS—352

Ackerman	Biaggi	Callahan	Craig	Kolbe	Rodino
Akaka	Bilirakis	Carney	Daniel	Kolter	Roe
Alexander	Bliley	Carper	Darden	Kostmayer	Roemer
Anderson	Boehlert	Carr	Daschle	Kramer	Rogers
Andrews	Boggs	Chandler	Daub	LaFalce	Rose
Annunzio	Boland	Chapman	Davis	Lagomarsino	Rostenkowski
Anthony	Boner (TN)	Chappell	Derrick	Lantos	Roth
Applegate	Bonior (MI)	Cheney	DeWine	Leach (IA)	Roukema
Archer	Borski	Clay	DioGuardi	Lehman (FL)	Rowland (CT)
Aspin	Bosco	Clinger	Dixon	Leland	Rowland (GA)
Atkins	Boucher	Coats	Donnelly	Lent	Roybal
AuCoin	Boulter	Cobey	Dorgan (ND)	Levin (MI)	Russo
Barnes	Boxer	Coble	Dornan (CA)	Levine (CA)	Sabo
Bateman	Breaux	Coelho	Dowdy	Lewis (CA)	Savage
Bates	Broomfield	Coleman (MO)	Downey	Lewis (FL)	Saxton
Bedell	Brown (CO)	Coleman (TX)	Duncan	Lipinski	Schaefer
Beilenson	Broyhill	Conte	Durbin	Lloyd	Scheuer
Bennett	Bruce	Conyers	Dwyer	Long	Schneider
Bereuter	Burton (CA)	Cooper	Dyson	Lowery (CA)	Schroeder
Berman	Bustamante	Coughlin	Eckart (OH)	Lowry (WA)	Schuette
Bevill	Byron	Coyne	Eckert (NY)	Lujan	Schumer
			Edgar	Luken	Selberling
			Edwards (CA)	Lundine	Sensenbrenner
			Edwards (OK)	Lungren	Sharp
			Emerson	Mack	Shaw
			Erdreich	MacKay	Shelby
			Evans (IL)	Madigan	Shuster
			Fascell	Manton	Sikorski
			Fawell	Markey	Siljander
			Fazio	Martin (IL)	Sisisky
			Feighan	Martin (NY)	Skeen
			Fiedler	Martinez	Slattery
			Fields	Matsui	Slaughter
			Fish	Mavroules	Smith (FL)
			Flippo	Mazzoli	Smith (NE)
			Florio	McCain	Smith (NJ)
			Foley	McCandless	Smith, Denny (OR)
			Ford (MI)	McCloskey	
			Ford (TN)	McCollum	Smith, Robert (NH)
			Frank	McCurdy	
			Frenzel	McDade	Snowe
			Fuqua	McHugh	Solarz
			Gallo	McKernan	Spence
			Garcia	McKinney	Spratt
			Gaydos	McMillan	St Germain
			Gejdenson	Meyers	Staggers
			Gekas	Michel	Stallings
			Gilman	Mikulski	Stangeland
			Gingrich	Miller (CA)	Stark
			Glickman	Miller (OH)	Stenholm
			Goodling	Miller (WA)	Stokes
			Gordon	Mineta	Strang
			Gradison	Mitchell	Stratton
			Gray (IL)	Molinari	Studds
			Gray (PA)	Mollohan	Swift
			Green	Montgomery	Swindall
			Gregg	Moody	Synar
			Guarini	Morrison (CT)	Tallon
			Gunderson	Morrison (WA)	Tauke
			Hall (OH)	Mrazek	Tauzin
			Hall, Ralph	Murphy	Taylor
			Hamilton	Murtha	Thomas (CA)
			Hatcher	Natcher	Thomas (GA)
			Hawkins	Neal	Torres
			Hayes	Nelson	Torricelli
			Hefner	Nichols	Towns
			Heftel	Nielson	Traficant
			Hendon	Nowak	Traxler
			Henry	Oakar	Udall
			Hertel	Oberstar	Valentine
			Hiler	Obey	Vander Jagt
			Hillis	Olin	Vento
			Hopkins	Ortiz	Visclosky
			Horton	Owens	Vucanovich
			Howard	Oxley	Walgren
			Hoyer	Panetta	Walker
			Hubbard	Pashayan	Weaver
			Huckaby	Pease	Weiss
			Hughes	Penny	Wheat
			Hutto	Pepper	Whitehurst
			Hyde	Perkins	Whitley
			Ireland	Petri	Whittaker
			Jacobs	Pickle	Whitten
			Jeffords	Porter	Williams
			Jenkins	Price	Wirth
			Johnson	Pursell	Wise
			Jones (NC)	Rahall	Wolf
			Jones (OK)	Rangel	Wolpe
			Jones (TN)	Ray	Wortley
			Kanjorski	Regula	Wright
			Kaptur	Reid	Wyden
			Kasich	Richardson	Wylie
			Kastenmeier	Ridge	Yatron
			Kemp	Rinaldo	Young (AK)
			Kennelly	Ritter	Young (FL)
			Kildee	Roberts	Young (MO)
			Kleczka	Robinson	Zschau

NAYS—34

Armey	Hansen	Packard
Badham	Holt	Quillen
Bartlett	Hunter	Rudd
Barton	Kindness	Schulze
Burton (IN)	Leath (TX)	Shumway
Combest	Lightfoot	Smith (IA)
Crane	Livingston	Snyder
Dannemeyer	Lott	Stump
Dymally	Marlenee	Sundquist
Evans (IA)	Monson	Weber
Franklin	Moorhead	
Hammerschmidt	Myers	

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—47

Addabbo	Dicks	McGrath
Barnard	Dingell	Mica
Bentley	Dreier	Moakley
Bonker	Early	Moore
Brooks	English	O'Brien
Brown (CA)	Foglietta	Parris
Bryant	Fowler	Skelton
Campbell	Frost	Smith, Robert (OR)
Chappie	Gephardt	Solomon
Collins	Gibbons	Sweeney
Courter	Grotberg	Volkmer
Crockett	Hartnett	Watkins
de la Garza	Latta	Waxman
DeLay	Lehman (CA)	Wilson
Dellums	Loeffler	Yates
Dickinson	McEwen	

□ 1310

Messrs. WALKER, BROWN of Colorado, and SCHAEFER changed their votes from "nay" to "yea."

Mr. GONZALEZ changed his vote from "yea" to "present."

So the first part of the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. The Clerk will report the second part of the resolution.

The Clerk read as follows:

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House certify the report of the Committee on Foreign Affairs, detailing the refusal of Joseph Bernstein to answer questions of the Subcommittee of Asian and Pacific Affairs of the Committee on Foreign Affairs, to the United States Attorney for the District of Columbia, for him to be proceeded against in the manner and form provided by law.

The SPEAKER pro tempore. The question is on the second part of the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. LEACH of Iowa. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 343, noes 50, not voting 41, as follows:

[Roll No. 35]

AYES—343

Ackerman	Anthony	Bateman
Addabbo	Applegate	Bates
Akaka	Archer	Bedell
Alexander	Aspin	Bellenson
Anderson	Atkins	Bennett
Andrews	AuCoin	Bereuter
Annunzio	Barnes	Berman
Bevill	Gray (PA)	Moody
Biaggi	Gregg	Morrison (CT)
Bliley	Guarini	Morrison (WA)
Boehlert	Gunderson	Mrazek
Boggs	Hall (OH)	Murphy
Boner (TN)	Hall, Ralph	Murtha
Bonior (MI)	Hamilton	Natcher
Bonker	Hatcher	Neal
Borski	Hawkins	Nelson
Bosco	Hayes	Nichols
Boucher	Hefner	Nielson
Boulter	Heftel	Nowak
Boxer	Hendon	Oakar
Breaux	Henry	Oberstar
Brooks	Hertel	Obey
Broomfield	Hiler	Olin
Brown (CO)	Hillis	Ortiz
Broyhill	Hopkins	Owens
Bruce	Horton	Oxley
Bryant	Howard	Panetta
Burton (CA)	Hoyer	Pashayan
Bustamante	Hubbard	Pease
Byron	Huckaby	Penny
Callahan	Hughes	Pepper
Carney	Hutto	Perkins
Carper	Hyde	Petri
Carr	Ireland	Pickle
Chandler	Jacobs	Porter
Chapman	Jeffords	Price
Chappell	Jenkins	Pursell
Chappie	Johnson	Rahall
Cheney	Jones (NC)	Rangel
Clay	Jones (OK)	Ray
Coats	Jones (TN)	Regula
Cobey	Kanjorski	Reid
Coble	Kaptur	Richardson
Coelho	Kasich	Rinaldo
Coleman (MO)	Kastenmeier	Ritter
Coleman (TX)	Kemp	Roberts
Conte	Kennelly	Robinson
Conyers	Kildee	Rodino
Cooper	Kleczka	Roe
Coughlin	Kolbe	Roemer
Coyne	Kolter	Rogers
Craig	Kostmayer	Rose
Daniel	Kramer	Rostenkowski
Darden	LaFalce	Roth
Daschle	Lagomarsino	Roukema
Davis	Lantos	Rowland (CT)
Dellums	Leach (IA)	Rowland (GA)
Derrick	Lehman (FL)	Roybal
DeWine	Leland	Russo
DioGuardi	Lent	Sabo
Dixon	Levin (MI)	Savage
Donnelly	Levine (CA)	Saxton
Dorgan (ND)	Lewis (CA)	Schaefer
Dornan (CA)	Lewis (FL)	Scheuer
Dowdy	Lightfoot	Schneider
Downey	Lipinski	Schroeder
Duncan	Lloyd	Schuette
Durbin	Long	Schumer
Dwyer	Lowery (CA)	Seiberling
Dyson	Lowry (WA)	Sharp
Eckart (OH)	Luken	Shaw
Eckert (NY)	Lundine	Shelby
Edgar	Lungren	Sikorski
Edwards (CA)	Mack	Siljander
Edwards (OK)	MacKay	Sisisky
Emerson	Madigan	Slattery
Erdreich	Manton	Slaughter
Evans (IL)	Markey	Smith (FL)
Fascell	Martin (IL)	Smith (NE)
Fawell	Martin (NY)	Smith (NJ)
Fazio	Martinez	Smith, Denny (OR)
Feighan	Matsui	Smith, Robert (NH)
Fiedler	Mavroules	Snowe
Fields	Mazzoli	Solarz
Fish	McCain	Spence
Flippo	McCandless	Spratt
Florio	McCloskey	St Germain
Foley	McCurdy	Staggers
Ford (MI)	McDade	Stallings
Ford (TN)	McHugh	Stangeland
Frank	McKernan	Stark
Gallo	McKinney	Stenholm
Garcia	McMillan	Stokes
Gaydos	Meyers	Strang
Gejdenson	Michel	Stratton
Gekas	Mikulski	Studds
Gibbons	Miller (CA)	Swift
Gilman	Miller (OH)	Swindall
Gingrich	Miller (WA)	Synar
Glickman	Mineta	Tallon
Gordon	Mitchell	Tauke
Gradison	Mollohan	Tauzin
Gray (IL)	Montgomery	Thomas (CA)
		Thomas (GA)
		Torres
		Torricelli
		Towns
		Traficant
		Traxler
		Udall
		Valentine
		Vander Jagt
		Vento
		Visclosky
		Vucanovich
		Walgren
		Walker
		Weaver
		Weiss
		Wheat
		Whitehurst
		Whitley
		Whittaker
		Whitten
		Williams
		Wirth
		Wise
		Wolf
		Wolpe
		Wright
		Wyden
		Wylie
		Yatron
		Young (AK)
		Young (FL)
		Young (MO)
		Zschau

NOES—50

Armey	Green	Packard
Badham	Hammerschmidt	Quillen
Bartlett	Hansen	Ridge
Barton	Holt	Rudd
Bilirakis	Hunter	Schulze
Burton (IN)	Kindness	Sensenbrenner
Clinger	Leath (TX)	Shumway
Combest	Lehman (CA)	Shuster
Crane	Livingston	Skeen
Dannemeyer	Lott	Smith (IA)
Daub	Lujan	Snyder
Dymally	Marlenee	Stump
Evans (IA)	McCollum	Sundquist
Franklin	Molinari	Taylor
Frenzel	Monson	Weber
Gonzalez	Moorhead	Wortley
Goodling	Myers	

NOT VOTING—41

Barnard	Early	Moakley
Bentley	English	Moore
Boland	Foglietta	O'Brien
Brown (CA)	Fowler	Parris
Campbell	Frost	Skelton
Collins	Fuqua	Smith, Robert (OR)
Courter	Gephardt	Solomon
Crockett	Grotberg	Sweeney
de la Garza	Hartnett	Volkmer
DeLay	Latta	Watkins
Dickinson	Loeffler	Waxman
Dicks	McEwen	Wilson
Dingell	McGrath	Yates
Dreier	Mica	

□ 1335

So the second part of the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

WITHDRAWAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1809

Mr. FISH. Mr. Speaker, I ask unanimous consent that my name be withdrawn as a cosponsor of H.R. 1809, introduced by the gentleman from California [Mr. LANTOS].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. JEFFORDS. Reserving the right to object, Mr. Speaker, I reserve the right to object for the purpose of raising my concern that the House may attempt to adjourn shortly and the fact that the bill which was scheduled for today dealing with dairy provisions which are critical to the dairy people of this country to insure that they are not unnecessarily ruined and put out of business, that we would have an opportunity to vote on that.

I would point out also that the other body intends and is hoping to vote on legislation and have legislation over to us by 3 o'clock this afternoon.

The problem is that if we do not do something today, the provisions which will be affecting adversely the dairy farmers and costing the citizens and the taxpayers of this country potentially millions and tens of millions of dollars will not be acted upon and we will be in a situation where we will cost the dairy farmers of this country some $300 million unnecessarily, with no benefits to the taxpayers, and will deprive the taxpayers of the opportunity to save money and at the same time to insure that we have a compliance with the provisions of Public Law 177, the provisions of the Deficit Reduction Act.

For those reasons, I would have to raise the awareness of the body to this and say that it will be critically important to me that this body does not adjourn today and that the dairy farmers of this country will be adversely affected if we do adjourn and would hope that the body would not adjourn before such time as the Senate has had an opportunity to pass such legislation which corrects this very grievous error. The error came about because we have an agreement with the other body, with the administration and with the House leadership on the farm bill to take care of the provisions of Gramm-Rudman in one way, but the technical aspects of the law aimed at crops do it another way. Thus it is important that we get that corrected today. For that reason I have to say I am reserving my right to object.

Mr. GUNDERSON. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Speaker, it is not my intent to object at this point, but I want to echo the comments which my colleague, the gentleman from Vermont, has just made.

Everybody in this body needs to understand what is going on here today, because the decision was made this morning, apparently a leadership decision, to pull the dairy assessment bill from consideration today.

Now, let us understand, that bill must be passed before we go home this week, before March 1, or what we will do is we will impose upon certain constituents of ours very Draconian cuts, when we do have a process in front of us that, No. 1, will save the Government more money, not cost it more money; and second, will allow us to meet Gramm-Rudman in the way we choose to do so.

The bill has passed the Agriculture Committee on a voice vote. The bill received a rule from the Rules Committee last night. We are at the point today of deciding whether or not we are going to do our business as the elected Representatives of our constituents, or whether we are just going to shut down shop at 3 o'clock on Thursday afternoon and go home. I do not think any of us want to suggest that that is the option that we ought to be pursuing.

We need to take a look at this issue. We need to bring it up in one way or the other. We need to stick around here today, either to bring that bill back up on the calendar, deal with it and send it to the Senate for their decision, or else as the gentleman from Vermont said, await the Senate action. The Senate is working on not one, but two different efforts.

No. 1, they are working on the Commodity Credit Corporation bill which must be passed, I understand, or we run out of money.

The second one is that they are trying to put together a four or five point technical amendments package to deal with various farm bill provisions, and dairy is only one of them.

In addition to dairy, we have a number of other issues which need to be passed before Monday, because starting Monday we have signup on all our different commodity programs.

The Department of Agriculture, very frankly, wants one of those issues resolved in determining what the yields are going to be.

So there are a couple different measures that need to be resolved. We in this body ought not to close up shop and go home on mid-Thursday afternoon and go home and make those farmers, those people who work 7 days a week, early morning and late at night, suffer because the Congress of the United States wants to call it a weekend on Thursday afternoon.

Mr. JEFFORDS. Mr. Speaker, I thank the gentleman for his comments. The gentleman is absolutely right.

I just want to again state that this is just a technical problem that we have with the bill and that what we are trying to do is do it in an orderly fashion that was agreed upon in the farm bill by the administration in order to make sure that we do not heap onto the farmers what essentially is about a dollar price cut, a dollar deduction price cut in their milk checks this spring, when no such matter was in the farm bill and an orderly fashion was derived in order to save the taxpayers $80 million to insure that we do not have a disruption of the markets.

The thing is a mess, it will be a terrible mess, and it will cause undue harmship to thousands of farms and thousands of farmers will unnecessarily go out of business if we do not do something about that today.

I am terribly upset with the Democratic leadership for first saying to go ahead, but then for what I believe purely political reasons decided to pull this bill.

Mr. PETRI. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Wisconsin.

Mr. PETRI. Well, Mr. Speaker, I just want to associate myself in the strongest way possible with the remarks of the gentleman from Vermont and the remarks of my colleague, the gentleman from Wisconsin.

This is an unnecessary way of going about a distasteful thing that is required under Gramm-Rudman that was anticipated, was negotiated with, as I understand, with representatives of the Department of Agriculture and we certainly should have an opportunity to implement that discussion, rather than to allow this change to pass today.

Mr. FOLEY. Mr. Speaker, will the gentleman yield to me?

Mr. JEFFORDS. I am happy to yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I find very strange the suggestion that the Department of Agriculture has been cooperative in bringing this legislation to the floor.

As a matter of fact, the administration has not been supportive, to the point of stating that if the matter was sent to them as a single piece of legislation it would be vetoed, or at least the recommendation would be made that it would be vetoed. The decision, of course, lies with the President; but the administration position is against this bill. Under the circumstances, those who stand up here and suggest that we on this side, for political reasons, are doing harm to dairy farmers should first address themselves to the administration of the Department of Agriculture, with whom one would think they would have some communication, instead of leading the House to believe that if only this bill could be brought up it could be passed by the Senate and signed by the President tomorrow.

Oh, yes, it has been said that if we linked some provisions that the Department likes here or the Department likes there, they might be willing under some circumstances to consider a package. But the dairy farmers of the country ought to know that this legislation is being opposed by this administration.

Mr. GUNDERSON. Mr. Speaker, if the gentleman will yield further, I would like to see the letter from this administration that opposes it, because the fact is the Office of Management and Budget has taken no position on the issue.

Second, yesterday Dick Goldberg, who is one of the assistant secretaries for commodities, told me, No. 2, that he felt that the bill dealing only with the assessment change would be accepted, that they did not want to get into the other issues in the farm bill regarding dairy because they would cost money, this one would not.

Third, when has it been the policy of the Democrats in the House of Repre-

sentatives not to pass a bill because the President did not want it? We spent all day yesterday passing a bill that the administration did not want in the midst of arms control discussions and that did not bother anybody on that side of the aisle; but today you are deciding because somebody, not in a letter, not an official communication, but because somebody said to somebody else that they did not like this bill that we are not even going to take it up. Worse than that, if you do not like this bill, do not take it up; but for God's sake, stay in session until the Senate completes their action or else take up the other bills that we have in the Agriculture Committee that we reported out yesterday that we worked so hard on, but bring it up so that in a responsible fashion the Congress of the United States can do what needs to be done before Monday, March 3, so we do not stick it to agriculture once more.

Mr. FOLEY. Mr. Speaker, if the gentleman will yield further, I understand the gentleman has made a good speech, but I have tried as long as I have been in the Congress not to make agriculture a partisan issue. I think the gentlemen trying to do this on the other side are working against the long range interests of the agricultural community.

The gentleman has the time and can cut me off if he wishes; but I would say to him that I think injecting into today's discussion the suggestion that there is a partisan issue here of trying to hurt agriculture is a very great mistake. It will not serve to help the interests of dairy farmers or the farmers in other areas of this country who are indeed in trouble. I say this both as a former chairman of the committee and a subcommittee chairman who has fought for agriculture on a nonpartisan basis and is proud of that record.

I am concerned about the interjection of this note of narrow partisanship, and am particularly surprised when it comes from Members like the gentleman from Vermont and the gentleman we are addressing from Wisconsin who have generally also taken a poisition of nonpartisanship.

Mr. JEFFORDS. Well, that is why I am here, because I am concerned about the interjection of partisanship into this issue.

Mr. FOLEY. There is none.

Mr. JEFFORDS. That is why I am standing here today. I have never done this before in my time of 12 years in the Congress. If I had not worked day-by-day all the way through the steps of this and did not know that the Democratic leadership last night had approved this, but then suddenly overnight had changed their minds because they thought they could lay the blame onto the other party or the administration, to suddenly withdraw the bill today to me is injecting partisanship into it.

Mr. FOLEY. If the gentleman will yield, he could not be more in error.

Mr. PETRI. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to my colleague, the gentleman from Wisconsin.

Mr. PETRI. Mr. Speaker, I agree with the distinguished majority whip. The gentleman is looking at two Members on this side of the aisle who are perhaps two of the most nonpartisan Members on this side. We pride ourselves on that issue.

Mr. FOLEY. I think I said that to the gentleman.

Mr. PETRI. This is the first time in my 6 years in the Congress of the United States that I have served here that I have made a blatant partisan attack on the floor of the House, but I would like to read what the Democratic leadership position was this morning when they made the decision to pull the bill from the floor. It says three things.

Number one. The dairy bill does not reduce the Gramm-Rudman savings on March 1st. It substitutes fees paid by dairy farmers for the outlays cuts set forth in the order.

Secondly, the issue at stake is whether Congress should alter in any detail the priorities set forth in Gramm-Rudman.

Number three, the decision not to consider the dairy bill today does not foreclose later action on a similar measure.

Let us understand what this means. We deal with dairy today or we do not deal with it, because March 1 happens to be on Saturday and we are not going to be in session tomorrow.

The decision was made by the Democratic leadership not to deal with this in a responsible way, but rather to force sequestration to go into effect so they can run around the country and say that Gramm-Rudman and deficit reduction is a bad idea.

Deficit reduction is something we support. What we oppose is sequestration.

□ 1350

That is the problem here. We have come up with a way that will save you more money, not the $80 million required under Gramm-Rudman for dairy. We will probably save you $160 million in terms of what this could save versus the 50-cent price cut.

So we have to understand we are saving the Treasury money here, but we are being denied the opportunity to save the Treasury money and we are being denied the opportunity to save our dairy farmers money because certain people have decided to make this a part of an issue rather than to deal with it in a responsible way. And that is why I am so upset and why I am so partisan.

Mr. FOLEY. If the gentleman will yield, there is absolutely no foundation in his remarks.

The SPEAKER pro tempore. The gentleman from Vermont [Mr. JEFFORDS] has the time.

Mr. JEFFORDS. I am happy to yield to the gentleman from Washington.

Mr. FOLEY. I will tell the gentleman that his remarks are without foundation. If he is suggesting that the decision made was arrived at for partisan reasons, to embarrass those who voted for Gramm-Rudman, or to create any such consequence, he is totally mistaken.

Mr. GUNDERSON. Then why are we not bringing up the dairy bill today? Why are we not bringing up the dairy bill today?

Mr. FOLEY. Because there is a serious question about whether, as a policy matter, we should make a decision as to whether committees will be permitted to bring legislation to the floor that alters the specific provisions of Gramm-Rudman. Until that is resolved, there is a strong opinion that it would be unwise to single out the dairy program as the only exception.

Mr. JEFFORDS. I would point out to the gentleman——

Mr. FOLEY. It is for this and no other reason. If the gentleman wants to think that there is some secret agenda of trying to embarrass Members of Congress on the issue of Gramm-Rudman, that cuts on both sides of the aisle. There would be absolutely no sense in doing that since nearly half of the Members on the Democratic side voted for Gramm-Rudman themselves. There is no political advantage to that, including for the person that is speaking.

Mr. JEFFORDS. First of all, this week we already voted on one change to the Gramm-Rudman procedures for the veterans, and obviously that was politically motivated, if what you say is correct across the board, that was done because they are more powerful and Members would support them.

Continuing with that, we have no difference here. This is a technical correction to implement what was decided on how to handle it, and because of very technical problems created with language aimed at grain crop programs in the Gramm-Rudman bill which were construed to apply to dairy, we had to bring this bill forward in order to do what was agreed upon, and that was put the assessment in instead of a price cut.

So you have already interjected in a sense a change in the procedures for Gramm-Rudman. That has already been done and it has been passed by this House. I voted for it, we all voted for it, so you are not setting any precedent on this thing. So I do not understand the argument that we are setting a precedent here for the first time.

Mr. FOLEY. In the first place, the question of whether it is technical or

not is one that might be debated. The issue in the veterans bill was one of miscalculation. As you know, it was widely supported on both sides of the aisle and with the administration's recommendation.

The second question has to do with whether the dairy bill, which you know I personally support is, in fact, a change of a more substantive nature from the provisions of Gramm-Rudman, or is a mere technical change. I grant you that it is one that is savings-neutral. That is clear, and it is not being suggested otherwise. The problem is that there is a serious question about whether other committees have opportunities to make similar decisions with respect to specific changes or an exception is being offered for dairy alone.

The provisions of Gramm-Rudman were, however, specific with respect to dairy; and people who knew about Gramm-Rudman, knew about what they were.

Mr. JEFFORDS. I would like to first state that I think there is important distinctions with all of us. Let us take, just to explain to the body as to what our concern is here, if you go one way and Gramm-Rudman is ruled unconstitutional by the Supreme Court, money is required to be redistributed to the various programs and that can be done in every case except this one, because once you reduce the price support, as this would do effectively, you essentially would take out of the dairy farmer's hands some $300 million-odd which would be gone forever, and there is no way that could be recouped. If you go the assessment route, and it is ruled unconstitutional and we do not implement it by the sequestration, then that money can be returned to the people, to the dairy farmers by simply the Government writing a check, and a dollar taken would be a dollar given back.

This is an unusual situation which is not one that can be taken under a normal policy as we go into other matters of Gramm-Rudman which can be done while we await the action of the Supreme Court. This is gone and $300 million for our dairy farmers will be gone if this goes into law. Thousands of dairy farmers will be out of jobs, they will be out of business if we do not act today.

Now will the gentleman from Washington admit that if we do not act today, it is impossible for us to do anything in all practical terms next week?

Mr. FOLEY. No, I am not willing to make that statement. If the gentleman wants to make it, he makes it on his own responsibility.

Mr. FRANKLIN. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Mississippi.

Mr. FRANKLIN. Mr. Speaker, I would like to ask the distinguished majority whip another question, and that is concerning the provisions that were passed in an emergency session of the Agriculture Committee yesterday. One of those provisions that you authored and sponsored dealing with the determination of yields for wheat farmers and feed grain growers, to which I had an extremely important amendment that affects the people of my district in Mississippi and farmers all over this country, again which bumps up against that March 1 deadline, it was this gentleman's thought and opinion that the reason that that emergency session was held was so that these things that are so critical to the Nation's farmers, that need to be worked out before this March 1 deadline, could be worked out. I would ask the gentleman from Vermont to yield to the distinguished majority whip to respond to that question about what happens to that legislation.

Mr. JEFFORDS. I will be happy to yield to the gentleman from Washington [Mr. FOLEY] for that purpose.

Mr. FOLEY. The legislation is going to be processed, I would tell the gentleman, but the committee has not yet reported it. It is not available for suspension because we do not have a suspension calendar this week. It would therefore have to be processed through a rule.

The gentleman knows that it is not the usual process to have legislation reported on one day and brought to the floor the next day. In fact, it is usually one in which the minority insists upon their 3-day opportunity to make reports.

Again, I want to say that we have not had the most wholehearted enthusiasm from the administration and the Department of Agriculture in helping us reach these conclusions. Among those bills is one that I have introduced, as the gentleman knows.

Mr. FRANKLIN. And to which my amendment was offered and accepted by unanimous agreement by the Agriculture Committee, and it is not here on the floor, and we are adjourning.

Mr. FOLEY. It is not on the floor and can only be considered under unanimous consent. That is the only possible way.

Mr. FRANKLIN. No one here is objecting that I hear.

Mr. GUNDERSON. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Speaker, I want to get back to the point discussed earlier about timing. The fact is, ladies and gentlemen, that we are dealing with a technical change in the dairy bill to conform the farm bill with Gramm-Rudman. There is no debate among any Member, anywhere, as to what we are doing. Even the gentleman from Virginia [Mr. OLIN], who opposes the farm bill's dairy section, he agrees that the policy change is none. We are not dealing with a policy change. We are dealing with a technical issue.

Where we run into a problem is that if we do not deal with this issue today before Gramm-Rudman goes into effect on March 1, in order to deal with it next week, you frankly have to repeal a part of Gramm-Rudman. Now I do not know anybody on this floor that wants to repeal Gramm-Rudman at this point in time. That is totally a different issue than dealing with a technical issue as we have today. So the question really becomes, and this is where it gets partisan, the Democratic leadership has pulled from consideration today the bill, the technical bill to conform the farm bill with Gramm-Rudman. If they do not allow that bill to be brought and considered and passed today before we go home, let us understand who is going to be responsible for its effects.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Texas.

□ 1400

Mr. ARMEY. I thank the gentleman for yielding to me. Mr. Speaker, I have been watching this debate with great interest, because having spent my first year here in the House, I continue to ask myself: "What's going on around here?"

There are a few things that are painfully obvious. First of all, the Calendar of the House of Representatives is controlled by the Democratic majority. It is not unusual to have bills on the calendar disappear from the calendar. I, myself, experienced that earlier last year, and discovered after a week of research that allegedly a staffer pulled the bill off the calendar.

Let us get to the point of what we are talking about today. It is very clear that when this bill was put on the calendar, everybody knew about the March 1 deadline; that it was important to deal with this issue.

It was pulled. Now, I think it is also clear that one of the theories going around this town is exactly that the Democratic majority would like to force issues into sequestering, have the Nation experience the pain and put the blame on the Republicans and the White House.

Whether or not that is why this bill was pulled, I do not know; but I can tell you this: That is what it looks like, and I do think we have got a right and an obligation to raise that question, because the Nation's business must be dealt with, and I for one do not understand why last week we had one vote, one recorded vote in the entire week; we have frittered away 2 months again already this year.

The American people want to know, when is this House going to go to work and deal with the Nation's business? Here we are back at it again, and I commend the gentleman for raising this fight. We adjourn all too frequently too early and leave the business on the table.

Mr. HORTON. Will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. HORTON. I thank the gentleman for yielding, and I would ask for the attention of the gentleman from Washington, the minority whip [Mr. FOLEY].

The State of New York is very much interested, and particularly my district, we have a lot of dairy farms. This is going to have a very profound impact if we do not act today, and I realize, if I could have the attention of the gentleman from Washington——

Mr. FOLEY. I am sorry.

Mr. HORTON. This is going to have a very profound impact on the State of New York and our dairy farming, our dairy industry.

The fact that the price support is going to be reduced, as I understand it, cannot be recouped. It is very important for us to act. Now, regardless of what the administration might have said or might not have said, it seems to me that we ought to act so at least we can indicate to our dairy farmers what our position is with regard to the impact with regard to the reduction in price support.

I realize there have been a lot of charges and countercharges with regard to partisanship. Laying that aside, I would like to request of the gentleman: Is it possible that the leadership could bring this bill up so we can have a chance to exercise our will? I realize there are a lot of other problems that we might be facing, but it seems to me it would be appropriate for us to bring the bill up.

As I understand it, and I want to commend the Committee on Agriculture; they acted very expeditiously on this, in subcommittee and full committee, and it has gone through the Committee on Rules, and it is ready to be brought up right now. It seems to me it would be to the advantage of all in this House to have that legislation brought before us so we could literally discuss it on the floor and act and have an opportunity to vote on it.

Would the gentleman indicate whether or not the leadership is flexible enough to bring the bill up?

Mr. JEFFORDS. I yield to the gentleman from Washington [Mr. FOLEY].

Mr. FOLEY. Mr. Speaker, I think the question is in part, what sort of consideration we are going to give to legislation of this kind. We have some confusion over what can be done with respect to this particular provision, as to whether or not some action taken next week could be retroactive.

I am not at all clear on that matter.

Mr. HORTON. I am not, either.

Mr. FOLEY. I am not at all sure that there is an absolute requirement that it be done this afternoon and signed by tomorrow and so forth. We have no assurance that the other body is acting or will act. The gentlemen on the other side will correct me if I am wrong, but I have also seen no enthusiasm in my conversations with the administration about this legislation.

They have not requested it; they have not asked us to undertake it. Indeed, in almost every respect the administration's attitude toward alternative plans for dealing with agricultural policies has been cold, to put it mildly.

Mr. HORTON. Well, aside from that, it would seem to me——

Mr. FOLEY. Well, aside from that——

Mr. HORTON. Will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from New York.

Mr. HORTON. It would seem to me that regardless of the position of my side, at least those who are on the Committee on Agriculture have indicated that the administration is not cold to it, but aside from that, why couldn't we just bring the bill up? I commend the gentleman from California [Mr. COELHO], who heads the subcommittee, and the other members on the committee who have brought this bill to the point where it can be brought to the floor.

On behalf of the dairy farmers of New York State, I implore the leadership to let us debate this bill and at least have an oportunity to pass it and send it over to the Senate and then let the administration and those of us who are interested and will do everything we can to get the administration to sign it.

Because otherwise, we might have lost the opportunity if we don't do it today.

Now if somebody can give me an assurance that we are not going to lose that opportunity, I would feel much better about it, but as far as I know, that cannot be done.

Mr. COELHO. Will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. COELHO. The gentleman from New York [Mr. HORTON] brings up a good question about whether or not it is absolutely necessary to do something this week. The answer to that question is "No." The administration could well decide that they would delay the purchases; we could delay them for a couple of days—it would not hurt; it has been done in the past, and that we could go ahead at that point and implement a bill next Monday or Tuesday.

The second problem that we have is in regards to the fact that the Senate will not take up a bill that is dairy-solo. They want to have all different types of provisions in the bill. We do have a tremendous amount of confusion, not only on the dairy situation but on all the different agriculture provisions over in the Senate side.

We on the Dairy Subcommittee have been asking the Senate for 2 weeks to get something moving so that we could act on it, but we are caught in this situation now and the decision of the leadership is that the dairy bill could be brought up next week.

I would suggest that what we should be doing is trying to see what type of action we can get out of the Senate, and it the Senate does act this week, to see if we cannot bring up that bill on Monday or Tuesday.

We are currently trying to meet with the Department of Agriculture officials. A meeting has been scheduled for the next few minutes so that we can discuss this with them to get their cooperation so that the Congress can act early next week.

So that is what we are trying to do and that is the process.

Mr. EMERSON. Will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. EMERSON. I thank the gentleman for yielding.

Mr. Speaker, I would like to ask the distinguished majority whip if it might not be possible for us to recess for 10 or 15 minutes and for the leadership to meet and resolve this scheduling difficulty here.

My concern is over the anxiety of a lot of people out there who do face some very critical business decisions related to March 1. I think the issue here with the dairy situation, the issue raised in the bill by the gentleman from Mississippi, is very critical with March 1 being a very key date here.

I think that maybe we have a responsibility to spend a couple of hours here this afternoon to try to get this resolved in order to relieve some anxiety that exists out in the country. It is purely a suggestion.

What the gentleman from Washington says about the attitude of the White House, I do not think anyone quarrels with here; but we are the elected representatives of the people, there is a very broad, bipartisan consensus here about what ought to be done; we agreed almost unanimously in the committee, and I would hope we could find a way to proceed here this afternoon.

Mr. FOLEY. If the gentleman from Vermont [Mr. JEFFORDS] would yield, I want to make it clear that I did not bring up the subject of the administration's attitude until it was suggested very directly by two Members on the

other side who are usually among the most bipartisan and fair-minded people in the Congress, that there was some kind of a plot from this side to embarrass dairy farmers and embarrass Republicans. This is a suggestion I reject entirely, and have said that time and time again.

Beyond that, we do have a problem with the administration's position; and anyone, as the gentleman from Missouri is aware, who sat in the Agriculture Committee knows how reluctant they have been to deal with this problem.

We have to deal in some way with the overall question of whether committees are going to be allowed to bring to the floor exceptions that someone might suggest to the Gramm-Rudman legislation, even though those are savings neutral.

I think there needs to be some consensus in this body on that point, because we have Members that would like to consider compensatory education changes, and changes in other areas.

It was in the bill, which I voted for, that dairy was to be dealt with in this way. Everybody recognizes that, I hope. It is very specific. Anybody who did not see it did not read the bill.

Now, there is a question of whether we ought to——

Mr. JEFFORDS. I will take my time back at that point.

Mr. Speaker, the language in the Gramm-Rudman bill with respect to the programs that we are talking about here is very less than specific. It talks about contracts—there are no contracts except an instantaneous contract for the purchase of dairy products.

It talks about 1-year contracts. The ruling from the legal beagles was that well, an instantaneous contract comes within the meaning of a 1-year contract. There is some language in there about entitlement programs, but it was aimed at, and everybody agrees that it was not aimed at dairy, and I was present at all these meetings—we had a meeting with Secretary Brock present, Mr. DOLE from the Senate, myself, and others who were present when we agreed to go this way; this is in negotiation on the farm bill.

Subsequent to that, we have had a meeting with the members of the administration being present, the members of the Agriculture Department being present, members of the Office of Management and Budget being present, the majority leader of the other body, myself, and others, and we agreed again; this was 3 weeks ago.

□ 1410

Now I would yield to the gentleman from Wisconsin for clarification on this issue. I believe the gentleman has a document he would like to read.

Mr. GUNDERSON. I thank the gentleman for yielding.

Mr. Speaker, No. 1, it is seldom I disagree with my distinguished subcommittee chairman, but the fact is that unless we pass something today the Department has no legal option except but to move to a 50-cent reduction in the price that they pay.

Now, I especially want the Democratic majority whip and the subcommittee chairman to hear this because while we have been discussing this issue—would the gentleman from California and the gentleman from Washington please listen?

Mr. FOLEY. I am sorry. I apologize to the gentleman. I am trying to be constructive in discussing the matter.

Mr. GUNDERSON. No problem; I understand. I want to share something with the gentleman because I believe it is something that I believe can help the gentleman because while we have been discussing this issue here this afternoon our leadership staff contacted the Office of Management and Budget which has just told them they have no objection to the bill. So it is not the White House that is causing the problems on this bill. They have said they have no objection to the passage of this particular bill. It is not our destiny to determine what the other body does. We are Members of the House of Representatives. Now I would suggest that we take our responsibility, we call this bill up, we pass it, we get it over to the other body and get them to pass it. Based on the OMB position of 5 minutes ago we should get it down to the White House, get this issue signed today before we go home.

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Montana.

Mr. WILLIAMS. I thank the gentleman for yielding. It is clear now that no one wants to injure the dairy people. Lord knows they have suffered enough. But we have to look at a problem here and this is just the beginning of it, just the tip of the iceberg.

Gramm-Rudman requires across-the-board, mindless, bloodless cuts that ignore certain important vagaries, certain priorities and options which this Congress has historically dealt with in order to conduct the business of the public. We are seeing the tip of a very, very large iceberg here today. Now, if the gentleman from Washington State would give me his attention for just a moment, if we are going to accept the amendment of the gentleman to recess or if the gentleman from Washington State is going to try to work out something on this bill then I think everyone in this body has a stake in it. I serve on the Committee on the Budget and on the Committee on Education and Labor. If the Committee on Agriculture is not going to take across-the-board 4.3 percent cuts in everything and I do not think they should.

Mr. JEFFORDS. Now, wait a minute.

Mr. WILLIAMS. I understand. The gentleman is spreading it around, he is building it in, he is replacing it, I understand that.

But my point is if you are going to be able to do that then it seems to me we have to develop a process by which every committee has that right. Every committee should be able to come out here with a bill that says notwithstanding the March 1 sequester date, and we will all take our 4.3 percent but we will except the natural vagaries of Government and we will prioritize and we will pick and choose the way we are supposed to. So I tell the gentleman from Washington State and the other leadership that if you are going to allow this bill to come forward many of us want assurances that bills that we are interested in in our committees be allowed to come forward despite the March 1 sequester.

Mr. JEFFORDS. Let me ask the gentleman this question.

I understand his feelings, I understand his compassion. I have worked with him on the Committee on Education and Labor.

But I think if you understand first of all we are not trying to get out from under it, we are trying to implement an agreement that was made, that is a vast difference. Second, the most important point is if you go one way the dairy farmers are going to lose $300 million which is going to be irretrievable. It is gone, gone, no way to get it back. Every other program which may have a complaint or whatever, if the Supreme Court sustains the lower court, we do not pass a sequestration order, or in that order those modifications can be made, money can be returned. But we have $300 million that will be lost forever to these hard-pressed dairy farmers who right now—we could get into a debate on the point of how they are going down and with a well-designed dairy program we hope to have a kind of program which will not create undue hardships, undue disruptions. But this will do it. This is a big difference.

Mr. WILLIAMS. I understand. If I may. I understand that and I am supportive of that. Likewise 4.3 percent out there at Gallaudet College, and for these little colleges for the blind and the deaf, means that we are going to lose people that we will never be able to get back again. And simply by not giving them the 4.3 cut but rather spreading it over the other vast expenditures on education we can protect some of the handicapped, blind, and disabled just as we can protect dairy farmers who are in trouble. So if you are going to do it for dairy farmers you ought to do it for Gallaudet

and some of the others, that is what I am saying.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Washington.

Mr. FOLEY. I thank the gentleman for yielding. I wonder if we can for a moment go on to other business that is pending on the floor in an effort for some of us to consult. I am not suggesting that the schedule is going to be rearranged but it might be possible to have some unanimous-consent request or some other thing that would allow the possibility of the consideration of this matter next week without prejudice. If the gentleman is interested in doing that then I think we could move on to other matters and come back to this later.

Mr. JEFFORDS. Let me yield just briefly to the gentleman from Michigan.

Mr. SCHUETTE. I thank the gentleman for yielding.

My comments: I suppose these technical amendments and changes in dairy program but, triggered by a comment of the gentleman from Mississippi [Mr. FRANKLIN] I think it is important also for this House to remember that the clock is running on signup for programs. There are bills out there with nonprogram acres, for dryable beans and vegetables. We in this body should consider other important legislation so the clock is not running on producers in agriculture, so vitally important. I think it is important this House remember this piece of business and in addition to the very important, all important issue of dairy. Other important producers are making business decisions. There are difficult times out there right now. Let us not impact producers even more so in these very desperate times.

I thank the gentleman for yielding.

Mr. JEFFORDS. Let me inquire of the gentleman from Washington, if I understand what he wants to do. It is my understanding he would like to delay at this time so that we can try to work out some sort of delay in the implementation of these purchases whatever for a period of time for us to do this in an orderly way with respect to this legislation.

Mr. FOLEY. If that can be done I am willing to explore it in a constructive sense.

Mr. JEFFORDS. I would appreciate that.

I would also hope that all Members would repress the desire, perhaps, of trying to adjourn or do other such things as might make it impossible for us to work out that arrangement. That does concern me.

Mr. FOLEY. I am offering this in good faith to the gentleman and I do not think there is going to be a motion to adjourn unless we have another opportunity to make a discussion.

Mr. JEFFORDS. I appreciate that. I will be happy to yield briefly to other Members and then I am going to withdraw my objection to Mr. FISH's unanimous-consent request.

Mr. WALKER. Mr. Speaker, will the gentleman yield for just a moment?

Mr. JEFFORDS. I yield briefly to the gentleman.

Mr. WALKER. I thank the gentleman for yielding.

On the point made by the gentleman from Montana that sounded eminently reasonable as the gentleman explained it out here, the only problem is that when we had that issue on the floor the other day in an amendment offered on the floor on whether or not we ought to have the committee act independently on all of these various issues rather than taking the across-the-board sequester, the Democratic Party voted overwhelmingly almost to a man to not do that process, while the Republicans voted to have that kind of an option.

Mr. FOLEY. Mr. Speaker, I would ask for the regular order.

Mr. WALKER. I would also say——

The SPEAKER pro tempore. Regular order is demanded.

Mr. WALKER. Is the gentleman cutting me off? Is the gentleman cutting me off?

Mr. FOLEY. I will say to the gentleman I am making an effort to resolve a problem that the gentlemen here are presenting. The time for doing this is limited. The gentleman can make whatever political points he wants to make I am sure at another time. We are trying to work constructively to solve this problem. We are dealing with a reservation on a request of the gentleman from New York to remove his name from a bill.

Mr. WALKER. It surprises me that the regular order is all of a sudden very interesting to the gentleman when he has a point being made against him.

Mr. JEFFORDS. I will reclaim my time. I believe I have the time.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York [Mr. FISH]?

There was no objection.

FREEDOM OF INFORMATION DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 371) to designate March 16, 1986, as "Freedom of Information Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, and I do not object, but I simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Colorado, [Mr. WIRTH], the chief sponsor of House Joint Resolution 371.

Mr. WIRTH. I thank the gentleman for yielding.

Mr. Speaker, I appreciate the support on both sides of so many people for this joint resolution which commemorates James Madison's birthday as "Freedom of Information Day."

All of us I believe recognize that there are three fundamental documents in American history: The Constitution, Declaration of Independence, and the Federalist Papers, the Federalist Papers having been predominantly written by James Madison; that assures the Bill of Rights, predominantly again in the Federalist Papers, the most important of which is the first amendment.

This resolution was put together by the first amendment caucus of the American Society of Newspaper Editors hoping that we would, with them, celebrate the Constitution when it comes around for its bicentennial. And in that also recognize James Madison and James Madison's birthday as First Amendment Day. So I appreciate the efforts of my colleagues on this and their support.

Mr. Speaker, House Joint Resolution 371, authorizes the President to proclaim March 16, 1986, as national Freedom of Information Day.

This day marks the anniversary of James Madison's birthday. Mr. Madison, our fourth President and father of the Bill of Rights, is the American most responsible for many of the constitutional freedoms we enjoy today, in particular freedom of speech and the press.

What Mr. Madison understood, and what we often take for granted, is the importance of free speech, free press, and the value of information in a democratic society. He envisioned a society in which the American people could be truthfully informed about their Government, thus able to enjoy what he called a peculiar freedom to scrutinize the bureaucracy. He believed that through encouragement of interaction of the press and people, the Government would become more responsive to the people.

His idea was considered radical in his day. Today, however, it is hard to imagine not being afforded these freedoms in our society. Yet, because many Americans have never known any other way of life, they do not recognize how important the freedom of information is to the preservation of their other freedoms guaranteed by the Constitution.

A national Freedom of Information Day would serve as a reminder to the American

people and the rest of the world the vital role these liberties have played in shaping this country.

Moreover, it is important to recognize that the freedom of speech and press mean more than just being able to express one's thoughts. They are catalysts that spark a flow of information. This is the most fundamental right of an American—the right to a free and robust marketplace of diverse and antagonistic ideas.

My resolution would establish a national Freedom of Information Day to honor both the man James Madison, and the principles for which he stood. I urge you to support this resolution.

H.J. RES. 371

Whereas a fundamental principle of our Government is that a well-informed citizenry can reach the important decisions that determine the present and future of the Nation;

Whereas the freedoms we cherish as Americans are fostered by free access to information;

Whereas many Americans, because they have never known any other way of life, take for granted the guarantee of free access to information that derives from the First Amendment to the Constitution of the United States;

Whereas the guarantee of free access to information should be emphasized and celebrated annually; and

Whereas March 16 is the anniversary of the birth of James Madison, one of the Founding Fathers, who recognized and supported the need to guarantee individual rights through the Bill of Rights: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 16, 1986, is designated as "Freedom of Information Day", and the President is authorized and requested to issue a proclamation calling upon Federal, State, and local government agencies and the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution as follows:

The joint resolution was ordered to be engrossed and read a third time, was read a third time, and passed, and a motion to reconsider was laid on the table.

MUSIC IN OUR SCHOOLS MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 345) to designate March 1986 as "Music in Our Schools Month," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but I simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation I yield to the gentleman from Hawaii [Mr. AKAKA] the chief sponsor of House Joint Resolution 345.

Mr. AKAKA. I thank the gentleman for yielding.

Mr. Speaker, I rise in support of House Joint Resolution 345 to designate March 1986 as "Music in Our Schools Month."

Mr. Speaker, I want to thank Chairman GARCIA and his committee for supporting and bringing this resolution to the floor. I also want to thank the Music Educators National Conference and its president, Paul Lehman, for their advice and support for this resolution.

This resolution is important to our Nation. Music education in our Nation is an enterprise of enormous scope. Music is taught to over 13 million young people by music specialists and to untold millions more by classroom teachers. Because music was the first of the arts to be taught regularly in the schools, music education symbolizes the importance of the arts in education. It is one of the most glorious manifestations of our cultural heritage that should be transmitted to succeeding generations in every corner of our universe. I ask my colleagues to join me and my 221 cosponsors in support of this resolution.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 345

Whereas the music programs in our Nation's schools fundamentally influence the lives of millions of Americans who participate in these programs;

Whereas music is a powerful aesthetic force that exalts the human spirit, transforms human experience, and enhances the quality of life;

Whereas music is one of the most glorious manifestations of our cultural heritage that should be transmitted to succeeding generations;

Whereas music embodies one of the major symbolic systems that make mankind uniquely human;

Whereas music provides a source of enjoyment and an outlet for creativity and self-expression for all Americans;

Whereas music directly affects the innermost feelings and responses of every child and plays an essential role in the education of this Nation's children;

Whereas the study of music uniquely contributes to the intellectual, emotional, and physical development of young people;

Whereas music provides a useful means for learning about other cultures, both within the United States and abroad;

Whereas the study of music and the other arts enhances student morale and improves the quality of the school environment;

Whereas national recognition and support will assist music educators in enriching the lives of all Americans, regardless of background, age, or musical talent; and

Whereas the observation of "Music In Our Schools Month" will provide a special opportunity for Americans to learn about and support the music programs in our Nation's schools: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 1986, is designated as "Music In Our Schools Month," and all Federal, State, and local government agencies and programs, and all citizens, are called upon to show their support for music in the schools of America.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL TRIO DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the concurrent resolution (H. Con. Res. 278) expressing the sense of the Congress that February 28, 1986, should be designated "National TRIO Day" and that the achievements of the TRIO programs should be recognized, and ask for its immediate consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

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Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object but simply would like to inform the House that the minority has no objections to the legislation now being considered.

Mr. Speaker, under my reservation, I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding and rise in strong support of House Concurrent Resolution 278, proclaiming February 28, 1986, as "National TRIO Day." As a cosponsor of this measure, I would like to thank the gentleman from Michigan, my friend and colleague [Mr. FORD] and the gentleman from Massachusetts [Mr. CONTE] and the gentleman from Ohio [Mr. STOKES] for introducing this legislation, providing for appropriate recognition of the enormous contribution that the TRIO programs have made to improving educational opportunity in this Nation.

Adoption of this resolution is especially timely as Congress and the Nation attempt to grapple with the ef-

fects of the Gramm-Rudman balanced budget legislation. The TRIO programs, which are formally called the Special Programs for Students from Disadvantaged Backgrounds, are authorized under the Higher Education Act of 1965. They serve as a vital part of the Federal strategy to assure equal educational opportunity in postsecondary education.

It is presently estimated that over 38,400 students will be eliminated from the TRIO programs in fiscal year 1986, and that an additional 123,400 students will be dropped in fiscal year 1987 if Congress does not act and the Gramm-Rudman sequestration order becomes effective. While everyone of us must look for ways to cut the fat from even our most popular Federal programs, I contend that our education programs, programs which allow our most disadvantaged citizens to compete on an equal footing with other more fortunate students, must be afforded special attention. Continuing our strong support for education, both at the secondary and postsecondary levels, is clearly, one of the most cost-effective policies that this Congress can engage in. Adoption of this resolution is a strong message from those of us who support a strong Federal role in education, that the fight has not yet begun.

Since the adoption of the Gramm-Rudman legislation late last session, and the subsequent presentation of the President's fiscal year 1987 budget proposal, I have been visited by representatives from all segments of the education community—school teachers, university and college presidents, trustees, teachers and students—all of whom are deeply and rightfully concerned about the future of education in America. By observing National TRIO Day, we will draw attention to the erosion of our postsecondary education programs, and the tremendous risk that we as a nation place ourselves in should we perpetrate a system of education available only to those who can afford it.

The 1,280 programs presently funded under TRIO operate in over 800 colleges and universities and over 800 community agencies. Currently more than 460,000 disadvantaged youth and adults receive counseling, basic skills instruction, tutoring, and information about college admissions and financial aid from these projects. Two thirds of the students served by TRIO come from families whose income is below 150 percent of the poverty level and where neither parent has graduated from college.

Accordingly I urge my colleagues to offer their support to House Concurrent Resolution 278, designating February 28, 1986, as National TRIO Day.

Mr. GARCIA. Mr. Speaker, will the gentleman yield?

Mr. HANSEN. Mr. Speaker, further reserving the right to object, I yield to my distinguished chairman, the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. I would just like to take 1 minute, if I may, Mr. Speaker, to give us the opportunity to understand what the TRIO programs are all about.

There are approximately 1,280 TRIO programs throughout the country. They are educational opportunity centers, special services, Talent Search, Upward Bound, and there are presently over 460,000 disadvantaged young people who are presently enrolled in these programs.

The TRIO programs are targeted to those students whose family incomes fall below 150 percent of poverty and whose parents did not graduate from college.

Forty-one percent of TRIO's students are black, 35 percent are white, 17 percent are Hispanic, 4 percent are American Indian, and 3 percent are Asian.

Whereas the TRIO programs are an important retention mechanism for the physcially handicapped students in higher education as well, because they currently serve over 14,000 disabled students.

So TRIO programs have a record of success, Mr. Speaker, in providing students information about college, motivating them to attend college and enabling them to succeed in college.

Mr. Speaker, I would also like everybody to know that the TRIO programs in the past two decades have produced hundreds of thousands of educational success stories, including two Rhodes scholars and the first Hispanic astronaut. Whereas, as far as we are concerned, this program has been essential and necessary.

Mr. Speaker, I thank my colleague from Utah for yielding.

Mr. FORD of Michigan. Mr. Speaker, I am delighted that the House is today adopting House Concurrent Resolution 278, designating February 28 as National TRIO Day. I am very heartened by the fact that more than 218 Members of this body have cosponsored this resolution. I also want to extend my appreciation to Congressmen CONTE and STOKES for joining me as original cosponsors of this resolution and to Congressman GARCIA for handling it on the floor.

The TRIO programs, which are formally called the Special Programs for Students from Disadvantaged Backgrounds, are authorized under the Higher Education Act of 1965. They serve as a vital part of the Federal strategy to assure equal educational opportunity in postsecondary education.

The 1,280 presently funded TRIO programs operate in over 800 colleges and universities and over 80 community agencies. Currently, more than 460,000 disadvantaged youth and adults receive counseling, basic skills instructions, tutoring, and information about college admissions and financial aid from these projects. Two-thirds of the students served by TRIO come from families whose income is below 150 percent of the poverty level, and where neither parent has graduated from college.

National TRIO Day is designed to draw attention to the National importance of federally supported initiatives to assure equal educational opportunity. TRIO and the other Federal student aid programs authorized under title IV of the Higher Education Act offer a realistic promise of upward mobility, both to individuals and families as well as developing the talents of all our citizens to the benefit of the Nation.

Moreover, these programs have a proven record of success. For example, Upward Bound graduates are more than four times as likely to graduate from college compared to similar students who did not have the benefit of these services. Special Services students who receive counseling, tutoring and basic skills instruction are more than twice as likely to remain in school as similar students who do not participate in the program. And, more than 20 percent of black and Hispanic freshmen who enter college receive information and assistance in applying for one of the TRIO programs.

National TRIO Day also aims at drawing attention to the serious erosion of these programs that will result from the automatic cuts under the Gramm-Rudman-Hollings legislation, absent other actions by Congress. It is presently estimated that over 38,400 students would be eliminated from the programs in fiscal year 1986 and that an additional 123,400 students could be dropped in fiscal year 1987, if the Gramm-Rudman-Hollings sequestration order becomes effective. Coupled with substantial cuts in student financial aid, this can only exacerbate present trends of declining enrollments of poor and minority students in postsecondary education.

Mr. TALLON. Mr. Speaker, February 28 has been declared National TRIO Day. The TRIO programs, which include Upward Bound, Talent Search, Special Services, and Education Opportunities Centers, identify students from disadvantaged backgrounds and help them enter or continue in postsecondary education programs. These programs serve as a vital part of the Federal strategy to assure equal educational opportunity in postsecondary education.

National TRIO Day affords us the chance to reaffirm our commitment to equal educational access and opportunity and to recognize the special contributions made by the TRIO programs. TRIO is one of the rare Federal programs that works to the benefit of all. In my State of South Carolina, we have learned that, with the benefit of TRIO, the nontraditional student can and will succeed. A high percentage of disadvantaged students enrolled in the TRIO programs have returned to our State to make important contributions through their professions and through community service.

The 1,280 presently funded TRIO programs operate in over 800 colleges and universities and over 80 communities. During the 20 years that the TRIO programs have been in effect in South Carolina, over 20,000 disadvantaged low income, first generation college students have been able to achieve a higher education. Currently, more than 460,000 disadvantaged

youth and adults receive counseling, basic skills instruction, tutoring, and information about college admissions and financial aid from these projects. Two-thirds of the students served by TRIO come from families whose income is below 150 percent of the poverty level, and where neither parent has graduated from college.

In districts such as my own these are essential programs that motivate and assist students with little financial or familial support to continue their education. With the help of the TRIO programs thousands of disadvantaged youths are able to break a frustrating cycle of proverty, dependence through a higher education and make important economic, social, and political contributions.

TRIO programs have a proven record of success. For example, Upward Bound graduates are more than four times as likely to graduate from college compared to similar students who did not have the benefit of these services. Special Services students who receive counseling, tutoring and basic skills instruction are more than twice as likely to remain in school as similar students who do not participate in the program. And more than 20 percent of minority freshmen who enter college receive information and assistance in applying for one of the TRIO programs.

A strong education system is a basic right and national imperative. We are now in an information age that leaves those without information access and understanding isolated and impoverished. Our Nation's prosperity, productivity, and security are irrevocably linked to our ability to provide quality, extensive higher education. Unfortunately, the effect of the administration's budget proposal and Gramm-Rudman-Hollings legislation on higher education will be severely detrimental to our hard-won educational system.

It is presently estimated that over 38,400 students would be eliminated from the programs in fiscal year 1986 and that an additional 123,400 students would be dropped in fiscal year 1987 if the Gramm-Rudman-Hollings sequestration order becomes effective. Coupled with substantial cuts in financial aid, this can only exacerbate present trends of declining enrollments of poor and minority students in postsecondary education.

I appeal to you today to consider the importance of higher education to America's future and support our TRIO programs. Our best investment in and for our Nation's future is a strong, viable education system. We have a responsibility to make this investment and I believe the TRIO programs are a great place to start.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 278

Whereas the Special Programs for Students from Disadvantaged Backgrounds, commonly known as the TRIO programs, are integral to the Federal strategy aimed at advancing equal opportunity in postsecondary education;

Whereas the 1,280 TRIO programs—Educational Opportunity Centers, Special Services, Talent Search, Upward Bound, and TRIO Staff Training—presently provide over 460,00 disadvantaged youth and adults the upward mobility afforded by higher education;

Whereas TRIO programs are targeted upon students whose family incomes fall below 150 percent of poverty and whose parents did not graduate from college;

Whereas 41 percent of TRIO students are black, 35 percent are white, 17 percent are Hispanic, 4 percent are American Indian, and 3 percent are Asian;

Whereas the TRIO programs are an important retention mechanism for physically handicapped students in higher education, currently serving over 14,000 disabled students;

Whereas TRIO programs have a record of success in providing students information about college, motivating them to attend college, and enabling them to succeed in college;

Whereas the TRIO programs in the last two decades have produced hundreds of thousands of educational success stories, including two Rhodes Scholars and the first Hispanic astronaut;

Whereas, absent action by the Congress, the Gramm-Rudman-Hollings legislation will eliminate 38,500 students from the TRIO programs in fiscal year 1986, and an additional 123,400 students in fiscal year 1987; and

Whereas, absent action by the Congress, over 300 colleges and universities will lose TRIO programs as a result of the Gramm-Rudman-Hollings legislation by fiscal year 1987: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That February 28, 1986, be declared "National TRIO Day", a day on which the Nation is asked to turn its attention to the needs of disadvantaged young people and adults aspiring to improve their lives, to the investment necessary if they are to become contributing citizens of this country, and to the talent which will be wasted if that investment is not made.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the various resolutions just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The Chair is now going to call for special orders with the understanding that there might be further legislative business.

INTRODUCTION OF LEGISLATION REQUIRING UNIFORM MINIMUM STANDARDS FOR LITE AND LEAN PRODUCTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee [Mr. COOPER] is recognized for 5 minutes.

Mr. COOPER. Mr. Speaker, I am today introducing legislation to bring some sanity and regularity into one of the fastest growing sectors of the retail food industry. I am speaking of that sector of the market which are packaged as "lite" or "lean" products. The growth of these products has been nothing short of a present day phenomenon.

This phenomenon has been part of a fundamental change in the thinking of Americans about their diet. In ever increasing numbers, Americans are learning the nature of the link between proper diet and good health. This new awareness is causing millions of us to cut back on the intake of such things as fat, cholesterol, and sodium, to name a few.

This change in eating habits has, in turn, sent shockwaves throughout the food industry. Whole lines of products have either disappeared or undergone major reformulation. Perhaps even more impressive has been the introduction of entirely new products especially tailored to meet our changed habits.

Among the most popular of these new products have been those labeled as "lite" [light] or "lean." The market for these products has exploded overnight. It is, by most accounts, the single fastest growing sector of the retail food market. It already registers in the billions of dollars.

This rapid growth has not occurred by accident. Retailers have spent millions of dollars on advertising to convince people to think "lite" and "lean" when they think of nutrition. They have reaped a huge return on their investment.

There are a wide array of products, which are called "lite." There is lite salad dressing, lite syrup, like catsup, and, of course, the famous lite beer. There is now even lite fruit and lite french fries of all things.

There has been a similar explosion of meat products marketed as "lean." There is lean beef and pork. There are lean hot dogs and lean bacon. And, how could one omit the famous sizzlean.

There has even been the introduction of a whole line of prepackaged dinners which are marketed as "lean cuisine" and similar catchy names.

Many of these new products are highly desirable and deliver what they promise. However, far too many either fail to deliver what they promise or deliberately make confusing claims.

The result is that consumers are not getting what they think they are paying for. All too often, they are paying for significant calorie and fat reductions, but receiving only minimal

reductions at best. In some instances, consumers are actually receiving none of the caloric and fat reductions for which they are paying.

Examples of the confusion and false claims are illustrative. Some lite products use inconsistent standards of comparison in making claims. Some make several claims at once. Some make no claim at all, while capitalizing on an industry-created perception of calorie or fat reduction.

Equally confusing and bothersome is the current practice of allowing different, and even inconsistent, claims to describe the same products. For example, "lean", "light" and "extra lean" may presently be used to describe the exact same meat product. It takes more than a little sophistry to divine how the same slice of meat can at once be both "lean" and "extra lean." At the very least, relative and absolute terms should not be used interchangeably.

Perhaps most disturbing of all, are the lax fat standards currently allowed for lean meat products. Most so-called lean meat products have only modest reductions. As a result, they still contain unhealthy levels of fat. Even the meat industry trade association (The American Meat Institute) admits that more stringent standards are needed. Lean meat products should be genuinely lean in fat content, not just in words.

Mr. Speaker, I do not claim that the regulators have taken no action. They have done quite a bit. The FDA has required that some lite products claiming calorie or sodium reductions, meet significant standards. The USDA has moved to impose minimum requirements for the use of the terms "lean" and "light." And, the Bureau of Alcohol, Tobacco and Firearms (BATF) has made nutritional labeling mandatory for all lite beers.

The problem is that the job has only been partially done. More, much more, must be done. The wide array of comparative claims nearly defies comprehension. The consumer has a right to some basic rules of thumb.

Mr. Speaker, I believe that my bill—The Lite Food Labeling Act—fills a big void. It would impose uniform standards for the use of terms like "lite" and "lean" or other comparative terms. I do not pull numbers from a hat. The standards, in my bill, are based on current regulatory standards where possible. Where new standards are proposed, they have been carefully formulated to assure the least disruption with current practices. Most importantly, my bill would limit the use of comparative terms to put an end to the free-for-all that now exists.

Mr. Speaker, this month has been proclaimed "American Heart Month" by President Reagan. The connection between a healthy heart and a proper diet is by now beyond dispute. As this month ends, it is a good time for Congress to begin to assure that Americans receive the diet and nutrition that they pay for.

Mr. Speaker, my bill already enjoys the support of numerous public interest groups such as the Center for Science in the Public Interest, the American Association for Retired Persons, the American Heart Association, the American Public Health Association, and Public Voice for Food and Health Policy. I urge my colleagues to join with us in sponsoring this important piece of consumer legislation.

LET'S RESTORE COLA'S TO OUR RETIREES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. WRIGHT] is recognized for 5 minutes.

Mr. WRIGHT. Mr. Speaker, last week I joined my distinguished colleague, from Texas, RONALD COLEMAN, as a sponsor of H.R. 4025, a bill to exempt Federal, military, and tier II railroad retirement cost of living adjustments from automatic cuts imposed under the Gramm-Rudman process.

This Congress must act—and act quickly—to cut these bloated Federal deficits. And to the extent that the Gramm-Rudman legislation helps in accomplishing that goal, I support it.

But there is no excuse for this Congress breaking its word to the retirees of America. We must cut the deficit, of course. We should not, however, cut and run from our solemn commitment to dedicated, hard-working public servants.

We said we would provide them a fair and decent retirement income that keeps pace with the rising cost of living. The application of Gramm-Rudman eliminated the January 1986, COLA for certain retirees, and it should be restored. In addition, we must amend Gramm-Rudman before any further COLA cuts take place.

Balancing the Federal budget isn't just a question of dollars and cents, of numbers on a ledger. We also must take into account the impact on the people of this country. I believe we can reduce the deficit and keep our word to retirees. We can be fiscally responsible and compassionate at the same time.

And that's what H.R. 4025 is all about. It's really that simple. It's a question of plain fairness. It is also, and primarily, a question of honor. A nation that breaks its commitment to those who have served it dishonors itself in the process. I believe too much in the greatness of America to want that to happen.

The fact is, Mr. Speaker, the U.S. Government has been able to attract high-quality people into the public work force, both military and civilian, not through higher pay and more perks. We have attracted qualified people over the years in large part because of a decent retirement program that includes a cost of living adjustment.

You can take away the COLA—as the Gramm-Rudman bill allows—with the stroke of a pen. But you can't restore to the millions of retirees all those years they spent in service to America.

We shouldn't treat people like objects that have outlived their usefulness. Our retirees, in their sunset years, deserve not only our gratitude for a job well done. They deserve, and have earned, a decent retirement income. They deserve, and have earned, an income that keeps pace with the rising cost of living.

As we consider ways to cut the deficit and eventually bring about a balanced Federal budget, we should be very careful not to enact changes in law that undermine our long-standing commitments to people and that shatter their faith in their Government.

H.R. 4025 establishes the date of the passage of Gramm-Rudman (Public Law 99-177) as its effective date. That means, with the adoption of H.R. 4025, Congress will provide for full reimbursement of the January 1986, cost-of-living adjustment.

The General Accounting Office reported on January 21, 1986, that the savings to the Government through the suspension of the January COLA for civilian, military, and tier II railroad retirees comes to just under $1 billion. While that may seem like a lot of money at first blush, compared to the total amount we need to cut in order to bring down the deficit, cutting the COLA's amounts to little more than a drop in the bucket. Saving that amount of money is not worth breaking our good faith commitment.

And so, Mr. Speaker, I ask my colleagues to support H.R. 4025. Breaking our promise to retirees is too high a price to pay. We cannot in good conscience support paying that price in the name of savings. Other, better alternatives exist for closing the deficit gap, and this Congress should pursue these other avenues rather than trying to deprive retirees of income they have earned, been promised, and deserve.

GRAMM-RUDMAN AND FARM POLICY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas [Mr. ALEXANDER] is recognized for 5 minutes.

Mr. ALEXANDER. Mr. Speaker, I take this time today in an attempt to eliminate the confusion which has arisen in the farm community in my district regarding the implications of current farm policy on farm income.

Farm income will be reduced by two factors. The provisions of the 1985 farm bill and the spending cuts mandated by Gramm-Rudman.

The farm bill contains a new formula for calculating farm yield. Average yield will be determined by taking the average yield for 3 of the past 5 years, dropping the high and low years. This new calculation reduces yield by 10 to 20 bushels per acre. Some farmers have lost as much as 45 bushels per acre. This yield reduction means a loss in deficiency payments and a reduction in farm income. For example, with a $2.11 per bushel deficiency payment a farmer with 250 acres in rice production who loses 20 bushels per acre will lose up to $42 per acre for a total loss of $10,500.

Farmers will face further income reductions under Gramm-Rudman. USDA has announced that it will reduce loan payments and deficiency payments to farmers by 4.3 percent for the 1986 crop year. Payments made in 1987 for the 1986 crop year will also be reduced. The 1987 crop will face further reductions which could be as much as 25 percent.

For example, under current law the soybean loan rate is $5.02 per bushel.

However, loan payments will be reduced by 4.3 percent. A soybean farmer who places 10,000 bushels as collateral for a loan should receive $50,200, instead he will receive $48,041. That payment is the equivalent of a $4.81 loan rate. Next year, spending reductions mandated by Gramm-Rudman could reduce the loan rate as low as $3.77

The reductions in farm income brought about by the 1985 farm bill and the spending cuts caused by Gramm-Rudman come at a time when farmers do need a helping hand from their Government. Current farm law and Federal Government policy do not provide the American farmer the much needed assistance.

□ 1435

WHY DOESN'T GRAMM-RUDMAN APPLY TO THE FEDERAL RESERVE?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. HAMILTON] is recognized for 5 minutes.

Mr. HAMILTON. Mr. Speaker, when the first round of sequestration under Gramm-Rudman takes effect March 1, there is one civilian Government agency whose budget will be untouched, because its spending does not appear anywhere in the official Budget of the U.S. Government.

The agency is the Federal Reserve System.

The Federal Reserve has annual revenues of about $18 billion. A small fraction of these revenues—about 3 percent—are fees which the Federal Reserve actually earns on services provided to the Nation's banks and other financial institutions, such as check clearing and electronic fund transfers. Almost all the rest, over $17 billion, is paid by the U.S. taxpayer in the form of interest on the Federal Reserve's holdings of Treasury securities.

From these revenues, the Federal Reserve sets aside about $1.6 billion annually to meet its administrative expenses and other costs, such as the dividends paid to member banks and additions to reserves.

Whatever amount is left over after the Fed has covered its expenses is then returned to the Treasury, where it is used to reduce the Federal deficit.

Despite the fact that the Federal Reserve is a major Government agency, with spending of $1.6 billion annually and over 25,000 employees, you will not find its budget anywhere in the annual Budget of the U.S. Government.

No matter how hard a citizen or Member of Congress may search, he will only find two references to the Federal Reserve in the Government's budget. The funds returned each year to Treasury are listed in table 13 of chapter 6e under the heading "Miscellaneous Receipts," with a short discussion in chapter 5. The budget of the Board of Governors—which comes to about 5 percent of total Federal Reserve spending—appears in part IV of the massive Budget Appendix.

Because of this omission of the Fed from the budget, the Federal Reserve completely escaped the sequestration order which goes into effect Saturday under Gramm-Rudman.

Gramm-Rudman, as you know, requires a 4.3-percent across-the-board cut in spending in fiscal year 1986 for all nonexempt domestic programs, with the cuts to take place on March 1. There are two paragraphs in section 256(b) of Gramm-Rudman which make it clear that sequestration should apply to the administrative expenses of the Federal Reserve, just as it applies to every other Government agency:

(1) Notwithstanding any other provision of this title, administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or account should be subject to reduction pursuant to an order issued under section 252, without regard to any exemption, exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity or account under this part.

(2) Notwithstanding any other provision of law, administrative expenses of any program, project, activity, or account which is self-supporting and does not receive appropriations shall be subject to reduction under a sequester order, unless specifically exempted in this joint resolution.

There is nothing in Gramm-Rudman which specifically exempts the Federal Reserve System from these two provisions, and so the law seems to require that the administrative budget of the Federal Reserve system be cut by the same 4.3 percent that will apply to all other domestic spending programs.

Nonetheless, the Congressional Budget Office and the Office of Management and Budget have both decided that the Federal Reserve is exempt from sequestration under Gramm-Rudman. I recently wrote to OMB Director Jim Miller and to CBO Director Rudy Penner and asked for an explanation of this decision. OMB has not yet responded, but the CBO has and I include the CBO response in the RECORD at this point:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 31, 1986.

Hon. LEE H. HAMILTON,
Chairman, Subcommittee on Economic Goals and Intergovernmental Policy, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your letter of January 13 regarding the treatment of administrative expenses of the Federal Reserve System under sequestration orders issued pursuant to P.L. 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985.

During the preparation of the joint CBO/OMB sequestration report to the Comptroller General, we specifically considered whether the Board of Governors of the Federal Reserve System and the Federal Reserve Banks were subject to sequester under P.L. 99-177. We concluded that they were not for two reasons. First, it did not appear to us that the Federal Reserve System was affected by the provisions of P.L. 99-177 to bring on budget certain federal entities that formerly were off-budget, such as the Federal Financial Banks, the Postal Service fund, and strategic petroleum reserve purchases. Such a major change of policy normally would have been made explicit, either in the Act, the statement of managers, floor statements, or other legislative history.

Second, we would not have had a basis for sequestering any Federal Reserve System funds because these funds do not appear in the appendix to the President's budget. The Presidential sequester order applies only to funds not otherwise exempt that are provided in annual appropriation acts or are identified in budget accounts contained in the appendix to the President's budget. Section 257(8) of P.L. 99-177 defines the term "account" for items not provided for in appropriation acts to mean an item for which there is a designated budget account identification code number in the appendix to the President's budget. Only the Board of Governors' budget was included in the appendix to the 1986 budget in the section covering government-sponsored enterprises (pages V-15 and V-16), but without any budget account identification code number.

It was for this second reason, for example, that various revolving funds for the House of Representatives and the Senate were not subject to sequester. The CBO/OMB January 15 sequestration report inadvertently included the restaurant fund of the House of Representatives, but the Comptroller General's January 21 report deleted the funds from the listing of accounts subject to sequester. The reason given by GAO for this deletion would also apply to the Federal Reserve System.

In order to apply P.L. 99-177 to the Federal Reserve System, I believe either the Balanced Budget Act would have to be amended, or the Federal Reserve System would have to be included in the appendix to the President's budget with appropriate budget account identification code numbers.

With best wishes,
Sincerely,

RUDOLPH G. PENNER,
Director.

As the letter makes clear, the primary reason why CBO decided to exempt the Fed from sequestration is that the Federal Reserve is not included in the Government's annual budget.

Last year, at my request, the Congressional Budget Office prepared a study listing various ways the Federal Reserve could be brought into the budget process. The study listed three options:

One would be to subject all spending by the Federal Reserve to the appropriations process.

The second would be to subject the Fed to more authorizing legislation and oversight.

The third would be to require that the Federal Reserve publish its budget each year in the Budget of the U.S. Government.

All three would give Congress and the public more information on Federal Reserve spending and would eliminate the ambiguity over how the Fed should be treated by sequestration orders under Gramm-Rudman.

But they would have very different effects on the sensitive issues of Federal Reserve independence. CBO found that the option which could shed light on the Fed's budget without compromising its independence in the conduct of monetary policy was publication of its budget in the annual budget of the Government.

Recently, I and 55 other Members of the House introduced legislation which would re-

quire such publication of the Fed's budget. This bill—H.R. 1659—would not only bring billions of dollars of spending by a Government agency into the sunlight, without expanding congressional control over monetary policy, it would also eliminate the ambiguity in current law that allowed the Federal Reserve to escape sequestration under Gramm-Rudman.

The Federal Reserve has responsibilities that may require it to take unpopular actions. But the Fed's need for a measure of independence from political pressure is no excuse for shielding its budget from accountability to Congress and the public or providing it with an implicit exemption from Gramm-Rudman. One of the basic principles of democracy is that no Government agency should be able to take in and spend billions of dollars without being accountable. My bill reflects the sound principle of full disclosure, without comprising the Fed's independence in conducting monetary policy.

Recently, I have sent a letter to each of my colleagues in the House with answers to other questions that have raised about my bill and the current budgetary status of the Federal Reserve System. I hope it will be useful to other Members of the House who are concerned about the budgetary status of the Federal Reserve System.

THE 100TH ANNIVERSARY OF NEWPORT NEWS SHIPBUILDING & DRY DOCK CO. AND THE LAUNCHING OF THE U.S.S. "NEWPORT NEWS"

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia, Mr. BATEMAN, is recognized for 30 minutes.

Mr. BATEMAN. Mr. Speaker, 1986 marks the 100th anniversary of the Newport News Shipbuilding & Dry Dock Co. in Newport News, VA, and it is fitting that on March 15, 1986, the U.S.S. *Newport News*, a *Los Angeles*-class attack submarine, will be launched. Newport News Shipbuilding was founded in 1886 by Collis P. Huntington, and the city of Newport News, VA, grew up around the shipyard. Collis Huntington defined his goal for the shipyard by stating, "The yard is new, and what I want is to get a reputation for building first-class ships, and then always build ships to sustain that reputation." From its inception to this day, Huntington's goal has been met and sustained.

The shipyard's legacy is long and renowned. Newport News Ships' first hull, the tugboat *Dorothy*, was launched in 1890 and was still in service in 1964 when it was retired and eventually returned to the shipyard and dedicated to the pride and craftsmanship of the men and women of Newport News Shipbuilding. Other ships built at Newport News at least as early as 1914 are still in operation, plying the world's oceans.

Mr. Speaker, although their experience at the time was primarily in tug boats, cargo vessels, and a few Navy gunboats, a special tribute to the early sense of dedication and expertise at Newport News Shipbuilding came when, the U.S. Navy contracted with Newport News to build some of its first "dreadnought" battleships. The first of these, the U.S.S. *Kearsarge*, was launched in 1898, just 8 years after the launching of their very first hull. The *Kearsarge* would later be joined by six other Newport News battleships, the *Kentucky*, the *Illinois*, the *Missouri*, the *Virginia*, the *Louisiana*, and the *Minnesota*, as part of President Theodore Roosevelt's Great White Fleet which sailed around the world in 1907 making port calls and firmly establishing the United States as a first-rate world power.

Newport News Shipbuilding also has a long and renowned reputation for building first rate cargo and passenger liners. Notably, the U.S.S. *America*, a passenger liner built in 1939, was the U.S. Navy's highest performing troop transport ship of World War II, and the U.S.S. *United States* built in 1951 continues to hold the record for the fastest crossing of the Atlantic by a passenger liner. Mr. Speaker, it is shamefully regrettable that the degree of technical capability represented by these examples of commercial shipbuilding have been allowed to fall into disuse. The ongoing depression in the U.S. shipbuilding industry is creating a situation where our commercial shipbuilding capability is diminishing dangerously, while foreign nations are taking the lead in the construction of modern commercial ships.

Mr. Speaker, despite this situation, the legacy of Newport News Shipbuilding continues. To date, the shipyard has built over 700 ships of varying functions, sizes, and classes. These include cargo vessels, passenger liners, oil tankers, river boats, tugs, and ferry boats, as well as some of the most prominent warships in U.S. naval history. In addition to those already mentioned, these include the U.S.S. *Ranger* launched in 1933, the first ship designed as an aircraft carrier, and the U.S.S. *Enterprise* launched in 1960, the world's first nuclear-powered aircraft carrier.

Today, Newport News Shipbuilding is the only American shipyard in the business of building aircraft carriers, and is currently working toward delivery of its fourth, fifth, and sixth *Nimitz*-class aircraft carriers, respectively the U.S.S. *Theodore Roosevelt*, the U.S.S. *Abraham Lincoln*, and the U.S.S. *George Washington*. These will bring Newport News' total aircraft carrier production to 26 ships.

Additionally, in its early days, Newport News Shipbuilding did some pioneering work on submarines. In 1904, they launched their first submarine, and by 1912 had launched a total of eight submarines. This early work on submarines paid off handsomely for U.S. national security in the 1950's when Newport News Shipbuilding began building nuclear-powered submarines for the U.S. Navy. These include both attack and fleet ballistic missile submarines.

In 1974, Newport News Shipbuilding launched the lead ship of what remains the most modern nuclear attack submarine in the world, the U.S.S. *Los Angeles*. To date, Newport News has launched 16 of these ships, and very soon, the shipyard will launch its 41st nuclear submarine, the U.S.S. *Newport News*.

Mr. Speaker, Gen. George S. Patton once said, "Wars may be fought with weapons, but they are won by men. It is the spirit of the men who follow and the man who leads that gains the victory." I am not speaking merely of the 127 brave men who will man this ship, but of the 30,000 men and women of Newport News Ship who have contributed to our national security by building this magnificent vessel and others. They are the reason that the 100-year reputation of Newport News Shipbuilding is so impressive. It is based on the shipyard's ability and proven track record for building the best submarines, and building them at the lowest price and on time. The technology, workmanship, and quality that the shipbuilders of Newport News incorporate into their submarines and aircraft carriers make them the finest in the world.

Mr. Speaker, it is the men and women of Newport News Ship who have supplied the spirit and the dedication to produce these vessels which are calculated to prevent war. These ships continue the legacy of pride and workmanship of the people of Newport News Ship while contributing immeasurably to our Nation's security. Mr. Speaker, it is to remind my colleagues in Congress of the contribution of Newport News Ship over the past 100 years that I requested this special order. Obviously I am proud of the tradition of excellence which is the hallmark of the shipbuilders of Newport News, and want to assure the House that these great artisans, engineers, and managers will sustain their reputation through the years to come.

Mr. Speaker, at this time I would be most pleased to yield to my distinguished and able colleague of the Fourth Congressional District of Virginia [Mr. SISISKY].

Mr. SISISKY. I thank the gentleman for yielding.

Mr. Speaker, I want to closely associate myself with the remarks made by my distinguished colleague, Mr. BATEMAN. I think it's commendable that he has had the foresight to request a special order in honor of the 100th anniversary of the Newport News Shipbuilding Co.

Mr. Speaker, Newport News is located in the heart of the historic Hamp-

ton Roads area of Virginia. This region has a long and distinguished tradition in the history of our Nation—particularly the maritime history of this Nation.

When British troops under Lord Cornwallis and the traitor, Benedict Arnold, overran the region south of Hampton Roads—including the area I represent in the Fourth Congressional District—American forces gathered in Hampton and Newport News to keep an eye on their movements prior to Yorktown.

It was within sight of Newport News that the French fleet pursued the British fleet down the river and out of the Chesapeake Bay—thereby paving the way for the victory at Yorktown.

It was also in the vicinity of Newport News that Abraham Lincoln came to get a first hand look at the destruction brought about by Civil war. And it was within sight of Newport News that the clash of the ironclad ships, the Monitor and the Merrimac, ushered in the age of iron ships and the type of naval conflict that many of us witnessed during World War II.

It shouldn't surprise anyone that this tradition of defending the Nation at sea has deep roots in the Hampton Roads area, and those traditions have been furthered for the last 100 years by the presence of Newport News Shipbuilding.

Mr. Speaker, I hope that you and any other Members of Congress who can will take the opportunity to visit the Newport News Shipyard. I think you'll be impressed by the dedication and spirit of the shipyard personnel—from Newport News president Ed Campbell all the way down to the newest apprentice on the job.

I think one of the strongest commendations we can make for the effectiveness and efficiency of Newport News Shipbuilding is that in all the times I've walked through the yard, I've never seen anyone sitting down. As a businessman myself, I know how the hustle and determination I've seen at Newport News translates into good business and a quality product.

Mr. Speaker, Newport News shipbuilding is one of two primary contractors for the *Los Angeles* class nuclear-powered attack submarines. These ships are a key component of our naval strategy of forward deployment of forces to prevent the Soviet fleet from bottling up our sea lanes.

Newport News makes a 688-class sub that is faster, quieter and more deadly than any of its predecessors. They've made a commitment to our country and each of our citizens in terms of top value for the tax dollar and top quality for national security. I think they've kept their word.

I, for one, am looking forward to giving them the opportunity to make the same commitment to value and quality with respect to a new class of submarines—the SSN-21.

In addition, Newport News Shipbuilding is the only shipyard in the country equipped to build our largest class of aircraft carrier, the 95,000-ton *Nimitz* class carriers. The most recent of these ships to be launched, the *Theodore Roosevelt*, is scheduled to be commissioned later this year.

Two other ships of this class, the *Abraham Lincoln* and the *George Washington*, are currently in various stages of construction aned long-lead procurement. I have confidence in these ships as a stable and secure platform for the projection of American power—the same power that all of us recently witnessed when the ship hijackers were captured over the Mediterranean.

In conclusion, Mr. Speaker, I want to thank Mr. BATEMAN once again for giving all of us the opportunity to honor Newport News Shipbuilding on the occasion of their 100th anniversay. This company is one that we can all point to with pride and confidence in their integrity and their commitment to excellence in service to the American people.

Mr. BATEMAN. I thank the gentleman very much for his participation in this special order and for the excellence of his remarks.

Mr. WHITEHURST. Mr. Speaker, I am pleased to join my colleague HERB BATEMAN in saluting the Newport News Shipbuilding and Drydock Co. on the occasion of its 100th birthday.

Several weeks ago, I had the opportunity of sharing a splendid weekend commemorating 100 years of shipbuilding achievement at Newport News Ship. Two things stood our during the review of the history of this great company. First was the incomparable leadership of its presidents, going back to its earliest days. In every case they have been men of vision and high competence. In boom times and depression, they have labored hard to keep the company in the forefront of shipbuilding technology. The second significant factors has been the accelerated sophistication in shipbuilding, particularly in warships, in which Newport News excels. Those of us who were privileged to tour the company yards that Saturday morning saw the evidence of this. With the giant nuclear carrier *Theodore Roosevelt* nearing completion and two new carriers, the *Lincoln* and the *Washington*, just beginning construction, Newport News is continuing to provide our Navy with the finest fighting ships in the world. A majority of the Navy's nuclear attack submarines have slid down the ways of this great yard. More recently, it was announced that the powerful Trident ballistic missile submarine would be overhauled there.

All Americans can take pride in the skilled craftsmen at Newport News who have labored through four generations to build and maintain the ships of our Navy. The spirit of these great shipbuilders still reflects the initial charge given by the company's founder, Collis P. Huntington, who declared that they would build good ships, at a profit if they could, but always good ships.

GENERAL LEAVE

Mr. BATEMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their marks and to include extraneous material on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

ORDER OF BUSINESS

Mr. GUNDERSON. Mr. Speaker, I ask unanimous consent that I be recognized for my special order at the conclusion of all other special orders today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

□ 1450

IN TRIBUTE TO DAVID SOLOMON

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute.)

Mr. GONZALEZ. Mr. Speaker, this marks the termination of service of Mr. David Solomon, who has the title of enrolling clerk, and who has worked very faithfully and loyally in this respect for 12 years for the House of Representatives.

I have often remarked that to some of us, even Members of the House, the faces we see sitting in this tier below the Speaker's rostrum or chair are individuals who are indispensable to the opening and the closing of the doors of a workaday session of the Congress.

The enrolling clerk is one of those that is indispensable. The constitutional offices that are provided in the Constitution for our election to lead the House do not list these people. They do list, for instance, the Doorkeeper; that is a constitutional office. An enrolling clerk, I want to point out, is just as indispensable to the happy carrying on of our chores in the House of Representatives.

So I want to salute and thank Mr. Solomon for his faithful service of 12 years and to wish him well as he leaves this service to enter private business in company with his brother.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, on several occasions, since April 1, 1980, I have taken advantage of this high privilege of addressing the House of Representatives after all legislative business has been either finally or tentatively completed, in order to address my colleagues and for the RECORD, my thinking and perhaps an explanation of my voting reasons on basic issues that I feel transcend the purely parochial service of trying to represent one geographical entity of the State of Texas known as the 20th Congressional District of the House of Representatives from that State.

On April 1, 1980, for the first time since I had come to the Congress, elected in 1961, did I address the subject matter of what we call Latin America. One reason was that I never felt that I was an expert. So often my last name would always unavoidably associate me as a person who must be knowledgeable, who certainly must be aware of what is going on even, say, across the border in Mexico.

The truth of the matter is that just 1 minute of pause and sober thinking would reveal the falsity of that assumption. You know and I know that any community involves a complex and an involved history, not only history of politics but the present pattern of political activity so that when you take into consideration a nation of the size, the complexity, the historical richness, the varied patterns of its historical evolvement, you know you have something that is not simplistic in nature or one that cannot be addressed knowledgeably without some detailed and reasoned and prolonged thinking and study.

Although my parents did come to San Antonio, TX, from Mexico, in the case of my father, he did not look upon himself as an alien. His roots were in the northern State of Durango in Mexico, and had been since 1561. At a time when all of these territories were part of what was then known under the Spanish colonial regimes as the Province of Nueva Viscaya, and which, by definition, territorial definition, included what now today is the State of Texas, and as the archivists will tell you in reading the original documents, further defined as that territory that extended as far north as man could walk.

So that this perspective which is very little realized in our country, is one that does exist in the minds of many, many citizens who live south of the border. Not only in Mexico, but in those territories south of Mexico.

Being that our modern-day living, not only in the United States and every other society that we can mention today, we tend to be self-centered. We are not aware of the most important historical facts as they have evolved and as they impact us today in the 1980's in this last quarter of the 20th century.

I felt that I was not an expert, not even in the case of my own county could I tell you then nor can I tell you now that I am an expert on politics. It is complicated, it is involved. All we can do is grope and muddle through day to day. But on April 1, 1980, I finally took the floor because of information that had been brought to my attention by the most reliable of people and sources that one could find that had been brought to my attention 6 months before in the month of September, to be precise.

At the time I was given the information, which related to the country of El Salvador, and which of course was just about 2½ or less than 3 months after the successful revolution of the revolutionary forces in Nicaragua which then called themselves and are still today mistakenly referred to as the Government known as the Sandinista.

Anybody knowledgeable of the history of that part of the world would know immediately that the moment the word and the name Sandino was evoked that it was bound to be the evoking of a memory that was not happy in its relationship to American or, as I say, North American intervention in that country.

Until the advent of our actual President today, Ronald Reagan, the policy of direct military intervention had not been resorted to since Calvin Coolidge in 1929. True, I was exposed even more than the average, growing up at the time in the city of San Antonio at that time and in that world, to the history, the culture, and above all, the language because of a rather unique and unusual family situation where my father, since the time he found himself in San Antonio, was working out his existence as a newspaper man involved in the publication of the only Spanish language daily newspaper published in the United States at that time and for many years; 44 in all.

The only Spanish language daily newspaper that for 44 consecutive years was published without fail any one day in all of the New World, from the United States to the Cape in South America.

□ 1500

Why is that so? Because without exception newspapers south of the border from Mexico on down, great newspapers, prestigious newspapers, such as that beacon light of the Spanish language journalism, which incidentally had just as deep and as high a heritage as the English language journalism and journalistic history, the Buenos Aires La Prensa of Argentina which was a world noted publication read just as avidly in Europe and Spain as it was Argentina, at one time or another together with every other daily published in every other Spanish speaking country in the New World, had been either censored, shut down or destroyed at one time or another. Only La Prensa of San Antonio, TX, published 44 consecutive years without fail any one day and that in the United States of America.

So with this backdrop, which today cannot be remembered or recalled or even thought possible, the idea that there was a period of time in which you could publish a Spanish language daily, not a weekly, not a monthly, but a daily, that in 1929 and 1930 and even in 1931 had a higher rated circulation than any of the daily English language newspapers in San Antonio, because it was much looked after as a free voice, even in Mexico, and some of the great crises that I can remember in my life were at night when my father would be called in an emergency to be advised that the Mexican Government had embargoed the newspaper at the border because the Mexican official at that time resented something that had been published in La Prensa, San Antonio, and my father would have to get up at midnight or later because La Prensa was a morning newspaper. I remember those days as if it were today.

I was privileged, because I was exposed to the rich heritage of the language, enamored of its beauty, as I have become with English, and also being the exclusive tongue used in my household, which caused me to have to stay a whole year in the lower first grade when I first went to school because I did not know a word of English, but I did know another language besides Spanish, and that was German, for other reasons that are not pertinent today, at least to enlarge upon or discuss.

The reason I am giving this backdrop is that it has provided a rich, prime source of information and material that enables me to grasp a broad perspective of the developments and the churning of the processes of daily life south of the border which do impact us perhaps more visibly at times when we have these cycles of large numbers of people coming across the borders, illegals or undocumented workers as some call them, and these have been cyclical periods, a big cycle or tide of events back and forth that is totally ignored in the Congress when it considers the revisions or amendments to the immigration laws, but which have everything to do with whether or not we produce realistic and effective legislation, so that it is important that we know this history.

So when these individuals in the first week of September, finding themselves in Washington, contacted me to say that they were very, very disturbed by the course of events in El Salvador, one of the sources had been

on duty in Nicaragua and then had been transferred to El Salvador, so he was very knowledgeable and he assured me that two things were going to happen; one, that the course of events in El Salvador would not be the same as in Nicaragua, that he was apprehensive, second, because of the security and safety or lack thereof of the American Embassy and even its own Ambassador, and that the regime then that first week in September in power would not last until October.

His reason for seeking me, as well as two other individuals coincidentally the same week finding themselves in Washington, feeling they could communicate with me and making the same request that I in turn bring to the attention of President Carter or his administrators these pertinent facts that they felt were not being evaluated in the Washington State Department headquarters.

I tried unsuccessfully to have access to the President. President Carter in truth was not the most accessible of Presidents.

I might say that by way of explanation that out of all the six Presidents that I have had the pleasure of working with as a Member of the House of Representatives these nearly 25 years, the least communicable and the least accessible is this present President, President Reagan, who will not even acknowledge a letter from a Congressman.

The most accessible was Lyndon Johnson, who until he got to the White House was more accessible than some of my local justices of the peace in San Antonio.

So I have seen this and when I saw that it had been my inability to communicate and I saw the fulfillment of everything that had been predicted by these sources, I then took the floor on April 1, 1980.

Now, before this—and I mentioned this once before—on July 1, 1966, the Organization of American States selected me to be an observer at the elections that took place in Santo Domingo at the time that we had intervened. Lyndon Johnson intervened militarily.

The big difference, however—and it is a difference, even though it might be imperceptible for most Americans—is that Lyndon Johnson made sure he would have the imprimatur of approval of the Organization of American States, so that technically, though the intervention was called for to protect American lives or property, that indeed and in fact were under some threat, the real truth is that it was done in the name and with the approval of the Organization of American States.

On April 1, 1980, I decided to speak, because I noticed in the newspapers that President Carter had first made a request for some of the first contingents of military and military advisers.

I felt that in the absence of having made an effort to first proceed collectively through the use of our moral suasive powers as still having some leverage with the multinational nations of the new world that we helped to create, that we ourselves wrote the treaties, all signed by these nations, I then appealed to the President in my address on the House floor—and it was President Carter, it was not President Reagan. For all those who accuse me of being partisan now, I must point this out, and that is why I am doing it.

The big difference was, though, was that President Carter was still orienting the thrust of his intervention mostly on the civil side, relief aid, the conditioning of aid on promises of land reform and other basic reforms, at least that was done; but my anguish was that I felt that the United States at that time would have no more than 90 days within which it could attempt to still use some remaining vestige of our leadership collectively in the new world.

President Carter did not, and soon the number of advisers was increased disturbingly, very much, as had been the case in Vietnam and which I recall, because when a certain situation was called to my attention, again by constituents, a serviceman in the Air Force that had just come back from what we later knew as Vietnam at that time, which was May 1963.

I doubt any of us had a precise idea just what we were talking about when we said Vietnam.

This young airman related a story that I thought was unbelievable. He had just been returned. Technically, he was an adviser. In reality, he had been a cargo master on a helicopter, and on one of the last which they later called their missions or trips, they received hostile fire. Since the terms of his service were that he could not carry arms, becoming very much alarmed that he would be shot down, he ordered the soldier in the ship from the army of the Republic of Vietnam to fire back. He refused, so the airman grabbed that gun and fired back and landed safely later; but when he was threatened with being reprimanded and abusing his status as an adviser, his CO—his commanding officer—shipped him back to Texas. I could not believe it.

President Kennedy was President, and I had more access to President Kennedy than any other President, including Lyndon Johnson, because I had met him and had formed a very personal friendship in 1951; so the first visit to the White House, which was on my return after that weekend that I attended the ceremony where this airman was being noted for 300 missions—missions, now, usually missions, you think of those in terms of military exploits; but the first question I asked was, "Well, if you are exposed to hostile fire, why are you not provided the basic rudiments and tools with which to defend yourself?"

Well, to me, I thought it was an "Alice in Wonderland" explanation and I brought it to the attention of President Kennedy.

I think the record ought to show that I got some reaction, because he got his personal secretary, Kenny O'Donnell, to get somebody to look into the matter.

But the question still remained unanswered very much, like the question I ask today with respect to American forces in the Sinai, American troops that every day are under the shadow of death and bodily harm and great embarrassment to our Nation.

So I have been raising that issue for that reason. That is the chain of events that motivates my behavior here and rising to speak.

To make a long story short, I bedeviled President Kennedy so on the last trip to Texas, I was on Air Force One. There were only three of us from the House and one Senator on that Air Force One and as the President came into the cabin that he had invited us into, he began to discuss other matters, and then laughingly said, "Did you ever get any satisfaction to your questions?"

At first I did not know what we was referring to. At that point, Larry O'Brien, his assistant, came in and called him. He started to leave and when he got to the little corner of the passageway, he turned around and said, "Well, as of the end of this year, I have ordered them all out, including the helicopters.

I was always puzzled by that remark, because later when he came back to the cabin, he again said that I had been pestering the devil out of his aides, because I was chastising him for spending only 3½ hours in San Antonio, which was the only major city which had voted for him in the majority, but he spent a day and a half in Dallas, half a day and night in Houston, and I was telling him he is not going to get a vote there the next time, either.

□ 1515

So that bedeviled some of the President's assistants. So he was joking about it, and he said, "Well, I tell you what: when I come back from this trip, the first thing I am going to do is, I am going to go to Hawaii to meet with Cincpac to review this whole business in Southeast Asia. But I want you to invite me in January and February and I will come to San Antonio and I will spend all the time you want me to."

We shook hands on that, so that when he moved out and said, "I have, as of the end of the year, ordered everyone out including helicopters," it

took a little while before I realized he was referring to our military advisers and the equipment we had sent over there, ostensibly on the request of the regime of Diem who later was assassinated. In fact, he had been assassinated in October on the eve of that trip to Texas. So that was the thing that was aggravating the newspapers.

I found out 2 years ago from one of the historians that, indeed, and in fact, he had issued an order that, in fact, was intended to be implemented to do that at the time of his death. So that we did have those differences.

First, you had Presidents or leaders who had a far more knowledgeable grasp and perception of that real world. Today, our leadership, without any effort for collective approaches, and then failing in that, proceeding unilaterally to protect our vital national interests—nobody could protest that. Instead of that, they have opted to going back to 1926 to Calvin Coolidge's invasion of Nicaragua and the occupation of our Marines for 13 years there. We have invaded Nicaragua seven times since before the turn of the century. But the longest occupation was the one from 1926 on for 13 years during which the Marines not only formed the National Guard, but installed Somoza as the dictator, whose regime finally and inexplicably collapsed just through sheer rottenness. There was no way anybody could shore that up.

The truth of the matter is that when any movement begins to call itself the Sandinista movement, we must remember that it was Sandino who was the stout resistor of the Marines and the American invaders, as they called them in 1926. So if that name is being evoked, what it means ought to be of significance to our diplomats and our statesmen who at least ought to pick up a history book and read a little bit, because it has grave implications, mostly to our children, our grandchildren, and our great-grandchildren because, as I have pointed out ad infinitum, the course that President Reagan has followed since its inception in January 1981 through the person of the then-Secretary of State, Gen. Alexander Haig, has been one of direct, unilateral military intervention. It is evoking a rancid, a bankrupt, policy that was disclaimed by every successive President since Calvin Coolidge.

We have the famous Good Neighbor policy of Franklin Roosevelt that turned around the entire sentiments. Then we had a gap. But one thing the Good Neighbor policy brought about was that even in countries such as Argentina, where the Nazi presence was very, very strong—all during the war, you could pick up a phone in Argentina to the day the hot face of the war was over, and call Berlin because the transatlantic cables were left intact; from the first day of the war, I was called in to work, first with military intelligence and then with naval intelligence, in what ended up being called the Cable and Radio Censorship Division. So I think I have a little bit of an idea of what that world was and the sentiment that existed based on the anti-American historical conditioning on behalf of German culture, Hitler or no Hitler.

We must also recognize that the cultural centers of these countries, beginning with Mexico, have not been in the past, at least, in the United States, in the New World. They have crossed the oceans over into Europe. An uncle of mine who graduated as a doctor from the University of Mexico in 1923 had all his instruction at the University of Mexico in French text and imported by French doctors and teachers. But the other counterpart as a cultural center was Germany. It was Germany that was the technological and scientific leader in the 1920's and middle 1930's. And then, of course, with the advent of Hitler. And why did Hitler rise?

Hitler's party, we must remember, was the National Socialist Party of Germany. It was socialist. When we use these words, we have got to look at them from the context of European, not American usage. But who does that among our policymakers? I have seen no evidence.

All during Vietnam, I kept asking the President: Who do you have, who do you have either in the military or the State Department that can speak the Vietnamese tongue fluently, and knows and has lived that history and can speak the tongue? Not one—we did not have one.

Now there should be no excuse for this when it comes to the very countries that inescapably we must share the destiny of the future. What I am saying today is that with the President's television appearance last night, and his reaffirmation of a bankrupt policy—its bankruptcy is obvious in El Salvador where General Haig drew the line 5 years ago—we are no farther along the premise of democracy of freedom than we were then. In fact, we are further removed, because we have been the basic root cause of the terrible bloodletting, 50,000 lives plus, the terrible assassinations of such figures as Archbishop Romero.

□ 1525

Who assassinated the archbishop? The very forces that the President says are coequals, moral equivalents of our Founding Fathers. What a horrible, horrible criminal distortion that is; and for them, he is asking again that we approve $100 million directly.

Now, he does not have to do that. He is giving them the money anyway, whether the Congress prohibits it or not. When the Congress, in a brief flurry of action prohibited in a rider amendment direct aid to the so-called Contras, the President was not stopped; all he did was shift in his discretionary executive budget 750 times, that is 750 percent times more money than any predecessor had used in discretionary executive funds. Just move them around.

On September the 18, 1984, who noted and who much cared that the Defense Department gave the CIA an untold number of airplanes—for what purpose, and for what reason, and under what provision of the 1947 Security Act which gave rise to the CIA, does the CIA have that power and that right, and what are we talking about when the Defense Department says "these are surplus aircraft," while we are told by the budgeteers from the Defense Department there is no such animal; that they are in dire straits. There is no such thing as surplus aircraft.

But overnight, in one brief Executive action, the CIA got those for us where? With the Contras. We are the first that have introduced the most deadly form of armament in the new world. SAMs, Huey attack helicopters with night vision, gunning down and shooting innocent peasants even as I am talking today.

Those are not Russian-made helicopters. Those are not Russian-made or Cuban-made equipment; those are American made. We have a literal bloodletting in the smallest country in the New World. Our policies are working? We are no further along after $4 billion investment in El Salvador alone, both written and unwritten.

The direct intervention of our Government, the use illegally of our armed services personnel; they are presently flying the so-called reconaissance flights for the Huey attack helicopter. They have been involved in activity and inaction, all illegally.

We have lost 17 of our servicemen between Salvador and Nicaragua. In Nicaragua, these regular servicemen were treated like the CIA does; they can always figure out fancy terminology like the words the CIA use to disaffirm any responsibility.

Plausible deniability. So these men are stripped of their dog tags; they are told "If you get caught or if you get shot, we disavow that you are a member of the armed services."

But who is kidding who? Do you know the Latin Americans know that? The American people do not, but they do, and the rest of the world. There is not a country in the New World or Old World that goes along with these policies. Even the most friendly intellectual in Latin America quickly hastens to say, "Americans, you're not doing it right by arming the Contras. That's the worst thing you can do even if we don't desire the Sandino regime," or

whatever you want to call that government.

It is wrong; it is counterproductive. Let us examine that a little bit. The President says, and General Haig so announced first, in 1981, that what was happening in El Salvador, the smallest country in the New World, was an East-West confrontation. That this was a Cuban-Castro-Russian activity.

Fidel Castro, in Havana, when this came out, took time on Radio Havana to say:

I'm delighted the Americans are giving me credit. Of course my heart is for the Nicaraguan people that are aspiring for liberty. But gosh, I don't even know who the leaders are.

You have five different revolutionary movements. The least numerous and up to now the least influential is the so-called Communist or Marxist-Leninist wing of the five rebel units now fighting in El Salvador.

What was wrong? What was wrong was the same thing that was wrong with our perceptions of the world that called for 50,000-plus American lives to be lost and untold treasure in Southeast Asia.

If we had understood then, particularly our leaders the nature of world communism, would we have acted that way? I don't think so; in fact, I know so.

Now we are close at home. We can afford to foul up, even in the Philippines, and maybe, maybe get along; but we cannot do this in our front porch and in our backyard. That day is gone.

General Haig, the first thing he did, early in 1981, was to invite the Argentina military to send him some troops so he could put them in Honduras to do what? To destabilize the then junta, or the Sandinistas in Nicaragua.

But lo and behold, General Haig and all of his cohorts in the State Department certainly did not understand what was going on, because Argentina had its idea that by golly, they were acceptable, and that they at last could move in on those British and claim their rights in what they called the Malvinas.

As a result, you had war between Britain and Argentina and the United States had to side with Great Britain; not Argentina. At that point, they not only pulled their troops out, but they said "a pox on your house."

So that year before last, or maybe it was early last year, lo and behold, Fidel Castro welcomes those leading Argentina generals that had been considered the most anti-Cuban, the most anti-Castro people in the whole Western Hemisphere, and there they were received with embraces and as heroes.

Does that mean that Fidel Castro is a great diplomat? No, it just means that the American leadership has been, if not stupid, certainly ignorant and has blundered colossally.

I often think of the words attributed to Bismarck of Germany when he said:

Yes, the United States is like a drunk; God looks out for drunks and the United States, nobody else.

I think sometimes maybe that is true. We manage to muddle through, but I think that our time limits for that are narrowing to the point where we have few options.

Because the $100 million asked by the President in effect is a request from this Congress to give our stamp of approval to a not only bankrupt policy but one that will inevitably lead us to catastrophic blunders in which American lives, blood and treasure will be lost at great cost.

Let us ask some questions: Mr. President, we give you the $100 million to help what you call the moral equivalent of our Founding Fathers. Who by all accounts—reporters from the Washington Post that go down there, live with them, come back and write books—are nothing more than a varigated, motley crew of rapists, murderers, assassins of school teachers and innocent peasants, and that is about it.

Eighty percent of them or more are ex-Somozistas who were kicked out of Nicaragua. We compelled the country of Honduras to keep them. The Honduran people do not want them. Read their newspapers, as I have been reading since 1981, 1982.

□ 1535

What does the conservative newspaper of Tegucigalpa say in 1982? These are the conservatives now. They want to protect United Fruit, they want to protect the United States investors, they are for us. But what are they saying? "We have lost all, including honor." Even now, Mr. President, the $40 million that you flummoxed out of the Congress on the pretext that it would be nonlethal aid, half of it the Honduran Government will not let you distribute because they do not want to admit to the world under international law that they are giving hospitality to that kind of force in their sovereign nation. That is the long and the short of it.

Now as I say in repeat there is not a country in the Western Hemisphere from Canada clear on down that goes along with us with our policies or lack of policies thus far. There is not a European country that does, either. Do you not know that these countries to the south of us are not all illiterate and unprogressive? I must remind my colleagues that in the churning events of historical occurrences, if we look at it from a historical perspective overview, when the 13 colonies were barely forming you already had a university and a press in Mexico City and Havana for 100 years. So when we blithely try to treat these entities as we did in past decades we are making profound mistakes.

Mr. President, if this Congress does give you the $100 million you know that the only net impact of that is to get the formal imprimatur of congressional approval so that then all stops are out. But the Contras cannot do it. It will take American troops. The Hondurans are not going to go fight Nicaragua, they do not want a war with Nicaragua. As a matter of fact in 1957, which was the last date of an eruption between Nicaragua and Honduras over the border, the United States did not have any compunction in joining the equivalent of what we call the Contadora nations today. What happened? Eisenhower was President and he was military. He did not think it was below the dignity of the United States to join this group on their invitation. They were so thrilled they made us the leader. We all went to the World Court, the International Tribunal of Arbitration, and settled the dispute. It had been settled until we went in there and churned it up with our destabilization moneys by the CIA. Through the CIA we have violated international law, we have violated three basic treaties with the countries that share the New World with us. We have been hauled before the World Court and we have walked out of the World Court. We are supposed to be and indeed we are, and I think the American people, knowing the facts, will not approve of this action, they will not approve of us turning our back on law and order merely because we resent any question of what I consider to be nefarious tactics, bankrupt policies, disastrous actions that will lead our children, our grandchildren, our great-grandchildren into an eternal hostility in a New World that we will mandate that they try to share.

We will have learned nothing from the old country from which our fathers came to seek a better world, a peaceful world. We will, and President Reagan has gone a long way in ensuring that we will have ancient hatreds and animosities perpetuated in concrete.

I ask my colleagues to unanimously turn down the President's request.

Mr. Speaker, I yield to the distinguished deputy whip, the gentleman from Arkansas [Mr. ALEXANDER].

Mr. ALEXANDER. I thank the gentleman for yielding. I am grateful to the gentleman for his leadership and for the admonitions that he gives today to the administration and to all who are considering a request to provide for military aid to the Contras in Central America. I am reminded of the words of one of our best friends in Latin America, Miguel de la Madrid of Mexico who said, when he said last year that the United States military maneuvers and naval operations in

Central America are causing anger and resentment among the Latin American people.

He said those words. Yet we are unwilling to listen to those words.

It seems that over and over again the American people are victims of the same kind of policies which have caused discontent among our friends in Latin America. Over 100 years ago the great Simon Bolivar said:

¿Estados Unidos parecen plagar a las Americans con miseria en el nombre de la libertad?

Is the United States destined to plague the Americas with misery in the name of liberty?

I ask that same question today in the name of Bolivar to the President of the United States.

Mr. Speaker, I thank the gentleman for yielding.

Mr. GONZALEZ. I wish to reply to the gentleman from Arkansas that I wish to acknowledge his leadership. He is one of the first few voices from the very outset who announced what I consider to be the correct perspective, the knowledgeable perspective. He has traveled there, he has had communications with them. I have more or less followed him, to tell the truth.

What the gentleman says is so important because if we want to know what the people really think, we read not only their leaders, what they are likely to say, such as Simon Bolivar, but also to Ruben Dario, who happened to be Nicaraguan, who addressed a poem to Theodore Reslo and he said:

Eres los Estados Unidos.
Eres el futuro invasor.
De la America ingenue.
Que tiene sangre indígena.
Que aún reza a Jesucristo.
Y aún habla en Español.

Here is Ruben Dario, this beacon light of a poet in the New World and he says:

You are the United States. You are the future invader of this naive America that has indigenous blood and that still prays to Jesus Christ and still speaks Spanish.

We have not the slightest idea of what these mistaken policies have by way of adverse impact. The common run of the people today are well advised because we live in a shortened, contracted world. They see television. They have a basic respect and they want to like Americans in general. The way they are is like our folks are with respect to the Congress; our people will be critical of Congress in general but individual Congressmen will be respected and loved. That is the way it is.

We cannot possibly gauge the accumulation of this impact of these past invasions until you do read what the thinkers are thinking and what the writers are writing. I really want to acknowledge my great respect and admiration for the gentleman from Arkansas.

Mr. ALEXANDER. I thank the gentleman.

Mr. GONZALEZ. I know he has been criticized at times. I also want to point out from a pragmatic standpoint that I have relatives in the service and I have had them all along. I have always thought that in America we valued human life, the sanctity of life, that we would not accept the expendability of life. We have had it in our history. There were a couple of generals during the Mexican War who fought some unnecessary battles because they wanted to run for President. But that is recorded in Mexican history, incidentally. Mexican historians will write about it. Few American historians will.

But let us assume that we give the President the $100 million and he in turn properly enables the Contras to successfully invade Nicaragua. Let us assume that the Contras successfully knock out the present regime in Nicaragua. Will the gentleman tell me who then is going to rule Nicaragua?

Mr. ALEXANDER. If the gentleman would yield, if the Contras should be successful then the United States would have another war on its hands.

Mr. GONZALEZ. We would have to occupy Nicaragua.

Mr. ALEXANDER. Because we would have to go in and support the Contras by occupying Nicaragua again. It is a repeat of 1927 when the United States overthrew a constitutionally elected government.

Mr. GONZALEZ. That is right.

Mr. ALEXANDER. And replaced it with Colonel Somoza. The following 47 years of history is a dark chapter in the history of the United States because we supported a military regime that imposed a policy of brutality upon the Nicaraguan people for 47 years and they are trying to come out from under the heel of oppression.

In their view the United States is again supporting oppressors in the name of freedom, in the name of the Contras. They call them Reaganistas in Nicaragua.

Mr. GONZALEZ. That is true. There is no question about it. The gentleman is 100 percent correct.

But even from a pragmatic standpoint if we do have to involve our soldiers, logistically there is not a military expert who will tell you that we can do that unless we have available 100,000 men.

Mr. ALEXANDER. It would take at least a division.

Mr. GONZALEZ. One hundred thousand men and that means backup. You have to think of it realistically. If we are going to resort to military then we had better think in terms of logistics and realities. But what is more important and pathetic is that we will not be able to control Nicaragua much less that entire region because that entire region will go up in flames and we will be faced with perpetual guerrilla warfare, peppering and just shooting at and knocking out some of our soldiers. That will be, of necessity, imposed upon them in the sense that as military they will be asked to carry out a mission that is more political than military and which we should not impose on our truly genuine and highly honored professional military.

Mr. ALEXANDER. I thank the gentleman.

Mr. GONZALEZ. Mr. Speaker, I yield back the balance of my time.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Saunders, one of his secretaries.

□ 1550

THE EFFECT OF GRAMM-RUDMAN ON DAIRY PRICE SUPPORTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont [Mr. JEFFORDS] is recognized for 60 minutes.

Mr. JEFFORDS. Mr. Speaker, I take this time first to alert that we are still trying to work out the difficulties which we have come into with respect to the bill referencing, trying to correct some technical problems we have with the dairy bill.

I think it might be appropriate to take this time to explain what the technical problems are and why it is essential that we do that at this time.

We are concerned about Gramm-Rudman. I know some of the Members, especially on the other side of the aisle, are worried that somehow we are going to set a precedent here to do something which in some way is to say that, gosh, you are going to let this fellow out or that fellow out of Gramm-Rudman. I sympathize and understand that.

Actually, that would be totally consistent with the concept of Gramm-Rudman. Gramm-Rudman and the sequestration were to go into place automatically, especially after the first round of Gramm-Rudman, recognizing that Congress in the short length of time would not have the ability probably to be able to handle the situation in making the 4.3-percent cut that would be required.

In order to ensure that difficulties did not arise, especially in the agriculture programs—and the agriculture programs are quite different than other programs in this sense. We are talking not necessarily about spending. We are talking about setting market rates, prices and all those sorts of things. So the ramifications of what you do in Gramm-Rudman are quite

different with respect to agricultural situations.

Thus, when we were considering the farm bill which, incidentally, was going on at exactly the same time that the conference on Gramm-Rudman was going on, we did not know what the results of the Gramm-Rudman bill would be at that point. We did not know what the language would be for agriculture or anything else. But knowing how serious the problems would be that could be created by Gramm-Rudman if such things were required to be utilized as price cuts, an agreement was reached after considerable negotiations as to how to handle the first round of Gramm-Rudman so as to not interfere with the very carefully delineated dairy policy within that bill, and to ensure that we did not devastate the small dairy farmers in particular in this Nation, and assure that we had an orderly process to bring about a balance of the market system for the dairy program.

Thus, we agreed that the best way to handle the first round, before we would have an opportunity to deliberate the ramifications in this body, would be to utilize an assessment.

Gramm-Rudman is supposed to treat everyone fairly, squarely some would say, but fairly, and to make sure that every person takes a little bit of a bite, not much that it is going to hurt too much, but to ensure that we all recognize the importance of bringing the deficit under control and everyone has his duty or her duty to bring it under control. Thus, we decided the best way to do that was through allowing every farmer to pay about 10 cents on every 100 pounds of milk produced.

The other approach that could be utilized, and we realize that that could be a possibility—and I, very frankly, tried to get the conference to agree not to utilize the price cuts later on because we had price cuts built into the program which are supposed to bring the dairy situation under control. I could not get that, because they said, hey, we will take that up in October as we go into the October parts of Gramm-Rudman.

But we did get agreement by the administration, by the Senate, and by the House conferees that we would utilize a 10- or an 11-cent assessment in order to take care of the Gramm-Rudman provisions.

Now what would be the ramifications in a different setting?

We have a chart here which indicates what the differences are and the impact upon one particular aspect, and that is the agreed upon method, that is the approach that was agreed upon by the conference committee, and also what would happen if you used the price cut situation.

Now, just to give you a little bit of an understanding of the dairy program, the reason there is such difference in the ramifications of these two is that when you take a 10-cent assessment, you put that on every 100 pounds of milk that is produced in this country. However, if you have a price cut, the price cut only goes on the surplus produced. In other words, just to give you an idea, we have about a 10-percent surplus now. So, obviously, if you collect an assessment on 100 percent of the milk produced, it will raise a lot more money and every farmer will pay a small share. If you put the 50-cent assessment on, it only affects the surplus which is purchased by the Government, and then the Government has to pay 50 or 55 cents more per hundredweight.

Just to give you an idea, if we use the assessment on the anticipated surplus of around 8 billion pounds, 7 billion or 8 billion pounds, that will bring in about $80 million.

If, on the other hand, you try to collect that kind of money—it is very difficult to tell what you get—by a price cut, then a 50-cent price cut for 7 months, the other one would be 6 months, would take from the farmers $350 million, but only raise for the Treasury somewhere between $50 and $80 million, depending upon what the surplus was at the time. We do not even know what it will raise. But it will definitely raise no more than the assessment, and most likely will raise considerably less.

So, obviously, it is not a good way to try to do what Gramm-Rudman must do, and that is a budget consideration of raising funds rather than trying to interfere with the market system on the dairy program.

So there is the basic difference.

The $350 million, if you go the price-cut route from the farmers, of which the taxpayers will only get $50 to $80 million, that $350 million also—which is very important to point out why it is essential that we do something now—if you go the price-cut route which is required by language which is aimed at the crops and not at the dairy—but the legal beagles, the lawyers, said that, oh, you may have wanted to do it this way, but because there is language in there that could apply to dairy, we say that it does apply to dairy and you have to go this other route.

Now, before I go on, just parenthetically, I remember that the lower courts have declared that Gramm-Rudman, the provisions of the automatic sequestration, is unconstitutional. That is on appeal to the U.S. Supreme Court. That case will be heard in April of this year, and no decision until June. If they declare it, as anticipated, as unconstitutional, then you will have the opportunity of Congress to either modify or to put in place that sequestration order. If they fail to do so, then all the money which is collected under the normal assessment type routes would be reimbursed to the programs or to the individuals that may have been hurt, with one exception. There is one exception with all the bills, all the parts of Gramm-Rudman, all the cuts. Only one program would not have that money reimbursed to the people from which it was taken, and that is the dairy program. And that is because if you cut the price, $50 million goes to the Treasury, but $300 million goes to the middlemen, the processors, or whoever is out there that gets the advantage of that price cut.

Incidentally, never in history have we passed a 50-cent price cut on to the consumer.

Therefore, if you go and you say it is unconstitutional, you have cost the dairy farmers $350 million. It is quite possible that we could get the $50 million back and we could distribute that, but even that would be a mess, because it would go to the people you would not want it to go to. That $50 to $80 million would not go to the struggling dairy farmer; it would not go to the people you would want it to go to. You know who it would go to? It would go to the people who are causing the problems. That rebate will go to the people who are causing the surplus. They are the ones who would get the benefit of the rebate. So, the people you are trying to penalize by the market system in attempting to get the surplus under control would end up getting the benefit. They will be getting $50 to $80 million back in their pockets, and they are the people who are causing the problem. And the poor farmers out here, many of them who have gone out of business because of this cut, would not get a cent back. That is another problem with the program.

I do not think there is anyone, and I have not found anyone, that will argue that as a matter of concept, as a matter of policy, as a matter of right, as a matter of anything, that this bill ought not to be passed, except for one thing, and that is, as I said earlier, this will set a precedent. This will say to the dairy farmers we will give you a deal, but to the children or whoever it is who may have been hurt under Gramm-Rudman you will not get one. They are not getting a deal. That is the point. They are not getting a deal. In fact, they are going to be contributing more money to relieve us of the deficit than they would if you went the other way. There is absolutely no reason.

Now let us take a look at what will happen to the dairy farmers of this country.

The purpose and the intent of the dairy program is to bring surplus under control. It is an attempt to try to bring order into the markets, to say that the best program—and the dairy

71-059 O-87-3 (Pt. 3)

program was designed to do this. This dairy program was designed to have a balance between supply and demand.

The support program, the Government is there to ensure that we have an orderly market, to ensure that we do not have large dislocations, large price increases and cuts and that sort of thing. It is to maintain an adequate income. That is the wording that has been used in the dairy program for years, to maintain an adequate income for the farm family, to make sure that we have an adequate supply of milk, to make sure that we do not have large increases to our consumers.

Well, let us take a look that, under the current law, under the additional assessment and under what this bill would try to correct, and that is what would happen if we try to put that price cut in.

□ 1600

This chart which is here before us shows the change in farm income of the assessment versus the price cut.

Now, we are at a very, very important point in the dairy program right now. As you can see, as of this point right here, right now the average farm income—and this is for the Northeast, and the Northeast is probably pretty programmatic or pretty much the average situation in the country—right now, because we have reduced the price cuts over the years now from $13.10 down to $11.60, have decided to put it down to $11.20, has brought us to a point now where you have farm income which is at the break-even point.

With the farm bill itself, the farm bill itself, however, will change that, and that is the green line there, will show that with the farm bill in, that gradually the farm income to our farmers is going to go down such that you have by 1987 a minus $10,000 per average family in the income category. They are going to be losing money. They are going to be dipping into their resources, dipping into the money available to the family, dipping into the money which is set aside for repairs and replacements. If you pass the 10 cent assessment, this is the blue line, you will see that there will be a small change, but still significant, amounting to a couple thousand dollars a year in lost income for the farmer.

However, if you go to the red line—and this is the price cut, this is the additional price cut which will be implemented by the error in the Gramm-Rudman law—will bring the average family income from zero down to almost a minus $30,000 a year.

Now, obviously, that is not going to be an acceptable level of income. You can go down a certain ways because you do have money because you do not pay your debt service, you do not pay your depreciation off, and those kinds of things, you cut your family living back, you put somebody else out to take a job, whatever. But when you get down to the minus $30,000, then you are into a negative or getting close to or in a negative cash-flow situation. That means if you are living off some other work, off your equity, off your savings, or whatever, you are going to end up with a situation where you cannot afford to stay in business. This is the average farmer. That is why this is so critical. We are talking now about the survival, the ability of the farms to survive.

Now, we have in the dairy program, in order to try to bring out an orderly means by which farmers can get out of the program, we have what is called the whole herd buy out. The whole herd buy out part says that we recognize that many farms are going to look at this income situation and they are going to say, "We cannot survive, we don't want to go bankrupt, let us take advantage of the program which will allow us to sell out, the program paid for in half by the farmers, and we will get out of production and we will make sure that the cows don't go back into production and we will get rid of, hopefully, the million-odd cows that are necessary to be rid of in order to be able to bring the surplus situation under control without the requirement, as we see here, which will be caused by this inordinate and extra price cut for a large number of family farms to go out of business in this country."

Hopefully, that will work. But we want to see if it will work before we do the disastrous things which this price cut by the red line would require. Thus, we would try to say what this program is designed to do is to get farmers out of the business voluntarily, stay out for 5 years, and then, with that production gone, we will be down to a situation where we can try to balance the income, the supply and demand, by an appropriate income to farmers and hopefully, get us out of this mess that we are in.

But what this additional price cut would do, we are going to go way ahead, in the sense of destroying farm income, of what is programmed in a graceful downflow, to try to gradually meet that balance between supply and demand, and we are going to force out ahead of the ability to participate in a meaningful way in the whole herd buy out, we are going to destroy too many farms, and the result of that, as we saw in 1973, when that happened, when the administration decided to use the dairy program as an example against inflation, made serious price cuts in the program and caused huge drops in farm income, too many farms went out. You cannot grow cows overnight. Once you are down too low, you create shortages. And guess what happened. Instead of fighting inflation by lower prices to consumers, you ended up with huge price increases to consumers. And the result was a very negative impact upon what the administration was trying to do. Since that time we have tried to balance the program out better, trying to make sure that we do not create large and huge dislocations, and to ensure that the farmers can survive and provide us with that adequate supply of milk to which we all want to have the benefits of.

Mr. GUNDERSON. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Speaker, I would like to compliment the gentleman for his remarks and call to the attention of my colleagues the challenge that we are facing today and what I think is the real tragedy, apparently, of what is about to happen.

Let us make it very, very clear that many of us support the concept of Gramm-Rudman, we support deficit reduction, and we do not believe any area ought to be exempt. I would make a contention that one of the tragedies of Gramm-Rudman is that 73 percent of the budget is exempt, which forces additional cuts on that 27 percent that is open to an across-the-board sequestration.

What we have been trying to do over the past couple of weeks is to deal with a technical problem, to conform the farm bill with Gramm-Rudman. It is not a policy issue in any way, shape or form, not a technical amendments bill, but rather a technical bill only to deal and conform the farm bill with Gramm-Rudman.

As the gentleman from Vermont indicated earlier, we came up with the 40-cent assessment this year, the 25-cent assessment next year, to fund a voluntary supply management in the dairy program. As we drafted that as part of the farm bill we had every intent that when Gramm-Rudman came up we would come up with dairy savings through an additional 10-cent assessment, bringing the total assessment to 50 cents.

Only after both bills had been signed into law and we were in the process of working out the regulations and implementing them were we made aware of the problem in doing just that. And at that point in time the process began to try to legislatively allow the department the leeway they do not have under the present drafting of Gramm-Rudman to use an additional dime assessment to meet the required savings under the Gramm-Rudman act as of March 1.

Now, the chart that we have in the well at the present time really indicates the dilemma. We are not trying to escape dairy from the impact of Gramm-Rudman in any way, shape, or

form. As a dairy Congressman I will tell you that dairy ought to be subject to the same cost-saving requirements as every other element of the Federal budget and of the Federal Treasury. We calculated what the savings ought to be for dairy. In that 4.3-percent cut, savings would be $80 million. That is what we have to come up with in dairy to do its part of the total savings in the Gramm-Rudman March 1 sequestration order.

The problem is that in order to achieve $80 million in dairy, you have to be very careful about the economics of dairy price supports and the resultant Government cost. There is no debate that if you have a 10-cent assessment or a 10-cent to 12-cent assessment, you will come up with the $80 million in savings.

The Congressional Budget Office has said that all of the things being equal, a 50-cent price cut will come up with $80 million savings.

The problem is that not all of the things are equal. Every dairy economist in this country will tell you that if you have a 50-cent price cut, the microeconomics of any small family farmer are that if his revenue per 100 pounds of milk decreases, he will have to increase the number of 100 pounds of milk he produces to bring in the same amount of revenue to meet his bills which are, for the most part, fixed capital costs, et cetera.

And so what typically happens in a 50-cent price cut is the production of milk in this country increases one-half percent. That results in Government purchases of an additional $160 million worth of surplus dairy products. The net effect of that is, then, that while you have $80 million in savings from a 50-cent price cut, you have just had an increased outlay of $160 million through the increased production of one-half percent, which results in an $80 million loss to the Treasury. So all of a sudden the way Gramm-Rudman is structured today to respond to dairy, you do not have the Government any money, you cost the Treasury about $80 million in what should be savings, which is turned into costs or outlays, on the other hand.

So not only do we have the problem of dealing with farmer income because instead of taking 10 cents per hundredweight off under assessment, we are taking 50 cents per hundredweight off, and my colleague from Vermont has so eloquently described the impact of that on a typical family farmer in this country, you also add the impact of it to the Government, and the Government's impact is not one of saving money, as we want under Gramm-Rudman, of deficit reduction, we will add to the deficit some $80 million as a result of our inability today to resolve the technical conflict between Gramm-Rudman and the farm bill, and that is the tragedy of what is occurring here today. It is so unfortunate that the people have indicated that they will object to our bringing up any kind of legislation to deal with this issue.

Mr. JEFFORDS. I think the gentleman has brought up an interesting point in addition to what I have brought up, and that is: What happens, normally, when farmers are faced with a price cut which is going to really give them a serious problem, as my previous chart indicated, with the average family going down.

In other words, what they will do, in hopes of being able to survive, in other words, I think we would agree that what happens is it is a survival of the fittest under those circumstances, and every farmer is going to hope and believe just as sincerely as possible that he will survive and the others will fail, knowing that if he can produce enough to stay in business that because of that cut his neighbor down the road or some other farmer who is not as good a manager, not be able to handle the situation, will go out of business and eventually the price will go up and they will be able to stay in business.

But for that short period—and we are only talking 6 months here—a price cut does not have the effect that you would expect in the long run, and that is driving farmers out of business. In the short run, what it does is increase the amount of surplus. And we are talking here about budget problems and not farm policy.

There is another thing to bring up at this point, and that is that what we are talking about here is a program of price cuts, and this has never occurred in dairy policy, never have we had a price cut go in for 6 months and then off, for 7 months and then off. What are you going to do? You go in and you cut the price and you are hoping to bring about some policy changes, those who argue against us, and then at the end of those 6 months if nothing happens, the price goes back up again, and that creates a bad message, a disruption as to the program, it makes a mess out of it, because this is not a dairy policy we are dealing with, it is a budget cut.

So what we are going to end up with, unless Congress in its wisdom does something else, you are going to end up with a price cut for 7 months and then a price increase at a time when it will create additional problems and additional disruptions to the market.

So I think the gentleman from Wisconsin has made some points. It is unfortunate that we have run into this policy problem where some people, and understandably, want to use this, at the detriment of thousands and thousands of dairy farmers around this country, to make a point they want to put those dairy farms out of business, and it is unfortunate that people would, in a sense, be so callous as to want to raise this policy point at this time to run thousands and thousands of dairy farmers out of business to make a point, and I think that it is too bad that that has occurred.

I would be happy to yield back to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. I appreciate the gentleman yielding again.

Mr. Speaker, I think the second thing we should point out is that one of the understandings and the whole concept, the basic concept, behind Gramm-Rudman is that if Congress is unable or unwilling to come up with its own legislative savings, that we will then achieve a savings in an across-the-board effect. The problem with dairy is you do not achieve the savings in an across-the-board effect, you place the entire burden of the $80 million in needed savings out of the dairy price support program on only those farmers who happen to produce the manufactured product which is sold to the Government. That is so blatantly unfair, it is so diametrically opposed to the intent and the basic concept of Gramm-Rudman, which says that everyone ought to share equally.

Now, you take wheat, feed grains, and all of the other commodity programs which have supports in agriculture, every one of those support programs will find that every farmer in the country will share equally in the reduction, the loan rate reduction and target price reduction and deficiency payments, et cetera. But in dairy, the way the bill is drafted at the present time, that is not going to be the case. Rather, what we will end up doing is forcing a very few farmers and in a very few select areas of high manufactured product in this country to bear the entire burden while other dairy farmers in this country are going to go scot-free of any obligations or savings under the dairy price support program and Gramm-Rudman. That is unfair, and I think we need to point that out, because that is not the way Gramm-Rudman was intended by those who drafted it on both sides of the aisle.

Mr. JEFFORDS. I thank the gentleman for his comments, and I would agree with him. For instance, we have large disparities in the price that farmers are paid for milk, and a lot depends upon whether or not they have a high percentage of fluid market, as you pointed out, or whether it goes into manufacturing cheese, or whatever.

In fact, for instance, in Virginia, it is my understanding that the blend price is somewhere around $15 a hundredweight, and in your area it is down under $12, in the $11 area.

Now, obviously, on a farm, if you are getting $15 even, and in some of those areas, you point out, you may not even

get any ramifications from a price cut, whereas in your area it goes bang, right now.

□ 1615

Your farmers, because of the lower price anyway are the most susceptibile to these kind of cuts and put in the most dangerous position.

In our area we are about half-way in between so we are about 50-50, whereas in other areas, southern parts of this country, they have a much higher utilization. I thank the gentleman for pointing that out.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. ARMEY. I thank the gentleman for yielding.

If you do not mind, I would like to maybe ask you some questions to help me clear up my understanding of this.

Mr. JEFFORDS. I would appreciate that opportunity.

Mr. ARMEY. As I understand, and we all understood at the end of the last session that the passage of Gramm-Rudman would affect the way we do business in the House by way of changing many deadlines and placing new constraints in the process.

It is my understanding that as your subcommittee or committee worked in this process you recognized that you had one peculiar program having to deal with milk or dairy subsidies that faces that unique deadline of March 1. In response to that, recognizing that it would be necessity of that pre-existing deadline, the basic cut of 4.3 percent might necessarily then fall extraordinarily heavily on one group of the constituency with respect to dairy subsidies.

Again, I believe as I understand, if I followed the discussion correctly, your committee then immediately went right to work to make some judicious decisions that really in fact were policy decisions that helped to accommodate to this constituency that might suffer this severe penalty and more or less in light of considerations of priorities and need, rearrange the cuts within the committee so that even though you stayed within the 4.7 that that overall cut would fall in areas of policy priorities set by the members of the Agriculture Committee as opposed to across-the-board.

Mr. JEFFORDS. That is correct, and even more than that in the sense—you are exactly correct in what you said. This was done in the farm bill itself, that arrangement was made and agreement was made, with the understanding that that was what we would be utilizing Gramm-Rudman. The problem was created in Gramm-Rudman itself that the people who were working on agriculture there were trying to take care of the problems which might occur within the areas of the crops, feed grains, wheat, and all that. Their language is interpreted by the lawyers to also apply to dairy. Because we did not specifically—there was testimony in the committee that indicated that the administration—if it had not been for the legal beagles here, would have had two options. One, either the assessment or the price cut.

We had testimony from the administration on that, but however, because the language appeared to apply to be specific and since there was no other language in there, they had to apply this price cut theory rather than the assessment theory.

So we had tried to arrange this priority before the passage of Gramm-Rudman, but unfortunately, because of the language that occurred in Gramm-Rudman and a number of these bills were going on at the same time so we did not have a chance to examine one before the others were passed. That is what happened.

But you are quite right. What you are pointing out, I think very correctly, is that that is what we are supposed to do with Gramm-Rudman.

Mr. ARMEY. So I can conclude then as a member not on the committee, but watching the committee's work today in the debate that your committee then responded to the challenge of Gramm-Rudman by immediately going to work making tradeoff decisions, setting policy options that would accommodate to the new rigors of Gramm-Rudman, but still do the decisionmaking within the committee and then to come here and meet this deadline that would be so critical.

Mr. JEFFORDS. That is correct, and unfortunately unlike other programs which are based upon a fiscal year, we have a mandate by law under Gramm-Rudman, but if you effect a program, then all these things go into effect and dramatic changes occur in the whole program itself which are irreversible. Not only do they affect the money that you raise for the Treasury but they create huge losses to the farmers in lost income which is just not recoverable in any way.

Mr. ARMEY. I am trying to understand the process, and obviously, very complex policy issues with enormous amounts of benefit and loss that can be spread around to various people.

I would guess then that many of you on the committee that have worked so hard sighed quite a sigh of relief to find that the bill was up for consideration today on the floor and that you could anticipate the possibility of having it passed, having your committee work move through the floor in time to meet that March 1 deadline.

Mr. JEFFORDS. That is correct, and we felt very strongly since we were only trying to implement what was the understanding of all parties that were involved in the farm bill as to how it would be handled and because we had gone through the orderly process, because we cleared it with the, supposedly the leadership, and also certainly with the Rules Committee that we were here today not as fast as we would liked to have been, but under constraints in a timely fashion to have us to be able to pass this to prevent the horrendous ramifications which could occur, which will occur from this bill if we do not get it stopped. If we cannot do it today, hopefully we can do it with the understanding of those who, hopefully, have been listening to us of a slight delay, as we will be asking for it sometime in the near future, so that we can, and if we fail the money could be recouped and so that there would be no, in any way, any infringement upon Gramm-Rudman, if we do not succeed in their minds. We hope they will give us that small opportunity to be able to continue the orderly process next week. I am hopeful that at a timely time and that is one of the reasons I am talking here.

Mr. ARMEY. Reflecting back to the debate we had earlier today, it seems to me that the fact that your committee really did roll up its sleeves and get down to the task frankly, you have belied then the allegation made earlier today by the gentleman from Montana that Gramm-Rudman mandates across-the-board cuts that are indiscriminating.

In fact, you brought to the floor today an alternative to that reflected in the judicious tradeoff decisionmaking of the committee. Is that correct?

Mr. JEFFORDS. That is true, but as I said we believe we have taken care of it in a more timely fashion and Gramm-Rudman itself did try to take care of unusual circumstances in situations. This is one that was missed. But I agree with your concept that this body, if it is a responsible body, will and should react to the Gramm-Rudman action by saying, "OK, the meat-ax approach in many cases will create bad priorities and bad precedents rather than shifting cuts around and what this body ought to do is to react in a timely fashion as we try to do here to implement it in a more orderly fashion which would benefit both the taxpayers as we have in this case and the farmers that we are affecting in this case."

Mr. ARMEY. Again, I am reflecting back on the debate, and both the gentleman from Vermont and the gentleman from Wisconsin are also on the Education and Labor Committee as I am myself. I think one of the questions that was raised was would it be fair for the Agriculture Committee to have this opportunity and not for example the Education Committee.

We are on the Education and Labor Committee, and in fact what you have

done is you have set the precedent that says it is possible if the committee will go to work, do its work, makes those decisions, that they can by beating deadlines, find themselves in a situation where the committee will have set policy, made the tradeoff decisions that are mandated by the rigorous budget conditions of Gramm-Rudman and do the best job they can of fulfilling what they believe to be the proper priorities of the committee and avoiding that meat ax that goes across-the-board.

I should say that rather than us being concerned that maybe your committee has here presented us with an unholy precedent, what you have done by being here today with your work completed on your committee you have set for us a grand example of how those of us on other committees might rise to the challenge of Gramm-Rudman, come to the floor, and I think it is rather unfortunate that after all that hard work that I know you must have gone through, having brought this bill to the floor in this kind of condition reflecting that good work that we should even consider adjourning today and not completing that process and demonstrating to America for their security, their satisfaction and perhaps relief of anxiety that Gramm-Rudman does not necessarily mean a meat ax that is going to kill all victims with one swath but that it means the Congress does have the ability and the resolve through even its committee systems to rise to the challenge, reorder priorities, reallocate funds, meet budget targets and requirements but still care for those very important needs that the committees have spent so much time and consideration on.

□ 1625

It would seem to me that the House at large would owe the gentleman's committee a debt of gratitude for having set such a fine example and be thrilled to have the opportunity for us today to remain here and complete our work. That is the conclusion that I draw.

Mr. JEFFORDS. Mr. Speaker, I appreciate very much the comments of the gentleman from Texas. He, of course, serves on the Committee on Education and Labor with me, not on the Agriculture Committee, which we are talking about now. I deeply appreciate the gentleman's thoughtful consideration as expressed today, but also in the committee in trying to reorder priorities. I know we have differences of opinion from time to time; but the gentleman is absolutely correct. That is our role. That is our job. That is what we are trying to do here.

As the gentleman knows, we are now working on how to finish the second round of cuts in the education and labor field. It is a very difficult thing to do; but if we do not do it, then somebody else is going to do it for us, and that is not the way it should be done. We should not duck our responsibility. We should face up to what ought to be done, as we are doing here today, and that is the orderly process that this bill should bring about.

I appreciate the gentleman's comments, both in the committee and for coming forward and doing it in this area and attempting to prevent what could be a very disastrous economic situation for the small dairy farmers of the country.

Mr. ARMEY. Mr. Speaker, will the gentleman yield further?

Mr. JEFFORDS. I am happy to yield again to the gentleman.

Mr. ARMEY. I do have two more points that I would like to finish up on.

Earlier in the year we were discussing Gramm-Rudman. I raised the question in a 1-minute speech that the American people I think raise all too often and they have often asked, "Is it necessary for the bureaucrats in Washington to make decisions, or can the Congress make the decisions?"

The gentleman has demonstrated with his committee that yes, indeed, we can make the decisions. We do not have to leave it to the bureaucrats. If we do not complete the work today, the House, not the committee in this case, but the House will have sent the message that, no, we are not satisfied to let the Washington bureaucrats run things.

I would suggest an area of concern. All of us who have representatives of the various Government agencies working in our local districts and our communities where they have immediate contact with the voters and see their needs so clearly, I am very much concerned that if the bill perhaps makes the cuts, the agency heads and department chairmen, that what they will do, they will cut those people out in the States and out in the districts and out in the countries that are working immediately with the American citizens, rather than to cut the people sequestered here in Washington, if I might use that word, who have a remote contact.

I think the gentleman has helped to avoid that with his work.

My final word is that I did change my flight arrangements so I could remain here. I will remain here a day later than I thought would be necessary in the hope that the other Members of the House will come back with an agreement that will allow us to complete this good work of this morning and to let the gentleman's committee to be the shining example to this House that I believe it richly deserves to be.

Again I want to commend the gentleman for his work.

Mr. JEFFORDS. I deeply appreciate the comments of the gentleman from Texas.

Mr. GUNDERSON. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Speaker, I appreciate the gentleman yielding. I certainly want to extend my thanks to our distinguished colleague, the gentleman from Texas, for his very kind remarks.

You know, the Agriculture Committee gets beat up a lot of times I think unfairly. The fact is that many of us in this body are aware that one of these bills which did not pass at the end of the last session was the reconciliation bill; however, few people are aware that agriculture did pass its reconciliation savings as a part of the farm bill legislation. I believe we are the only committee in the entire Congress of the United States that passed their reconciliation savings for the fiscal year 1986.

We need to understand and we need to understand, frankly, that most of the reconciliation savings, about $1.8 billion of those came out of dairy last year, so the dairy farmers of this country have already made a significant contribution of savings to the 1986 reconciliation bill.

That brought us to Gramm-Rudman and this whole effort that we are facing at this point in time and what it means, because when we came up with the orders from CBO, from OMB, and from the now nonlegal GAO as to what those savings ought to be, they calculated that we ought to come up with about $80 million savings out of this area.

The question is, how do we come up with those savings? The Congress, particularly the Dairy Subcommittee and now the full Agriculture Committee, calculated that there is really one and only one honest and fair way to do that, and that is to do it as an assessment. The reason for the assessment is obvious, because the assessment guarantees that we will come up with the $80 million in savings for the Government, but it also makes sure that we only reduce dairy farmer income by $80 million; whereas the gentleman so eloquently pointed out, the alternative of the 50-cent-price cut does not really save anything at all, as that chart there shows in the bottom line in red. The end result is an $80 million cost to the Government, not a savings.

Worse than that is the $350 million loss to the farmer, the dairy farmer in this country in lost earnings as a result of that reduction in the price he would receive for his products.

So therefore, the committee, the subcommittee and the full committee, came up with this calculation. As they came up with that calculation, we

then passed the legislation out of committee. We went to the Rules Committee yesterday, and I was there. The gentleman from Vermont was there and others who testified, and we said that we understand there are all kinds of policy issues in the farm bill, even relating to dairy. Many of us would like to calculate the basis for whole herd buy out on the prediversion program base.

Another thing we would like to do, we would like to mandate legislation that the sign up period be extended longer than it is.

Those are policy issues, technical policy issues to deal with the farm bill.

We felt, however, that it was important not to bring those issues into the issue today, because this was purely a technical bill to deal with the budgetary issue which was necessary to be accomplished by March 1, so that we truly would have the savings here and it would not result in the price cuts that would be the alternative.

The Rules Committee, to their credit, considered this issue long and hard yesterday and how to deal with it. They had conflicting testimony from Members as to what should or should not be a part of that bill, whether it should be an open or closed rule, what kind of amendment should or should not be allowed. The Rules Committee came out and recommended that bill last evening for a 1-hour open rule with any amendment that dealt with the budgetary issue, no policy issue.

We all assumed as we came here to the Congress this morning that we would have in front of us an opportunity to vote on this issue and guarantee that, No. 1, the Government would achieve at least its $80 million in savings from dairy under Gramm-Rudman, but also that we would do so in the most humane and most fair way for the dairy farmers of this country.

Of course, that bill was then pulled off the calendar, which brought us to this afternoon when the gentleman from Vermont, who is now conducting this special order, brought up the issue again and brought to the attention of our colleagues exactly what was at stake.

While it is absolutely essential that something be done today, because if we do not do it today, we are not in session tomorrow; March 1 is on Saturday. That means there is no alternative.

What will happen on March 1, the Department has no legal alternative, as I understand it, except to order that reduction in the price that they pay for any product that they purchase after March 1.

Everyone says, "Well, we can come back next week and solve this." We cannot come back next week and solve this in a decent way, because then all of a sudden next week we are not dealing with a technical amendment which we are doing, as we are going to have to actually repeal a certain section of Gramm-Rudman and do something else.

I do not get very excited about doing that, if that is the only alternative, doing it next week in defense of fairness to the dairy farmers of this country, I guess I will support something to do that, but I certainly understand the implications of that and know that our colleagues, and I guess my distinguished colleague from Texas, is not very excited about the idea of repealing any section of Gramm-Rudman, and neither am I, because that is not necessary. If we do our job today, we save the Government not only $80 million, we save more than $80 million. I would suggest it is much more than that.

On the other hand, we also save the farmer in terms of lost income about $270 million, compared to doing the 10-cent assessment.

So with those comments, it is a very frustrating day for us. It is worse than a frustrating day for us, it is a very tragic day for the family dairy farmer in this country, because he is the victim of frankly the most unfortunate decisions that are being made here in the Congress today.

Mr. ARMEY. Mr. Speaker, will the gentleman yield again?

Mr. JEFFORDS. I am happy to yield to the gentleman from Texas again.

Mr. ARMEY. Well, I appreciate that. I did have another thought as I listened to the gentleman. Again, I think the gentleman has made it very clear that this is such an important critical date and the juncture is immediately upon us. I commend both gentlemen for having this special order and for their dedication in staying here. I certainly do not want to give any appearance of partisanship here. Obviously, we are very visible at this time, but it does occur to me that I should also recognize that the members of the majority party on the committee and in positions of leadership to affect this decision are indeed caucusing at this very moment and discussing among themselves what decision they might come to with respect to whether or not they will decide to go forward with this issue or put it off until after today.

I am certain they, too, understand and wish to avoid any need to go into the difficult business of revising the Gramm-Rudman legislation, when we have such a wonderful opportunity to meet its rigors here today and resolve this dilemma, let the dairy farmers sleep easily over the weekend and let me enjoy my cereal and breakfast on Monday.

So I want to commend the majority Members and their leadership, too, for being willing to stay here long enough to make a decision regarding what it is they will allow the House to do in order to resolve this issue.

Mr. JEFFORDS. Mr. Speaker, I thank the gentleman for those comments.

I would like to comment that earlier today we did have some rather, well, emotional comments by myself and others directed at the other side of the aisle. I certainly want to clear up any misunderstanding that may exist in my feelings toward the gentleman from Washington [Mr. FOLEY] because in my time here, I have worked with the gentleman many, many times, his comments about trying to keep agriculture on a nonpartisanship basis is very appropriate. We have been able to do that. It is unfortunate, how or when it occurred, but any comments I made in any way insinuating that the gentleman wanted to or would operate in such circumstances, I certainly would want to remove that thought from anything I said.

I also wanted to make a comment on what the gentleman from Wisconsin said.

One of the things we are learning about Gramm-Rudman, which is a very sad thing, even though I voted for it, and I agree with its concepts, is that those who try, those who do their job, get penalized. In other words, if you go out and voluntarily meet your guidelines and you do as the Agriculture Committee did, reduce for the 1986 budget the amount of money it is going to spend and looking at the outyears do the same thing, then if nobody else does, you come back and you get the same whack that everybody else does when it comes around for the meat axe to fall again.

What we are trying to do here is to live within and in fact to give a better deal as far as Gramm-Rudman goes and the Budget Reduction Act on this dairy bill then even the law would say we had to according to the legal people that refine the law; yet we are being forestalled from even being able to do a better job to help other people. If we save the additional $80 million, or whatever, that is money for other programs that will not have to be cut.

So instead of raising questions here, they ought to be praising us and saying, "Hey, thanks for the money. Thanks for saving us more money. Thanks for helping our programs not to have to take the cuts we would have to cut if we did not have this bill."

That is why it is always so hard to find the dairy programs especially as the butt of criticism, when we continuously come forward and demonstrate how we can save more money. We got a lot of flack on the diversion program the last time around, and yet all the analysts came back and said, "Hey, you know, you are right. That program saves money. It saved a billion more dollars than we would if we

hadn't done it." And yet we got criticized for it.

Mr. GUNDERSON. Mr. Speaker, will the gentleman yield further?

Mr. JEFFORDS. I am happy to yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Let me say to the gentleman, go get a glass of water and I will be happy to comment for a few seconds if I can.

I want to call to the attention of my colleagues and others that it is very important to understand dairy economics. They are not normal economics, if I may be so bold and so blunt. The fact is that normally when we have too much expenditure in a program, we think what we can do is cut the price support and that will result in savings to the Treasury.

Unfortunately, you have a conflict between the macroeconomics of the dairy industry as a whole and the microeconomics of any one individual family dairy farmer; so while you are trying to reduce by virtue of reducing the support price the total cost of the dairy program to the Government, just the opposite happens.

What happens is that—just put yourself in the position of a typical family farmer in Wisconsin or Vermont, 40 cows, you are receiving say $11.50 at the present time for any hundred pounds of milk that you produce.

Let us assume that next week if we are unable to resolve this issue today that we have a 50-cent price cut. What happens? Instead of receiving $11.50 per hundredweight, you will receive $11 per hundredweight, and yet your electric bill does not go down 4.3 percent. Your cost of feed does not go down 4.3 percent. Your property taxes do not go down 4.3 percent. Payments to the bank on the tractor and pickup do not go down 4.3 percent or anything of that sort; so you still have to meet all those fixed costs that you have, and yet you have reduced revenue.

So what is the only viable option or alternative for that farmer? Well, assuming he does not want to go bankrupt or just foreclosure, his only option is to produce more milk, bring some of those heifers into the barn, start milking them, add a couple of cows and begin milking more so that he can bring in more milk, so that instead of say selling 500,000 pounds of milk on an annual basis, he would sell 600,000 pounds of milk on an annual basis to bring in the same amount of revenue.

□ 1640

So, as he brings in that amount of revenue, he then would be able to make his costs. The problem with that is if every farmer in the country does that, and most farmers do, you get an increased production. I think it is calculated as one-half-percent increase in production nationally is what normally occurs every time we have a 50-cent price cut.

So if you have a one-half-percent increase in production but no increase in consumption nationally, that means the Government ends up buying 1 billion pounds additional milk. With those additional purchases, it results in a cost to the U.S Treasury in outlays of $160 million. So we get back to this chart, and that is why the chart becomes so important and why this whole issue is so important, because that is our intention, to save $80 million in Gramm-Rudman savings from the dairy price support program, the net effect is that while you save $80 million, a 50- to 55-cent price cut, as a result of the increased production and the increased purchases which follow the Government has an increased outlay of $160 million. The net effect, then, is no savings in the dairy program but rather increased outlays of $80 million.

So instead of contributing to a deficit reduction if you do not have the correct language in the bill, you do just the opposite, you contribute to increased deficits. I think that is a very important point that we need to understand here, and that is why we are dealing with this issue.

It is very seldom among our cynics that they can say that we in the dairy industry "come to the Congress to save money." I think often we do and we do not get the credit, but there can be no debate by anyone that what we are trying to do today is not excuse the dairy farmer from Gramm-Rudman; just the opposite. We are trying to make darned sure that the dairy farmer does truly contribute his $80 million to deficit reduction which has been calculated, and that is why to deal with this issue becomes so paramount before March 1 in one way or the other.

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I thank the gentleman from Wisconsin for his comments and would yield to the other gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, I simply would like to say that obviously I want the legislation under discussion to pass. I think it is important to dairy farmers that it do pass.

I also frankly do not understand the resistance on the part of the administration and some others who also avoid penalizing farmers who participated in the diversion program in terms of the calculation of their base for participation in the whole-herd buy-out program. I do not understand why the administration is resisting that.

I do want to make this observation, however. Very frankly, I have been spending the last 3 hours, when I was not up in the Appropriations Committee testifying, trying to persuade people with other budget concerns under Gramm-Rudman as to why this is a legitimate approach to take. It is a legitimate approach to take, it does have the same effect on the budget in terms of its impact on Federal outlays or Federal deficit reduction whether we do it through a 50-cent reduction or a 10-percent assessment. I do have to observe, however, that I think what we are facing is the consequences of institutionally agreeing to a process such as Gramm-Rudman in the first place which, in effect, gives us a conceptual idea of what we are voting on without having any real description of the detailed impact of what happens when we vote like this. Perhaps I say this simply because I am a member of the Appropriations Committee and I think that that is a more sensible approach to follow.

I think that we are in this hole today because there are a lot of people who are telling us, and I wish they were not telling us, but they are, they are saying we understand you have a problem with dairy, but, by golly, there is a problem in housing, and there is a problem in education that needs to be corrected as well. And if we are going to deal with one problem and not the others, then we do not see why we should go along. That is what they are telling me.

I think what this demonstrates is that the only responsible way to approach budgeting, even though it may be out of fashion to say this, the only responsble way to approach budgeting is to approach it through the traditional appropriating process so that we not only know what the total number is in any spending proposal before us, but we also have a clear idea on a line-by-line basis exactly what the impact is.

I think when we try to approach the world through these grand fix-up schemes, that pretty much represents a surprise Christmas package, we see what is on the wrapping, but we do not see what is in the box until we unwrap it, and then the damage is done. So I think what is happening is we are stuck in this box today because people are beginning to find out in a whole range of budget areas that there are problems caused by Gramm-Rudman, and they are saying we ought to be taking care of all of those problems. It is hard to argue, although I hate the fact that the bill that is being crushed in the process is one which you and I and the gentleman from Wisconsin and others want to see passed, but I think we have to also face up to the reason that we are here today.

Mr. JEFFORDS. I do not disagree with what the gentleman has said. I would only point out that in this case, because of the way the cuts would

work, and the way it would happen, is that the dairy farmers would lose over the course of time some $300 million which can never be recouped; whereas in the program areas, other program areas, if there was a mistake or miscalculation, or if it is eventually thrown out, that money can then be distributed back to those programs and remove those inequities. But in this case, it is gone forever, as you know.

Mr. OBEY. I agree with the gentleman that there is that difference. The problem is that there are eight other groups around here with problems that may not be identical, but they are similar, and we are all being caught in this crunch.

Mr. EMERSON. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Missouri.

Mr. EMERSON. Mr. Speaker, I think the bottom line on Gramm-Rudman is not so much that we have targets to meet, but the manner in which we meet them. I think automatic sequestration is an irresponsible means of arriving at the targets we have set before us.

If I may respectfully differ with the gentleman from Wisconsin, we have been given surprise Christmas packages around here for years in the form of continuing resolutions which open the door to a lot of spending that I think we may have been unaware of. Now the shoe is on the other foot, and we have got to be conscious of the need to make cost savings.

I personally am one who has regarded continuing resolutions as the Christmas package that was so full of surprises that we really did not know what was going on. I think that there is an opportunity here. I am not going to disagree with whatever budget we are talking about, but we have an opportunity, indeed a responsibility to reorder some priorities. But I think the Congress' job, and it would be irresponsible of us to let the automatic sequestration occur as we approach these various targets by which some action has to be taken.

I think the gentleman from Vermont, the gentleman from Wisconsin and the gentleman from California have come up with a very good solution here to the immediate dairy problem about which there is a time constraint, and this matter should indeed be acted upon. I think that a very responsible action has been taken here by the proposal that they have presented.

You know, I think this dialog that we are having here has been useful in many respects. I think it brings to the floor some frustrations that we all share, and perhaps helps highlight the need that I have felt for some time for some institutional reform around here.

You know, the process and the circumstances under which this farm legislation, this very serious legislation was considered left a very great deal to be desired.

□ 1650

Some Members may recall that the Agriculture Committee of the House was trying very diligently last August to report a farm bill before we went home for the August recess. The fact of the matter is, we couldn't, because we had not yet acted upon the budget and we were determined that our bill would conform to the budget.

When we came back in September, we did finish up our business, report a bill to the House early in September, and act upon it in October. The bill then languished for a couple of months until the other body saw fit to act upon it.

As a matter of fact, I think the farm bill was virtually the last piece of legislation that we acted upon before we adjourned at the end of December. Of course, the President signed it into law the 23d of December.

The SPEAKER pro tempore. The time of the gentleman has expired.

PARLIAMENTARY INQUIRY

Mr. FRANK. Mr. Speaker, are we starting the process of alternating the special orders today between the majority and the minority sides?

The SPEAKER pro tempore. The Chair will advise the gentleman that we have four or five others. We do not know who is going to use the time, though.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina [Mr. BROYHILL] is recognized for 60 minutes.

Mr. BROYHILL. Mr. Speaker, I would like to take this opportunity to outline my thoughts on an important issue that the House of Representatives considered yesterday. The legislation, House Joint Resolution 3, called on the President to immediately begin negotiations with the Soviet Union for a Comprehensive Nuclear Test Ban Treaty.

Unfortunately, I was at a speaking engagement and missed the opportunity to vote on the two important amendments. Had I been present I would have supported both the Hyde amendment and the motion to recommit offered by Mr. BROOMFIELD.

My feelings on this issue are quite strong, just as those of my colleagues and the American people. I, too, genuinely believe our world will be a better place when all nuclear weapons of all nations are eliminated, and I further believe that we are making progress in this direction. Just last fall, there was constructive, face-to-face dialog between President Reagan and Soviet Secretary Gorbachev on this issue, with hopes expressed for further meetings to be held in the near future. Fortunately, right now in Geneva, our arms control negotiators are at work.

I certainly understand and share the eagerness of Americans who realize the importance of attaining the goal of eliminating the threat of nuclear annihilation. Yet I believe we must fully recognize that, for decades, the security of our Nation and of our allies has been dependent upon the presence of a credible nuclear deterrent.

There is a great deal at stake when we approach proposals such as the Comprehensive Nuclear Test Ban Treaty. Therefore, I support the Hyde substitute and the concerns it addresses. It expresses the sense of the Congress that the United States should: First, pursue efforts to gain agreement on improved verification measures for the Threshold Test Ban Treaty, Peaceful Nuclear Explosion Treaty, and, ultimately, a Comprehensive Test Ban Treaty; second, reaffirm the need for mutual compliance with the Threshold Test Ban Treaty; and third, pursue as a goal the attainment of a verifiable Comprehensive Test Ban Treaty following achievement of mutual, substantial, verifiable, and militarily significant nuclear arms reductions.

Mr. Speaker, I sincerely regret that I missed these important votes, and I wish to set the record straight.

NAVAJO-HOPI LAND EXCHANGE LEGISLATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. UDALL] is recognized for 15 minutes.

Mr. UDALL. Mr. Speaker, today I am introducing legislation for myself and Mr. MCCAIN providing for a comprehensive resolution of the remaining problems and issues growing out of the longstanding land dispute between the Navajo and Hopi Tribes.

This land dispute is over a century old and is based upon the 1882 Executive order establishing a reservation in northeastern Arizona for the Hopi Tribe. The order provided that the reservation was to be for the Hopi and "such other Indians as the Secretary may settle thereon." Over the years, members of the Navajo Tribe migrated to, and settled on, much of these lands despite the continuing protests of the Hopi leaders.

Because of the growing friction between the two tribes over this issue, Congress, at the urging of the Hopi, enacted legislation in 1958 authorizing the two tribes to sue each other to determine their relative rights in the 1882 reservation.

In 1962, the U.S. Supreme Court determined that, with the exception of an area identified as district 6 which was held to be exclusively Hopi lands, the 1882 reservation was held by the two tribes in a joint, equal, and undivided ownership. However, at the time, this so-called joint use area was being used exclusively by Navajo people.

On October 14, 1972, the Federal district court issued an order of compliance ordering the Navajo Tribe to surrender one-half of the use of the joint use area. This court order raised the prospect of a court-ordered eviction

of numerous Navajo families in order to put the Hopi into its rightful use of the lands.

In light of this, Congress considered and enacted into law in 1974 legislation—Public Law 93-531—providing for the judicial partition of the surface area of these lands between the two tribes and established a mechanism for assistance to families which would have to be relocated because of such partition.

The lands were partitioned by the court pursuant to the 1974 act which resulted in the necessity for the removal of nearly 2,500 Navajo families. Under the law, these families had a grace period until July 6, 1986, to relocate. After that date, they would be considered as trespassers on Hopi land and subject to eviction.

While there is some dispute as to the exact number of Navajo families subject to relocation, it appears that 900 families have relocated and have been paid compensation for removal; 1,100 families have moved and have been certified as eligible for relocation benefits, but have not been paid; and about 500 families still remain on lands which were partitioned to the Hopi Tribe.

To date, $80 million has been appropriated and spent in this relocation effort. Recent testimony before congressional committees indicates that approximately another $300 million would be necessary.

While it is clear that the Hopi Tribe has a legal entitlement to the lands partitioned to it under the 1974 act, it is also clear that the 10-year process of relocation has caused extreme hardship, trauma, and bitterness among the Navajo families that have relocated or are facing relocation. Several Navajo families subject to relocation, including many elderly people, have indicated their refusal to move from what they consider their ancestral homes.

Once again, with the July 6 deadline approaching, we are facing the prospects of forcible removal of these Indian people and the potential for violent confrontation.

Mr. Speaker, I do not condone or accept the use or threat of violence to achieve one's goals. If this was the only reason for action, I would not be making the proposal which I have introduced. But there are many factors which must be weighed in determining whether or not Congress should reexamine the action it took in 1974. Circumstances have changed since then.

Nearly 80 percent of the Navajo families who are eligible for relocation benefits have either moved and been compensated or have moved and are awaiting their relocation benefits. Most of the lands partitioned to the Hopi Tribe have been cleared of Navajo families and are or will be available for Hopi use.

The costs of relocation, originally estimated at around $43 million, has already risen to over $80 million with the potential of another $300 million. Because of the severe budget constraints now in place, it is highly unlikely that this amount of money, which would be necessary to do justice to these Navajo families, would be available.

These factors, coupled with the great pain and suffering caused by relocation and by the stubborn refusal of some families to comply, are sufficient warrant for Congress to take a new look at the 1974 law.

Mr. Speaker, the bill I have introduced today is not the end of the process and may not, ultimately, be the most appropriate approach to this problem. It is, however, my intent that this bill will be the beginning of a process which may lead the Congress, the two tribes, and other concerned parties to an enlightened resolution of these very knotty problems associated with the land dispute.

Of course, the best resolution of these remaining issues is that which would be negotiated between the two tribes and which would have their full support. However, several attempts in the past few years, including attempts I have made, to encourage the two tribes to amicably resolve these issues have failed. I have no reason to believe that this attitude on the part of the two tribes will change without some outside factor being involved. It is my sincere hope that the introduction of this legislation may induce the two tribes to develop their mutual solution to these problems.

Mr. Speaker, the bill I introduce, while surely controversial and sensitive, is fairly simple. The bill provides that approximately 360,000 acres of the approximately 900,000 acres of the 1882 JUA partitioned to the Hopi Tribe will be transferred to the Navajo Tribe. This will reduce, by nearly 90 percent, the number of Navajo families still living on Hopi lands who would be subject to relocation. We estimate that fewer than 60 families would still be subject to relocation under this proposal. As for each of these remaining 60 families, they each would be given the choice to apply for a 160-acre assignment where they currently reside. It is not my intent to affect any rights to relocation benefits which have been promised but not yet delivered to some 1,100 Navajo families who have already willingly removed themselves from the disputed area.

In return for this transfer of lands from the Hopi to the Navajo, the Navajo will have to agree that approximately 360,000 acres of lands made available to the Navajo Tribe for relocation purposes will be transferred to the Hopi Tribe. In addition, as additional compensation to the Hopi, the bill provides that up to $300 million from certain Navajo rights to mineral revenues shall be paid to the Hopi over a period of years.

In order that the many sources of dispute between the two tribes can be cleared up, the bill provides that approximately 79,000 acres of land in the Navajo reservation containing the Hopi settlement at Moencopi will be transferred to the Hopi Tribe. This will settle a 9-year-old law suit between the two tribes. It is not my intent to affect any rights that the San Juan Paiutes may have in the 1934 Navajo Reservation.

Finally, six ancillary law suits by the Hopi Tribe against the Navajo Tribe for monetary damages would be ended by this legislation.

Mr. Speaker, this legislation does not come as a surprise to the two tribes. I provided a draft copy of the bill to the chairman of both tribes in early February for their review and comment. This bill is basically the same as that draft.

I believe that this bill can form the basis for a comprehensive resolution of the Navajo-Hopi land dispute. It attempts to cover all aspects of that dispute so that it will not continue to be the source of bitterness and contention between these two people who share many of the same goals and problems.

However, I do want to reiterate my intent that this bill not be viewed as the sole possible solution. There are many parties, including other Members of Congress, who have strongly held, sincere views on this perplexing problem. They may well want to offer other, better proposals to resolve the matter. As I said, it is my hope that the introduction of this bill will be a catalyst for the development of those proposals. It is for this reason that I have not made further plans for action on the legislation at this time.

Mr. Speaker, I know that the introduction of this bill will be the cause of some unhappiness and disappointment in some quarters. I regret that, but it's my sincere hope that this action will lead to the development of a proposal to end this bitter struggle which will find support in all quarters.

LEGISLATE OR SEQUESTRATE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, the gentleman from Missouri was talking and got cut off, so let me yield to him to conclude his statement.

Mr. EMERSON. If the gentleman will permit me to conclude my statement, I was speaking of the frustration related to the ultimate passage and signing into law of the farm bill. It was virtually the last piece of legislation that we acted upon. The President signed it into law on December 23d, and then of course the very lengthy process for a piece of legislation this comprehensive began to be implemented; at least the executive department began to write their regulations; many of which are still in process and unavailable.

Here we are with certain targets needing to be met under the law for which regulations have not yet been issued in order that the law may be appropriately implemented. This I think is something that we need to give attention to, not only as it relates to agricultural legislation, but to any legislation that the Congress is dealing with, is that it does take some time to implement it and we need in our work to have a view toward the fact that when we pass it and the President signs it, yes, it is law, but that does not mean it is ready to start operating.

So I think it is entirely appropriate that here early on in this session of Congress we are finding, now that the law is on the books, the implementation of it through regulation is commencing; that we find some technical corrections that need to be made.

There is nothing unusual about this, but I do think that it reflects sadly on the process, and I would hope that we might collectively, in a bipartisan way, find the means of redressing the prob-

lems, not only as they relate to the agriculture law, but to any other laws that may suffer similar unfortunate twists and turns, more because of process than because of intent.

Mr. WALKER. Mr. Speaker, I take this time in order to try to expand upon a point that I attempted to make earlier this afternoon when the issue arose as to how we ought to go about implementing Gramm-Rudman.

Caught in a squeeze of pressing events, at least one member of the majority party came to the floor, suggesting that what we ought to have is a process whereby the individual committees would figure out a way to make these cuts rather than accepting the across-the-board sequestering of money.

That is precisely the issue that was brought to this floor back before the recess earlier this month. It is precisely the issue that several Members of this body have attempted to articulate on several occasions, and have been rejected.

The gentleman from Texas [Mr. BOULTER] in particular has taken this issue, introduced it in legislative form, and has seen that legislation languish for lack of action.

In particular, when the committee funding bill was in the House of Representatives, an amendment was structured in such a way as to bring this issue directly to the floor.

Shall we as a Congress, given the mandates of Gramm-Rudman, to reduce by $11.9 billion the amounts of money in our spending program for this year, shall we take our role as a legislature and legislate that, or shall we live with across-the-board sequestration? Legislate or sequestrate, that was the issue.

This House, given that subject, given that vote, voted by a 2-to-1 margin to allow sequestration to go forward rather than deal with the matters through legislation. We voted, in other words, to abdicate our ability to do the right thing when it came to cutting spending.

It was in fact the majority party, in overwhelming numbers, that made that determination. Our party, the Republican Party, with almost no dissenters, voted instead that we ought to take upon our responsibilities and legislate these matters.

The gentleman from Montana who earlier today rose on this floor to suggest that that is the pattern we ought to follow, was one of the people who voted against the amendment designed to do exactly that.

Now the question becomes, are we going to continue throughout this year to deal in political rhetoric out here on the floor, or are we really going to attempt to resolve some of the problems that come when you have a massive spending cut kind of bill, such as the Balanced Budget Act has given us?

Are we going to be responsible, or simply rhetorical? What we have gotten so far is an awful lot of rhetoric and very little action. When it actually comes down to making the decisions, the majority party has shown an unwillingness to do anything except sequester these moneys.

One has to come to the conclusion that what they are attempting to do is inflict as much pain in the process as possible so that enough groups across the country will feel hit upon, so that ultimately what they really want to do will seem more rational; and that is, raise taxes.

The majority leader last night, in replying to the President's speech, suggested that the only way that we can properly defend this country is to raise taxes.

Time and time again, when the majority party went to Greenbrier the other week—the reports out of Greenbrier in their party caucus down there were that they spent most of their time sitting around trying to figure out a way that they could rationalize to the American people raising their taxes.

Now the fact is that many of us do not want to raise taxes. We think that there are ways of responsibly cutting Federal programs so that you do not have to raise taxes on working people in this country; but it is evident by the actions here this afternoon, evident by actions that have previously taken place in this body such as the vote on whether or not to legislate or sequestrate, that the majority party has come to the conclusion that they are better off inflicting as much pain as possible in this election year rather than doing the right thing.

I am disappointed in that, because I think that it is a situation where we can make the right decisions if we are willing to decide; but what we have said right along is, we are no longer really willing to decide.

Mr. FRANK. Will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. FRANK. I thank the gentleman, and I understand the point that he has been quite consistent on, that any reduction in the deficit should be on the basis of expenditure reduction and not revenue increases.

One of the problems I have, and it is not the gentleman's position here, is that I was a little surprised that on both sides of the aisle there was such ardent support for a dairy bill which, as I understand it, does exactly that; it would keep the expenditure level the same by raising revenues.

In other words, Gramm-Rudman says we should reduce expenditures. What the gentlemen are saying is, put this bill through so the amount paid to dairy farmers would be the same but the assessment, which looks very much like a tax to me, will be raised.

□ 1700

So what in fact we are being asked to do is to avoid an expenditure reduction under Gramm-Rudman and instead by raising the assessment on all the dairy farmers, increase revenues. I understand that. That is what people want. I do not want to do that at this point but I would note that there apparently is bipartisan support at this point for amending Gramm-Rudman so as to forestall a reduction in the amount paid out and make that up by getting more being paid back in from the farmers.

Mr. WALKER. I will be very glad to yield to a couple of the gentlemen here who know the program better than I do. I would simply say to the gentleman that that is certainly a philosophy that follows what your majority leader said last evening that the standing philosophy of the Democratic Party is that somehow we ought to figure out a way to raise revenues. And the only way I see us contending that that ought to be done around here is taxing the American people. I suggest that the American people, including most dairy farmers, do not want their taxes raised. But let me yield to a couple of gentlemen here who can explain the issue maybe a little bit differently than ways the gentleman from Massachusetts has outlined. I would be glad to yield to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding. The purpose is to reduce net expenditures. That is the purpose of Gramm-Rudman. Now either way you go in the dairy program it does not work like the normal price-cut situation; you either are going to deduct from the checks that are paid to the people purchasing from CCC and therefore reducing effectively the market price and in a sense a price cut, so either way you are doing it, you reduce net expenditures by taking it out of the check. The same is true if you go the assessment route. The only difference is that under one you have no ramification on the marketplace and on the other you have a substantial ramification on the marketplace.

Mr. FRANK. Mr. Speaker, will the gentleman from Pennsylvania yield to me so that I may ask a question of the gentleman from Vermont?

Mr. WALKER. I would be glad to yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for yielding. I appreciate his courtesy in this. My understanding is that under the dairy program every dairy farmer is assessed whether or not he or she participates in the program. So

if we reduce expenditures the way Gramm-Rudman now calls for, which I voted against but Members here voted for it and it passed, if you reduce expenditures, only those farmers who participate in the subsidy program will get a reduction. Their subsidy payout will be reduced. If you do it the way the gentleman from Vermont wants, every dairy farmer in America, those who participate and those who do not participate in the program, will have his or her assessment raised. That looks very much like a tax on dairy farming. Now that is a reasonable way for the gentleman to proceed, but let us be clear what it is. Instead of reducing the payout by the Federal Government to those dairy farmers who are in the program, the gentleman prefers legislation which would have put an assessment on every dairy farmer everywhere.

Mr. JEFFORDS. Mr. Speaker, will the gentleman yield?

Mr. WALKER. After a question of that length I think I probably ought to yield to the gentleman from Vermont.

Mr. JEFFORDS. I appreciate the gentleman yielding.

I understand the misconception of the gentleman from Massachusetts and it is a common one. In fact even the administration and Department people had that misconception and spread it around the country. The problem is, in response to the gentleman, even though you can argue and it sounds very nice the way you argue it, that you are only living on those who are participating in the program in that sphere, the problem is that the net ramification of that is, obviously, when you sell to the Government, you get that much less because they take that much less out of your check. The buyer next door who is not the Government says, "Well, there is no sense in us offering any more than the Government is paying," and that is the way the system works. Therefore, the processors next door offer a lesser amount of money and then all dairy farmers lose that money. That is correct. I understand the gentleman likes that, and that, philosophically, is one approach to dairy policy. Here we are talking about budgetary policy, not dairy policy.

Mr. WALKER. Let me reclaim my time here. I think I ought to keep track of my own time. I would be very glad to yield to the gentleman from Massachusetts.

Mr. FRANK. I thank the gentleman for his courtesy. Two points. One, I thank the gentleman from Vermont for pointing out the proconsumer implications of my position. What he said was, if we did it my way, then the prices drop. I appreciate that. I would like to see the prices drop. I do not think that is a bad thing.

Second, I ask the gentleman from Vermont if every farmer in the country, whether or not he or she chooses to participate in the dairy program, would be subject to a higher assessment, in effect if we passed the bill the gentleman advocates, every farmer will be subjected to a higher assessment which looks to be like an increase in revenue whether you want to contribute or not, rather than a reduction in expenditures, which is a way of dealing with Gramm-Rudman?

Mr. WALKER. I yield to the gentleman from Vermont.

Mr. JEFFORDS. I would be happy to respond to this gentleman. In a sense, the gentleman is correct. But you have to remember that in a sense with the price cut, every producer has his cut, too. The assessment route is what Gramm-Rudman was intended to do, to make a somewhat painless cut across the board to everyone rather than large cuts to a few which would create large cuts to everyone. Obviously anyone with any sense, with any logic, utilizing the Gramm-Rudman bill, any farmer would say, if you have your choice of paying off the bill with 10 cents or paying off the bill with 55 cents and the taxpayer gets more with the 10-cent payment than with the 55-cent payment, anybody in this world would say the logical way to comply with Gramm-Rudman is to stay with the 10 cents and make more money for the taxpayer than to pay the 55 cents and that money not going to the taxpayer with this deficit-reduction bill.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I would be glad to yield to the gentleman from Texas.

Mr. ARMEY. One of the things I find fascinating here is that almost by default, we are debating the provisions of the bill. In fact, the question at hand is whether or not we are going to debate the bill today. The bill was on the calendar, the bill was taken off the calendar. That is my concern. I would like to have seen it left on the calendar. I would like to know how the decision gets made to take bills off calendar on short notice. I raised this question around here before.

The question is also, do we legislate or do we sequestrate? The very fact is that for anybody observing this process—and let me focus on the process—it looks like there are key people in positions of power here who made the decision to take the bill off the calendar in order to force us to sequestrate rather than legislate. I do not know whether that was the motive, I do not know what else there is. But that right now is the only conclusion I can draw from the behavior I have observed. I hope we can resolve that question, get the bill on the floor, return to a discussion of the bill itself, look at the pros and cons, and at the that time, I will be able to cast a vote from which somebody could draw a conclusion whether or not I approve of the provisions of the bill. That really is not a matter at question here.

What I do approve of is fulfilling the calendar after it has been put out before us, after we have planned our legislative day and our legislative week, after we have prepared to deal with these things, then let us deal. Let us just not have somebody walk in and pull things off the calender without any prior notice nor any explanation and let us legislate this process in the Congress rather than sequester it to the bureaucracy. We have been elected here. We ought to be in charge as that committee has demonstrated its willingness to be by bringing that bill with those judicious tradeoff decisions already made in the committee where the responsibility lies.

I would like us to get back to that.

Mr. WALKER. I thank the gentleman. I think he makes an excellent point. I mean it is a point that a number of us have tried to stress for some time now, that this Congress has a responsibility under the process to do what is right in terms of getting the cuts that have to be made done in the right way.

Most of the committees around this Congress know ways in which the spending can be cut in ways that are better than taking the meat-ax-cut approach across the board. That would be a far preferable way of carrying out our job of getting the budget in order rather than sequestration. The sequestration was seen as an act so onerous that we would never take it and yet what we are proceeding to do in this body on a regular basis is to take the action of the most onerous kind of vehicle. That does not seem to me to be a very useful or practical approach to continue. Yet that is precisely what I see happening time after time as we make decisions on the House floor.

Mr. FOLEY. Mr. Speaker, I wonder if the gentleman from Pennsylvania would yield for the purpose of resuming unfinished legislative business with the understanding that at the conclusion of that time, his special order would be resumed.

Mr. WALKER, I must say I am somewhat reluctant to yield to the gentleman because this is the most people I have had on the floor to listen to a special order in some time. With the cameras sweeping the Chamber, this is wonderful.

But I will in fact yield to the gentleman from Washington.

Mr. FOLEY. If the cameras would do one sweep now and show the gentleman's attentive, rapt audience.

The SPEAKER pro tempore. By unanimous consent, the remaining time of the gentleman from Pennsylvania [Mr. WALKER] will be protected. The gentleman will be able to contin-

ue his special order after the legislative business has concluded.

REQUEST FOR CONSIDERATION OF H.R. 4265—SUSPENSION FOR 5 DAYS OF APPLICATION OF SEQUESTRATION ORDER TO DAIRY PRICE SUPPORT PROGRAM FOR FISCAL YEAR 1986

Mr. COELHO. Mr. Speaker, I send to the Speaker's table the bill (H.R. 4265), to suspend for 5 days the application of the sequestration order for fiscal year 1986 to the dairy price support program, and ask unanimous consent for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. ARMEY. Reserving the right to object, I am sure I will not object, but sometimes I get so dazzled by the footwork around here. This morning, earlier today, we were talking about taking up the original bill under consideration and I listened to a rather impassioned explanation of why it is you just cannot get a bill up here like this, this quick, without going through all kinds of periods of notification, and so forth. Now I find this wonderful event where we have been able to do that.

Mr. COELHO. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from California.

Mr. COELHO. I thank the gentleman for yielding. The bill is here under a unanimous-consent request.

The gentleman from Texas I am sure knows, he has been in the House for a year and I am sure he knows this, you can bring anything to the floor under unanimous consent, as long as you get it. So I am sure the question the gentleman, in asking this question or in making his statement, understood that.

Mr. ARMEY. I am quite aware of that, but your doing so at this time takes me by surprise in light of the explanation I listened to earlier regarding whether we could or could not get the original bill here.

Mr. COELHO. Mr. Speaker, will the gentleman yield further?

Mr. ARMEY. I would be glad to yield to the gentleman from California.

Mr. COELHO. I thank the gentleman for yielding.

Mr. Speaker, let me restate my point that I made earlier, I am sure the gentleman from Texas knows anytime he wants to, at any point he can offer a motion under unanimous consent to bring up a bill. The question is whether or not a bill will come up and be considered, and that is what we are into right now. But you could have done that anytime today or any other time, or yesterday.

Mr. ARMEY. I appreciate that.

Mr. WALKER. Will the gentleman yield?

Mr. ARMEY. Before I close I want to make a final point. What I am suggesting here today is what I have been talking about all day. We try our best to plan our legislative day, to respond to the needs of the calendar as it is presented to us and then we find it changed on such an ad hoc basis and I wanted to make the point to the gentleman from California that, as you may recall, I said I am sure I will not object but I would like to make a point that I really believe it would help us to accommodate to an orderly business of the House if the House business would be more orderly.

With that, Mr. Speaker, I withdraw my reservation of objection. I will not object.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. FRANK. Reserving the right to object, Mr. Speaker, I first want to say to my friend from Texas before his colleague who I think urged him not to yield anymore, the gentleman from Wisconsin, I wanted to say to the gentleman from Texas when he said he was so pleased this bill is coming up; one appropriate analogy is do not count your chickens before they hatch. As I look around the floor I would urge the gentleman: Don't drink the milk before the udder has been yanked.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I wanted to clarify something here. We have a standing agreement in the House that both leaderships shall have signed off on any bill brought to the floor by unanimous consent. Now it is my understanding that the minority leadership has in fact agreed to bring this bill to the floor by unanimous consent. Has this been thoroughly signed off by the majority leadership as well?

Mr. FRANK. Mr. Speaker, I control the time, the gentleman does not control the time.

Mr. GUNDERSON. Mr. Speaker, will the gentleman yield to me?

Mr. FRANK. Not yet, because I wanted the gentleman from Texas to yield to me, and you told him not to, so I do not think I will yield to you for a while. No, I am not going to yield at this point.

Mr. WALKER. Mr. Speaker, will the gentleman yield further to me?

Mr. FRANK. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

The only question I had was whether or not the legislation we are being asked to be brought before us by unanimous consent has been fully signed off by the majority leadership.

Mr. FOLEY. Speaking for the majority leadership I support the unanimous-consent request of the gentleman from California.

Mr. FRANK. I just want to say, Mr. Speaker, I want to make clear that I wanted to say something earlier and the gentleman controlled the time under his reservation and the gentleman explained that he did not want to yield to me. I want to make clear some of the accusations that were made before, fundamentally what some of us who do not like this legislation are being accused of. Some of us who voted against Gramm-Rudman are being accused by some who voted for it of the dastardly deed of letting it take effect. Now it seems to me a bit harsh when some of us voted against that bill, for people who voted for it to be critical of us because we are objecting to their very particular way of derailing it.

□ 1715

I think it needs a lot of changes. There is going to be on March 1 a lot of pain from a lot of people. I would like to see a whole raft of changes.

Mr. Speaker, I also want to underline what the gentleman from Vermont acknowledged. I appreciate the courtesy before the gentleman from Pennsylvania extended to us to give us a chance to make this point clear. The gentleman from Vermont acknowledged that every dairy farmer in America under the proposed legislation that we are talking about, the underlying legislation, would pay a higher assessment to the Federal Government. That is, we would avoid Gramm-Rudman's proposal to reduce expenditures and make up the equivalent amount of money instead by raising revenue.

Now the gentleman from Wisconsin said, and I will yield to him right after this, you would not really save anything by cutting expenditures because the dairy producers would just produce more milk, and then we would have to buy more milk.

That is true in part right now because the bipartisan, cross-ideological coalition of liberals and conservatives who forgot about free enterprise have legislation on the books that say we will buy all the milk the dairy farmer produces.

So as long as you insist on continuing the dairy program as an antimeans tested entitlement, in which the more you make the more you get back from the Government, that is true. So I would hope we would correct the underlying thing.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Speaker, I appreciate the gentleman yielding to me.

I want to point out that I happen to share the gentleman's sentiment that the dairy purchase program is an anti-means tested entitlement, and I have suggested for a long time that we ought to restructure it for that purpose. I think the gentleman would be happy to know that the farm bill includes a dairy policy commission intended to look at that very issue and report back to our subcommittee and to this Congress by March 1987, at the end of the whole-herd buy-out program. So we share the same sentiment on that. We want to revise the program.

The earlier question and the reason I asked the gentleman to yield at that time, after you yielded to the distinguished majority whip, was when the question was asked whether or not the majority party cleared the bill brought up by our distinguished subcommittee chairman.

Mr. FRANK. I did not ask that question.

Mr. GUNDERSON. I understand that.

I wanted to also point out that this bill has also been approved by the administration, that they will sign this into law, this 5 days.

I think that we ought to point out to everyone that what we have got here is a recoupment policy.

Mr. FRANK. Mr. Speaker, I want to take back my time at this point.

Mr. GUNDERSON. So that if we do not resolve this issue next week, we will not lose money.

Mr. FRANK. Mr. Speaker, I am taking my time back at this point, because I do not want something obscured.

I want to point out again I was on my feet for quite a while when the gentleman controlled the time before and the gentleman would not yield to me at all. So I am struck by my generosity. Not the gentleman from Pennsylvania, he was very courteous.

What the administration has agreed to sign, as I understand it, is the 5-day backstopper. They have not indicated that they are going to sign the underlying bill which would reverse Gramm-Rudman by replacing deficit reduction to expenditure reduction with revenue increase.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding.

Let me just try to share with my colleagues some of the objections I have to allowing this to go forward.

First, I think back to last year at this time, or maybe a little later. There were many of us on the Housing Committee who had struggled, literally struggled, to come up with some new programs. What happened was that we took the money from existing programs which many of the other side had said were failures—we would not have gone that far, but certainly we believe they would need perfection—and we said let us put the money into new programs. Let the Housing Committee decide on where housing money should go. We do not want to spend any more money than the budget process had allocated us, but let us at least try with new programs. And all but seven people on the other side of the aisle voted against that under the rubric of no new programs. They said that you in the Housing Committee cannot change what is going on.

Then Gramm-Rudman came up, and the only theory that I heard that would make any sense to me about Gramm-Rudman, because I am not of the ideology that we ought to shrink government, is very simply that let us make things so bad that everyone will come to their senses and reduce the deficit. That was the idea of Gramm-Rudman. At least that is one of the reasons that I heard voiced on our side of the aisle, on your side of the aisle and all over the place. Let us make things so bad, let us let the steam on that kettle cook and cook and cook, and let us not let any steam out of the kettle until it gets so hot for everybody that they come to the table.

Today we are talking about heat, the first of what I feel will be many changes that some will propose in Gramm-Rudman. As my colleague from Massachusetts had said, most of them are people who voted for Gramm-Rudman; not all, but most.

In any case, the idea was pain, not just pain for the people who live in urban areas or the elderly, which is the kind of pain that my constituents have been experiencing for 5 years under Gramm-Latta, and now under Gramm-Rudman, but pain for everybody. Cuts are real, gentlemen. We are not talking about people far away. We are talking about pain.

This idea that government does no good for nobody, it seems to do some good for dairy farmers, and it does. And it does some good for people in public housing. And it does some good for senior citizens.

Now you are saying make an exception, make an exception because it does not cost any more money. We have been asking for those kinds of exceptions for programs that we care about for 5 years.

Ladies and gentleman, yes, government does good, and yes, Gramm-Rudman hurts government which does good; not just the waste, not just the inefficiency, it hurts real people.

I, for one, will be damned if I am going to say let us let dairy farmers out from under the knife of Gramm-Rudman, although I respect dairy farmers and care about dairy farmers. Maybe not as closely and as emotionally as you do, but I believe in my heart I do. And let us leave all the other people under the Gramm-Rudman knife. No way for me.

Mr. FRANK. Mr. Speaker, further reserving the right to object, I just wanted to underline some of the very eloquent things that my friend from New York has said.

Not only in the housing bill were we seeking to do some things that were revenue neutral, we were not raising any taxes.

I want to stress again that in the legislation that is being argued for by so many on the floor, we increase the assessment. Do you know what that assessment is? It is a tax on the privilege of being a dairy farmer in America. That is what it is. We tax you whether or not you get benefits from the dairy program. If you want to be a dairy farmer, you are subject now to an assessment, and they want to increase that by 10 cents per hundredweight.

In fact, we not only have them arguing, those who are for this, that we eschew reducing expenditures, but instead increase this assessment, this tax on being a dairy farmer, but we have it being done in ways I think are inflationary.

The gentleman from Vermont had said that one objection the gentleman has to cutting the support prices, if the Government pays less, other people say they will pay less and the price will drop. But the gentleman said I liked that and he did not. That is true. I think it is a good idea.

I agree with the Reagan administration here that excessive price supports have been inflationary.

On the other side, when you raise the tax on people for the privilege of being in the milk producing business, you raise the price. I have been hearing from some of the people who use dairy products who were worried about the price increase impact of this. You raise the assessment; that is, the tax on every dairy farmer, you raise the cost of dairy farming and there is the tendency to raise the price.

So, the gentleman says if we cut the support price, we may lower the price; instead the gentleman wants to have us do something that may increase the price. I think that may be in the interest of some dairy farmers, but I do not think it is overall in our interest.

I, of course, agree with the gentleman from New York that this piecemeal process of exempting people from Gramm-Rudman—and this is not a technical amendment. This is replacing an expenditure reduction with a tax increase, the increase in tax on being a dairy farmer.

Mr. Speaker, I yield to the gentleman from Missouri.

Mr. EMERSON. Mr. Speaker, I thank the gentleman very much for yielding.

Mr. Speaker, I would just like to point out that we have two options under Gramm-Rudman, and that is to legislate or sequestrate.

Gramm-Rudman and the farm bill were two of the very last pieces of legislation that we acted upon in the last Congress. The farm bill, the new farm law, is the first piece of legislation to feel the impacts of Gramm-Rudman because of the process here. I mean, the law was the last one passed, and the regulations, if I may say to the gentleman from Massachusetts, are just now being implemented. That is why agriculture is here up front.

I am not necessarily saying it is the first to be felt. We are in a particularly difficult bind because we are beginning to implement the law with regulation.

So I think the Agriculture Committee has done the responsible thing here. There is a twist here that needs some attention. We are trying to legislate it rather than to let the automatic sequestration take effect.

I dare say, and I say this in all sympathy to the arguments of the gentleman from New York, that we are going to face situations like this many times this year. It just happens, if I may say to the gentleman, the gentleman complains that there has been a lack of sympathy in the past for our not acceding to new programs. I think we are going to see a lot of it this year. I would hope that the gentleman, in the spirit of amity and compromise here, in the hopes of some of the rest of this coming around this year later on some of the programs that the gentleman is interested in, might see his way clear to letting us deal with this problem which is of such serious consequence to so many people in the agricultural community.

□ 1725

Mr. FRANK. I have to disagree with the gentleman. And I have to say, this is not a sequestration. I know that is what people in the other body called it. But, in addition to the economic and social failings of Gramm-Rudman, it is a semantic horror. You do not sequester funds by making them disappear. If we report that someone has been sequestered, we do not expect that that means he or she will never be heard from again, unless maybe they are in South Africa or Afghanistan. This is not a sequestration. People who say this is sequestration do not know the difference between a couple years in jail and capital punishment. But that is the least of the ignorances which the authors of Gramm-Rudman have inflicted upon us.

The point is that on March 1 everybody is going to feel the pain. A lot of things are going to get cut back, not just agriculture. I understand that agriculture has a particular March 1 deadline, but everything gets cut back on March 1.

And I want to be very clear why we are here. We are here because the majority of both Houses voted for and the President signed a dumb bill. I did not vote for the dumb bill. I would like to change it. The gentleman from New York is right. I cannot agree to the underlying legislation which says: Change the thrust, and not in a minor way, but in a major way.

I want to repeat, the gentleman from Vermont, a great expert on dairy, says, "If you do it the way Gramm-Rudman calls for, you will have a downward pressure on dairy prices."

Well, people who voted for that should have understood that is what they were bringing about.

And he says if you do it the other way, you will avert the downward pressure on dairy prices.

I am not prepared to avert the downward pressure on dairy prices. I do not like this legislation on its merits. I do not care what you are doing for other things, I think it is a great mistake to raise the tax on milk production in America instead of doing it the other way.

Mr. Speaker, I yield to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. I thank the gentleman for yielding.

Mr. Speaker, I, too, oppose this legislation in this fashion, not on the issue of the merits but on the question of the procedure whereby, at 5 minutes to midnight, before Gramm-Rudman takes effect in the first sequestering order, we find that those constituencies that have the strength can seek a manner in which to get out of it, because we have been told in other committees, where we did not have the political strength, there were to be no changes, the order would take effect as it came. That was the pain, that was the suffering of Gramm-Rudman. But now we find out, as David Stockman told us many years ago, the Federal budget and the Federal deficit is made up of strong clients with weak claims and weak clients with strong claims. Adn here we have strong clients with weak claims, because what do they have the opportunity to do? They have the opportunity to get out from under Gramm-Rudman, to take away that hot spot that rubs against the dairy industry and to socialize those losses, to spread it out through consumers or spread it out through other dairy farmers who do not participate. But when we cut a unit of housing on March 1, when we cut a unit of handicapped education or compensatory education or we cut down the hours in the Library of Congress, there is no other place for those people to do, there is no other place, because that was the function of the Federal Government.

But now we have some people who come and tell us: Simply change the Dairy Subsidy Program a little bit. It will not cost you any more on the deficit, we will not change the cost of the program, we will just spread it out across America.

But if we were to suggest, for a moment, that revenues need to be raised or taxes need to be raised, we were told we cannot do that, we have got to make those additional cuts.

Now, the Dairy Program as set up may be penny wise and pound foolish. But do you know what? That is the problems of Gramm-Rudman. And it was with great glee on the other side of the aisle and on this side of the aisle by people who thought that they were going to have a magical instrument here to whittle down the deficit and they would have to take no political responsibility or no political heat. Well, the heat has just arrived, and it will arrive in every other sector where the Government does business. What we are not going to do is have a piecemeal approach where those with big political action committees, those with broad constituencies can get out from underneath the heat and those who are weak and those who are disenfranchised will have to stay and do the suffering. That is not the way we are going to legislate under Gramm-Rudman.

Once again we see a very powerful industry that has always sought to maximize the profits and socialize the losses, and that is not the opening shot on Gramm-Rudman.

So again I will object to this legislation if somebody else does not, to the unanimous consent request to bring this before the floor. If people want to come and they want to give the other committees the same opportunity that this committee took upon itself, then maybe we can talk about it. But at this point that is not what is happening here. What is happening is very unfair. It is not by accident that this legislation came on the last legislative day before Gramm-Rudman goes into effect.

Mr. FRANK. I could not agree more.

Mr. Speaker, I yield to the gentleman from Wisconsin [Mr. GUNDERSON], and then I will yield to the gentleman from Washington [Mr. LOWRY].

Mr. GUNDERSON. I appreciate very much the gentleman's yielding, because I do want to respond to the comments that have been made here.

First of all, this is not the first bill to deal with Gramm-Rudman. We had the VA bill up earlier this week. We all understand that.

Second, let us talk about procedure, and let us also talk about the issue of

the housing bill. I understand the gentleman's comments on housing. They are legitimate. But let us understand that you were given the chance, as was every other Member of this Congress, to vote on that housing bill up or down. What we are objecting to today is that the bill, all of a sudden, was pulled from the calendar. It has been through the committee process, it has been through the Rules Committee, it has been given a rule, and, all of a sudden, we are not even given the opportunity to debate that bill. You have every right to vote against it. The gentleman from California and the gentleman from Massachusetts have every right to vote against this bill if they do not like it. But, for gosh sakes, let the legislative process work, do not deny it. That is what we are so upset with today.

Third, let us understand that the dairy industry has not been exempt from the cuts. In 1980, when I came to the Congress of the United States, the dairy price support for 100 pounds of milk was $13.10. As a result of what we are doing here today, on Saturday the dairy price, effective support price, is going to be $10.70. Let us understand there have been significant cuts.

Mr. FRANK. I will take back my time. The gentleman is trying to keep it, of course, a half a buck higher than that. When he cites the result of what is being done, it is a result of what he is trying to prevent that will get it down that last half a buck.

Mr. Speaker, I yield to the gentleman from Washington [Mr. LOWRY].

Mr. LOWRY of Washington. I thank the gentleman for yielding.

Mr. Speaker, I would like to have my own reservation of objection, and I am going to object, after this.

The SPEAKER pro tempore. The gentleman from Washington [Mr. LOWRY] reserves the right to object.

Mr. LOWRY of Washington. Mr. Speaker, just to notify people, fairly soon I am going to go ahead and object.

And, in doing that, I sincerely mean that I think some of the best Members of this Congress have worked hard on bringing this bill to this floor. I really mean that on both sides. I like you both as friends and as Members of Congress.

I, this morning in the whip meeting, raised my own personal objection to this bill coming up because 1½ months ago I asked to, within the same dollars, be able to have the opportunity for reprioritizing, and an example I used of many was specifically compensatory education. Within education, within the same dollars, for the low-income education program, I thought we ought to have an opportunity, when the 4.3 came down, to do something about it. No way. And just other examples went right down the line.

Now, I let go two staff people. One of the committees I serve on I think is going to let go 10. Now, that is real. That is not going to be reversed or taken out. The community health clinics in Seattle are cut back. Right down the line. I do not like it. I voted against Gramm-Rudman.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. LOWRY of Washington. I will, in just a second, yield to the gentleman from Pennsylvania. Frankly, I have made my point. I do not need to go on with the point.

I wanted very much to do, frankly, the same type of thing I heard the gentleman in the well and a few others say. I wanted us to be able to go at functions and, within those functions, reprioritize dollars within the limits set by the law that passed, Gramm-Rudman.

I yield to the gentleman.

Mr. WALKER. I thank the gentleman for yielding.

I was going to ask the gentleman how he voted on the amendment that was designed to do specifically that prior to the recess, so we were not acting at 5 minutes to midnight, so that in fact the committee could have gone through and reprioritized the money and done this the right way.

How did the gentleman vote on the amendment?

Mr. LOWRY of Washington. I heard talk about that earlier today. And I was wondering how I voted. I may have voted against it.

Mr. WALKER. The gentleman may want to check that.

Mr. LOWRY of Washington. I may have voted wrong. I will tell you, this would not have been the first time I voted wrong in this place.

Mr. WALKER. I thank the gentleman.

Mr. LOWRY of Washington. But I really feel bad about first, second, third, fourth-grade little kids who get tutoring because they are having trouble with math and reading, and they get cut 4.3 percent in compensatory education. My wife is a volunteer in one of those programs. We love those little kids, and Gramm-Rudman is cutting them 4.3 percent, and I do not want dairy off the hook.

So I am going to object.

I would be happy to yield to others if they would care to move on. I yield first to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. I thank the gentleman for yielding.

I would, personally, prefer that the gentleman not object or the gentleman from California or New York, because I think this legislation is legitimate. But I have to say, coming from a dairy district and wanting to see this legislation pass, I gag when I hear some of the rhetoric around here today, because let us face it, we are in this box because a whole lot of people are discovering that when they voted for Gramm-Rudman last October, what they voted for was a wrapped Christmas package. They saw the wrapping, they had no damn idea what was in it, and now they are discovering what was in it. And now that they are discovering that they do not like what was in it, they are saying, "Gee whiz, how can I cover my tracks?"

Now, let us not kid ourselves. That is what is happening. People are saying, "I want to cover my tracks. I voted for Gramm-Rudman, but I want to take a duck from the responsibilities of my own actions."

Now, that is what is happening.

I do not want to see this bill objected to because I think, on the merits, it is a more rational way to deal with dairy's obligations under Gramm-Rudman than the 50-cent price reduction. I disagree with the gentleman from Massachusetts. If he thinks his position benefits dairy farmers, he better come out and visit a few. But the fact is, let us not kid ourselves. What is going on today is we are getting into a semantic discussion about sequestration. But the fact is that when Gramm-Rudman was before us, we know that a lot of people were going to get clobbered because people did not know what was inside that box, just like we knew that a lot of people were going to get clobbered when they voted for Gramm-Latta 5 years ago when we did not even have a copy of the damn legislation.

So I agree with the objective of the gentleman from Wisconsin, I agree with the objection of the gentleman from Vermont, and others, and the gentleman from Wisconsin [Mr. KASTENMEIER], who is also an author of this legislation. I want to see it pass. But, by God, let us not kid ourselves. We are here because people voted for Gramm-Rudman and now wish to hell they had not.

Mr. LOWRY of Washington. Mr. Speaker, further reserving the right to object, I will say to the gentleman from Wisconsin that is right. That is why, after the yielding is over, I am going to object at that time.

Further reserving the right to object, Mr. Speaker, I yield first to the gentleman from Idaho and then to the gentleman from Missouri.

Mr. CRAIG. I thank the gentleman from Washington for yielding and for allowing me some of his time.

There were a good many of us who voted for Gramm-Rudman who knew what was in the box, but we also thought this body would then rise to the occasion and be responsible in recognizing that, once we had made the decision to reduce the deficit and to make, through that process, a tool that designated targets, we would

come back here and in a responsible fashion look at a variety of those programs and attempt in an even-handed way to bring about a different solution to the problem.

I think what I hear my colleague from the State of Washington and my colleague from the State of California say is that they do not necessarily object to this bill, but they are objecting to their leadership's unwillingness to be responsible. They are objecting to the committee chairmen of this House taking the responsible charge of Gramm-Rudman, spreading it out, looking at it and making the kinds of decisions that ought to be made.

Now, I, like so many of this body, just came back from a recess in which we spent a lot of time in our districts. We gave a lot of speeches, and most of those, I suspect, were about Gramm-Rudman or some portion of it. And one thing I told my constituents—and I think it was a valid statement—I said, "If you take Gramm-Rudman to the extreme, and that means that this Congress and this body has failed their responsibility, then the cuts you are hearing about will occur. And if it happens, do not blame Gramm-Rudman; blame the leadership of the House, blame the leadership of the Senate, blame the committee chairmen, blame the membership of the body, because it is our charge and our responsibility to be fair, to legislate properly."

That is what this legislation does this afternoon. It says: Here is an approach to change the process to meet the guidelines of Gramm-Rudman. Now, that is what it says.

So what I am hearing from my colleague from the State of Washington and my colleague from the State of California is that they are objecting to their own leadership, they are not objecting to a good piece of legislation, and it is sad, for me, to think that you have to get back at your own leadership by destroying a good piece of legislation.

□ 1740

Mr. LOWRY of Washington. Mr. Speaker, further reserving the right to object, I would say that I am objecting to Gramm-Rudman.

Mr. Speaker, I yield to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. I thank the gentleman for yielding.

Mr. Speaker, the previous speaker just mentioned the word "responsible." He said that he had hoped that what we were doing to Gramm-Rudman was the responsible thing. With all due respect, the responsible thing to do is not to pass some blind man's bluff scheme which says we are going to meet a magic number but we have no idea within the context how we are going to handle all of the details.

The responsible thing for Members to do if they want to avoid these kind of crunches, whether it affects my constituents in dairy or whether it affects urban constituents on other issues, the responsible thing to do is to go down the appropriations process and review each of those bills. It is irresponsible to pass Gramm-Rudman legislation which denies you the opportunity to deal with appropriation legislation.

Let us not kid ourselves: The act of irresponsibility was to say we are going to hit this 144 target without having any other idea of how we were going to do it. What we now have going on around here is the politics of blame; the maestros of blame of now trying to find any way to get out——

Mr. CRAIG. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I believe I am recognized, Mr. Speaker, and I would appreciate not being interrupted until I am finished.

The SPEAKER pro tempore. The gentleman from Washington [Mr. LOWRY] controls the time.

Mr. LOWRY of Washington. Mr. Speaker, I continue to yield to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Again, I want to see this legislation passed and I would urge Members not to object. But I just have to say that the pretense that somehow you are being responsible if you vote for a proposal which you know is going to put people in boxes like this, is, I find, a very weak joke. I do not think my dairy farmers are going to appreciate it. I do not think people who need housing are going to appreciate it, and I suspect that before this session is over we are going to learn that what we should have done is not to pass a blind Gramm-Rudman. What we should have done is to say to the President and to every Member of this House, we had better get a grand compromise which puts absolutely everything on the table which includes entitlements, which includes domestic discretionary programs, which includes the military budget, and, by God, which includes additional revenues as well.

That is the responsible thing to do and let us not kid ourselves.

Mr. LOWRY of Washington. Mr. Speaker, further reserving my right to object, I yield to the gentleman from Missouri [Mr. EMERSON].

Mr. EMERSON. I thank the gentleman for yielding.

Mr. Speaker, I would just like to say to the gentleman from Wisconsin that I do not think anyone is trying to blame anyone about Gramm-Rudman. It passed this House by a bipartisan, almost 2-to-1 majority.

You know, there is a winning side and a losing side to every issue that we debate and vote upon here. Gramm-Rudman did pass; it is here, and now we are trying to decide how we are to go forward.

I would observe that politics does indeed make strange bedfellows. I find myself here this afternoon in strong agreement with the points made by the gentleman from Washington, the gentleman from California [Mr. MILLER], the gentleman from New York [Mr. SCHUMER]; they want to legislate. We want to legislate. We do not want a sequestering. But legislating and sequestrating are the two options we have. Now, we can go one route or the other.

I would suggest to those of you who like to raise the issue of pain, that if we take the time and trouble to legislate, we are going to find there is an awful lot less pain than if we go the route of sequestrating.

Mr. LOWRY of Washington. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. I have to disagree with the gentleman from Missouri; he said no one is here trying to blame. I am trying to blame. I want to blame Gramm-Rudman. I was a little surprised at my friend from Idaho; he is a good fellow, but he was saying, "Do not blame Gramm-Rudman." How can we not blame Gramm-Rudman for Gramm-Rudman? What we are talking about is whether the Gramm-Rudman law should go into effect. If the law is not to be held accountable for its own provisions, then the gentleman has become a permissivist beyond the wildest dreams of the Civil Liberties Union.

I would think that it was not controversial to say that when people vote for a law and the law is signed by a President who thinks it is unconstitutional but signed it anyway, and it was held unconstitutional by three judges who let it go into effect anyway, that when it does go into effect, it is not unreasonable to note that what has happened is that a law that was signed and voted for went into effect. Members who did not like its provisions should have voted against it.

We are talking about Gramm-Rudman. My friend from Wisconsin said it was blind. I would disagree; I do not think it is blind, I do not think it is deaf; I think it is dumb, and I do not mean mute. That is a bad thing to call mute people. I mean dumb. I do not think it makes any sense and that is what people agree on.

This provision does not make any sense and other provisions do not make any sense. I also want to point out because I do not like the specifics. The gentleman from Wisconsin is a strong defender of the interests of dairy farmers and I respect the gentleman, Mr. OBEY. I did not say that I thought my position was better for

the dairy farmers. I agree that those of you who represent dairy farmers advocate the position that is better for dairy farmers. In 1981 it was $3 billion better for dairy farmers. Now it is not so good, it is only about a billion and a half better. But at a billion and a half better it is still pretty better where I come from.

My position is better for the dairy consumers and ultimately better for the taxpayers. But again I want to make it clear, too, the precedent you were setting. What you were saying is that where Gramm-Rudman calls for a reduction in expenditures to dairy farmers, you want to replace that with an increase on the tax that every dairy farmer in America has to pay for the privilege of being a dairy farmer whether or not that dairy farmer participates in the program.

Now, I thought revenue increases as an alternative to expenditure reductions was not the position of people on the other side, but apparently there is kind of a growing movement in that direction. If it is going to be that way for dairy, maybe it is going to be that way for other things.

I do want to just get back to the basic point. Yes, I think we should blame, and I do not think it is obfuscation to suggest that a Gramm-Rudman is a Gramm-Rudman is a Gramm-Rudman, and that is what you have got here today.

Mr. LOWRY of Washington. Mr. Speaker, further reserving the right to object, I would like to yield to the gentleman from Vermont who, I want to truly say, I think is an excellent Member of this body and I know has worked awfully hard on this legislation. I do not like causing you the problem I am going to be causing you here in a few minutes.

I yield to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. I thank the gentleman for his comments; I am not sure I will appreciate what you may end up doing.

I would just like to say that we knew and voted for and knew what was in Gramm-Rudman. Unfortunately, or at least we thought we knew what was in Gramm-Rudman. The issue here is that when we opened that package up, which we so eloquently described, we found out that what was supposed to be in Gramm-Rudman with respect to dairy was not there. It was not there. Something else was there.

The gentelman from New York, who talked so, so eloquently about housing programs which I have been a supporter of, I cannot understand in my heart at all as to why you want thousands of dairy farmers to join those people that do not have adequate housing, who will be thrown out of their homes, who will be required to go through bankruptcy, and that is what the difference is here.

We are not trying to get out from under Gramm-Rudman; we are trying to do it in a way to prevent a large number of people from joining those ranks of those people who have been thrown out of their homes.

Mr. LOWRY of Washington. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. I thank the gentleman. I just want to make a few points, first in general and then response to Gramm-Rudman.

When I went to the Budget Committee hearings with the gentlemen from Washington and Florida, I was appalled to find one of the authors in this House of the Gramm-Rudman legislation handing out a press release saying he was for restoration of the 3.1-percent cut for Federal retirees and for NASA and for 7 other programs that made like a roadmap of Florida. If what he did in Tallahassee was the same thing that is happening today here on dairy and tomorrow on other issues, then we can resolve this, gentlemen. There is not an impasse.

As the gentleman from Missouri said before, maybe we should all get together and resolve that each committee or each area of jurisdiction can make changes within the confines of Gramm-Rudman. But the basic problem is to the gentleman from Wisconsin and the gentleman from Vermont, we have to do it together. We cannot say, well, we will pass this and we will deal with it tomorrow because there are lots of other people out there.

Gentlemen, in my view, and I care about those dairy farmers, I really do, but I would be betraying the constituencies that I care about if I let this cow out of the barn, never to be sure or without working out all of the other problems. Gramm-Rudman, in my opinion, should be repealed no matter who gives milk. But in any case, if we are going to have to live with it, we ought to live with it fairly and equitably; not in a jaundiced setting whereby those who have the political power get out from under it.

□ 1750

Mr. LOWRY of Washington. Continuing under my reservation, I guess we see why we have a problem.

Mr. SCHUMER. To let this cow out of the barn without working out all the other problems; Gramm-Rudman in my opinion should be repealed, no matter who gives milk; but in any case, if we are going to have to live with it, we ought to live with it fairly and equitably, not in a jaundiced setting whereby those who have the political power get out from under and those who do not get squeezed.

Mr. LOWRY of Washington. Continuing under my reservation to object, Mr. Speaker, I will do this for only another 5 minutes, I am giving everybody fair warning.

First, under my reservation, I yield to the gentleman from Texas [Mr. BOULTER].

Mr. BOULTER. Mr. Speaker, I thank the gentleman from Washington.

I would just ask the gentleman from New York and several others who say we should be allowing all the committees to reach the $11.7 billion cuts in their own manner through their own power of authorization, where were you when a few days before we adjourned for the district work week when I introduced a resolution with 51 cosponsors that would have done exactly that same thing? I sent out "Dear Colleague" letters to every one of you and was told that the Speaker of the House would not go along with it, that the chairman of the Rules Committee would not go along with it, and some of the leadership on this side would not go along with it.

I think the gentleman is exactly right. I wish I had had the gentleman then.

Where were you on the Walker motion to recommit back when the House Administration Committee instructed the standing committees to cut administratively, but to set priorities? Where were you when we said, "OK, that's good, but go forward and instruct those committees to take up programs within their jurisdiction and reach the amount of cuts that the Presidential sequestration order would impose, but do it rationally."

I mean, we are so late. I just wish you all—maybe you did not understand my resolution. Maybe it should be resurrected.

In response to the gentleman from Wisconsin, talking about blind cuts, I think we all hate blind cuts. In my recollection and understanding of the Gramm-Rudman process before we came to a final vote was that it was the gentleman's amendment that caused the 1986 cuts with the $172 billion target set for fiscal year 1986 and we had no choice but to make blind cuts, because we could not get to the $172 billion target for fiscal year 1986. Therefore, sequestration comes in on March 1.

Then I introduced a resolution to void it and maybe there is still something we could do with my resolution.

Mr. LOWRY of Washington. Mr. Speaker, continuing my reservation of objection, I yield to the majority whip.

Mr. FOLEY. Mr. Speaker, just a point with reference to the original Senate bill which was sent to the House and contained a target of $180 billion to be effective in 1986, that was amended to reduce it to $159 billion and then it was again changed to $171.9 billion. The original bill coming from the Senate did have a 1986 se-

questration level of $180 billion. I think the gentleman will find if he looks at the legislation that was the case.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California [Mr. COELHO]?

Mr. LOWRY of Washington. Mr. Speaker, I object to the unanimous consent request.

The SPEAKER pro tempore. Objection is heard.

PERMISSION FOR COMMITTEE ON AGRICULTURE TO HAVE UNTIL MIDNIGHT, FRIDAY, FEBRUARY 28, 1986, TO FILE REPORTS ON H.R. 4105 AND H.R. 4079

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture may have until midnight on Friday, February 28, 1986, to file its reports on the bills H.R. 4105 and H.R. 4079.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

REQUEST FOR ADJOURNMENT OVER TO MONDAY, MARCH 3, 1986

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns tonight, it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

Mr. JEFFORDS. Mr. Speaker, reserving the right to object, it is my understanding the other body is still in session. They are presently, as I understand, working on legislation in this area. I think it is improper for this body not to take up the legislation which we have been referring to all day.

For that reason, Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

REQUEST FOR ADJOURNMENT FROM FRIDAY, FEBRUARY 28, 1986, TO MONDAY, MARCH 3, 1986

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns tomorrow, Friday, February 28, 1986, that it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

Mr. JEFFORDS. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

REQUEST TO DISPENSE WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

Mr. JEFFORDS. Mr. Speaker, I object.

Mr. WALKER. Mr. Speaker, I objectd.

The SPEAKER pro tempore. Objection is heard.

LEGISLATIVE PROGRAM

(Mr. GUNDERSON asked and was given permission to address the House for 1 minute.)

Mr. GUNDERSON. Mr. Speaker, I have asked for this time for the purpose of yielding to the distinguished majority leader to announce the program for next week.

I yield to the distinguished gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the House will meet tomorrow at noon. There is no legislative business scheduled.

The House will meet at noon on Monday, assuming that unanimous consent can be obtained that when the House adjourns tomorrow, it adjourn to meet on Monday next, which will be offered tomorrow again.

The House will have a pro forma session on Monday.

On Tuesday, March 4, the House will meet at noon with two bills under suspension of the rules. Recorded votes under suspensions will be postponed until after the debate on both bills.

The bills are: H.R. 3168, to require the Office of Management and Budget to prepare annual reports on the geographic distribution of Federal funds, and H.R. 3614, to restrict the use of Government vehicles.

On Wednesday and the balance of the week, March 5, 6, and 7, the House will meet at 3 p.m. on Wednesday, and 11 a.m. on the balance of the week for further consideration of the conference report on reconciliation and for consideration of H.R. 2418, the Health Services Amendments of 1985, under an open rule, 1 hour of debate; and for H.R. 4105, the wheat and grains yields bill, subject to a rule being granted. That actually deals with wheat, feed grains, upland rice and cotton; and H.R. 4079, legislation dealing with the planting of nonprogram crops on excess acres of wheat, feed grains, rice, and cotton, under the 1985 farm bill. This is again subject to a rule being granted.

Conference reports, of course, may be brought up at any time and any further program will be announced later.

Mr. GUNDERSON. Mr. Speaker, the gentleman has indicated that sometime Wednesday and the balance of the week we could have further consideration of the conference report on reconciliation. Because I understand that is a privileged motion to bring up at any time, would it be proper to get some kind of assurance that we could at least have 1 day or 24 hours notice before that legislation of that magnitude is brought up?

Mr. FOLEY. We can certainly give the gentleman assurance that it will not be brought up before Wednesday.

Mr. GUNDERSON. But could we know on Tuesday if it is coming up on Wednesday, or Wednesday if it is coming up on Thursday; is that possible, so Members could plan?

Mr. FOLEY. I think we are serving notice that it may come up on Wednesday or the balance of the week. If the gentleman would like to inquire on Tuesday more specifically on the plans, I think we would be willing to respond at that time.

I am reluctant to say at this time that we would give 24-hour notice after Wednesday as to the bill being brought up, but we will definitely assure the gentleman that it will not be brought up on Monday or Tuesday, that it will not be brought up before Wednesday.

Mr. MILLER of California. Mr. Speaker, will the gentleman yield?

Mr. GUNDERSON. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Speaker, I think the gentleman from Washington meant to say 11 o'clock tomorrow for the session—is that right, which is the normal hour for Friday?

Mr. FOLEY. Yes. I misspoke, as the current phrase is. The House will meet tomorrow at 11 a.m.

Mr. MILLER of California. Mr. Speaker, will the gentleman yield further?

Mr. GUNDERSON. I yield.

Mr. MILLER of California. Mr Speaker, I would just like to ask the distinguished whip what the situation will be tomorrow? The gentleman mentioned there is no legislation scheduled. So what will be the nature of the session tomorrow?

Mr. FOLEY. Well, I assume that any legislation that might be considered tomorrow would have to be considered under unanimous consent for its consideration.

Mr. MILLER of California. Mr. Speaker, I thank the gentleman.

LEGISLATE OR SEQUESTRATE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for his remaining 42 minutes.

Mr. WALKER. Mr. Speaker, I am certainly glad that all that did not come out of my time. I appreciate the Chair's indulgence.

Well, we have had a very interesting discussion here and it goes back to the question that I was raising as we moved toward the substantive discussion of potentially bringing a bill to the floor, and that is, the question is, what is it we are going to do around here and how are we going to do it? The fact is that we have had a whole series of people get up now and say that the individual committees of Congress ought to take care of these matters within their committees and make certain that the cuts that have to be made are made correctly.

On the occasion of having a vote on that matter, most Members of this House, by a 2-to-1 margin, voted against doing precisely that.

Now they want to make the point that the people who voted for Gramm-Rudman are responsible for what is happening under Gramm-Rudman right now.

The point is that they are responsible for the fact that we do not have the individual committees coming to the floor for the cuts because they voted down that process. That process, I will say to the people in this body, is precisely in line with Gramm-Rudman. Gramm-Rudman is not just a sequestration order.

Too many of the people who are getting up on the other side of the aisle equate Gramm-Rudman with sequestration. That is precisely not the case. What Gramm-Rudman says—and this is confirmed in a card that was sent around by both the majority whip and the minority whip, every Member got it, they got it in their office—and it says that the President, as of February 1, had to come forth with a sequestration order, but then we had a 30-day period in which to legislate. Between February 1 and March 1, we could have, in fact, legislated in a way to prevent the sequestration from taking place.

We specifically chose in this body not to legislate.

We specifically chose for the pain to be inflicted of sequestration. That is our contention out here, that Gramm-Rudman was not complied with, that Gramm-Rudman was in fact translated into a sequestration order, which it was never meant to be, and that is a decision that rests with the majority leadership of this body because they are the ones who made that determination.

It also rests with virtually everybody who voted against the amendment offered on the day that we brought it to the floor that would have given the individual committees the obligation of coming forth with their own plans. Those are the people who have inflicted pain, and I must say for the party of compassion as they so fondly call themselves, to be out here arguing what they are arguing today, that a lot of pain is a good thing, will leave an awful lot of people very cold on what their real belief structure is, because that is really what they are saying here, that the more pain we can inflict with Gramm-Rudman, the better off we are, because we think that ultimately that will destroy the act and thereby destroy the process toward a balanced budget. That is what it is really all about. They either want to destroy the act or they want to go to more taxes. That is precisely the opposite direction from which we should be going. That is really the argument we are hearing today.

The gentleman from Wisconsin [Mr. OBEY] got up and told us about this package that we bought. I think a number of us knew what was in that package. I do not agree with the gentleman that all we understood was what was on the wrapping. I understood what was in the package and what I understood was that this place had a responsibility to do the right thing, to legislate rather than go through the onerous kind of implementation of sequestration.

We have a responsibility. We have reneged on that responsibility. We are reneging on that responsibility right here today with our determination not to bring up this legislation.

We have now had the announcement that we are not going to do anything tomorrow. We have even had the announcement that we are not going to do anything Monday. We are not going to do anything around here. We had one vote all of last week.

Mr. CRAIG. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am glad to yield to the gentleman from Iowa.

Mr. GRAIG. Mr. Speaker, I appreciate my colleague yielding. The gentleman is absolutely right when he refers to the inaction of this body over the last month. That is what we have been dealing with here from the time the law took effect and our administration had the responsibility of making certain determinations and giving us a 30-day period in which to respond, this House simply has failed to do so.

□ 1805

Then an appropriate committee dealing with a responsibility that committee is charged with the Agriculture Committee in the instance of adjustments in the milk price support process, followed through in a responsible way to propose a change, to go to the industry and ask them if that was a reasonable approach that they could take in a one-time effort and they agreed. And they went to the Rules Committee in the process and got a rule and came to the floor.

The leadership of this House this morning met and decided that would not be good politics and pulled it. The reason they made that decision was the very reason my colleague from Pennsylvania has just explained. I suspect they are now choosing a path of irresponsibility, and that is the lack of responsibility in legislating in a proper fashion as this legislation did so that the pain will grow on a package that most of them voted for in hopes that either they will be able to go to the people once again and say we have done all we can do and now we must ask you to give more.

I have been telling my constituents in Idaho over the last month that I have only been here a little over 5 years and during that period of time, Federal revenues have increased 50 percent and Federal spending has increased 68 percent, and I do not think it takes too much of a genius to determine that we have got a problem. The problem is on the spending side in large part, and that is why we have Gramm-Rudman. And that is why this House and the body across the other side of the rotunda made the decision that we had to establish a tool, a process by which we force ourselves to make decisions. Now that is Gramm-Rudman. It is a tool; it is a process. It forces the issue.

We saw them turn tail and run today from the issue. They are trying to find a hole to hide in, they are trying to find an excuse that will serve them in their rhetoric, and they have not found it. And the dairy farmers of this country will feel the pain because the leadership of the House chose to inflict it. Blame Gramm-Rudman as they will, the law is clear and the law is very specific, and it says we have 30 days in which to act and we refuse to act.

Bipartisantly, the Agriculture Committee said no, we cannot do that, we must be responsible. The Rules Committee agreed, and the leadership of this House said no, inflict the pain and the pain will bring results.

I think it will anger the American public and it should anger the American public to think that those people that they elect and send to Washington and pay a pretty darned good wage spend more time on recesses and vacations than they do working here at a time when we have a very specific charge and a very clear responsibility. We abrogated that today, and we are going to continue to do it. As my colleague from Pennsylvania said, no work on Friday. Well, a lot of men and women in this country have to work on Friday. But this House will not.

No work on Monday. There are millions of Americans around this country that if they do not show up to work on Monday, they get fired. But we will not show up to work on Monday.

Yet our people are crying out, crying out for responsible decisionmaking processes, and no, we are not going to do that. We are going to let a process take place that is in part irresponsible, but it clearly becomes responsible if this House abrogates its responsibility.

That is what I believe we have heard in the last hour.

Yesterday we had a unique opportunity to debate a piece of legislation that does not even belong in this House. For us to talk about the treaty-making process when it is not constitutionally our responsibility, but the responsibility of the body on the other side of the rotunda, yet we spend hours here flexing our political tongues, all for the purpose of posturing, to try to create some image or some idea. It is not even our responsibility. Our responsibility is primarily the fiscal responsibility of Government. But no, we had to get involved in nuclear proliferation and treaties and all of that that do not mean a great deal, except that we can go home and talk about them.

Well, I hope there are a few people that go home this weekend and will say, yes, we talked about treaties, but that is not our responsibility. But we did not talk about the budget problems and we did not talk about fiscal responsibility and that is our responsibility. We chose to run from it.

I appreciate my colleague from Pennsylvania yielding, but we have a decision to make and we walked away from that decision.

Mr. WALKER. I thank the gentleman and I would agree with the gentleman that there were a lot of Members of this body who were prepared to stay here all night, if we had to, to do the things what we regarded as responsible, in order to implement Gramm-Rudman in a proper way. There are people who are prepared to be here tomorrow and legislate. There are people who are prepared to come back Monday to legislate if that is what we are going to do.

But the fact is that is not what this body is doing at the present time. We spent the month of February not legislating so that we could come up and then say that the legislation was being brought to the floor at 5 minutes of midnight and that was unacceptable.

Mr. LOWRY of Washington. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am glad to yield to the gentleman from Washington and I welcome him to this side of the aisle. We would be pleased if he wanted to make that a permanent arrangement.

Mr. LOWRY of Washington. I am not sure that politics would be able to stand that, but I thank my friend from Pennsylvania for yielding.

I do not really agree with some of the description of what went on here today altogether. I think the leadership on the majority side was for this bill coming up, and I think all along here, they were trying to work a compromise, to get those of us that were here to object, to get us not to object. I mean, that is what was happening.

So the reason this legislation is not up is not, in my opinion, because the leadership did not want it up. It was because I objected. I mean, it is not here because of that.

Mr. WALKER. If I can reclaim my time, the point we are making is that the bill, H.R. 4188, which was the originally scheduled bill, would not have been prevented from coming up by a mere objection. You would have had to have voted against the rule and you would have to have voted against the bill, but we would have had the debate and the discussion.

I personally am not in favor of that bill. I am personally going to vote "no." But it seems to me that the legislative process should have been allowed to go forward. We should have had this debate in the context of a real bill.

All we are saying is it was your leadership that made the determination to pull that bill. Now maybe it was because they were feeling heat from your side. But then that is largely a political decision made and it is not the decision that we think is in the best interest of implementing Gramm-Rudman in a responsible and a reasonable way.

I am glad to continue to yield to the gentleman from Washington.

Mr. LOWRY of Washington. I thank the gentleman again for yielding. Yes, I would assume that that action happened because of the arguments made by some of us this morning against the bill coming up, and I specifically argued very strenuously against this bill coming up just exactly the way I explained it a half hour ago when we were going through that debate, which was that previously I wanted to be able to have flexibility within the numbers for adjustments made in other areas and I used as an example compensatory education and I would have preferred to have not had to have that 4.3 but to find the numbers within education on the domestic side to do that. And I got nowhere on that.

So then here we came along with the first actual change in Gramm-Rudman. Now the numbers were the same, but it was a change in Gramm-Rudman. So what is the first thing that comes along here? It is the dairy bill. So anyway, that was the argument that was made, and there were many of us on my side of the aisle that made that argument to our leadership and said we do not like that.

Mr. WALKER. If I can reclaim my time, first of all, there are some of us that contend that was not the first one, that we allowed the veterans bill to go through earlier this week, which was said by many people to be a technical change. But nevertheless, it was a modification in Gramm-Rudman.

Mr. LOWRY of Washington. Right.

Mr. WALKER. The thing that strikes me as a little bit odd is the point that I have been raising out here. I offered an amendment that gave you the chance to have the flexibility that you determined, and it would have been at the beginning of the month when, in fact, it would have been real, when the committees would have had time to do the work, and then get us down here to this last week when we could have been doing some legislating out here in education, in agriculture, in housing, in all of these things that people raised as issues today. We could have been out here doing that this week. But, in fact, that amendment was turned down flat, and so we suspect that that was not wholly without plan too. You know, in no case was there the determination by the majority to do the responsible thing about implementation of Gramm-Rudman. That is really what we are complaining about.

Mr. LOWRY of Washington. Of course, I think Gramm-Rudman is just not responsible. And I voted against it. I argued against it, and if I could kill it today, I would kill it today. I mean, I want to do that, but that is not a secret.

I do not remember, and I know the gentleman is the kind to correct me, I do not remember the exact substance of the gentleman's amendment he was referring to. It was a recommitment motion to our legislative budget?

Mr. WALKER. The gentleman from Texas was wrong on that point. It was an amendment that was offered to the committee bill that was before us. You remember we had a committee funding bill and we were able to craft a germane amendment to the committee funding bill that instructed the various committees to do the job of allocating the moneys within their committee and come back to the House with a report as to how they would spend the money.

□ 1815

That was an attempt to try to get precisely the process going that the gentleman talks about. I will tell the gentleman, it lost by about a 2-to-1 margin, and that is the reason why we think that there was in fact a fairly strong plan to make certain that the responsible, reasonable thing on Gramm-Rudman never took place in this body.

Mr. LOWRY of Washington. Will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. LOWRY of Washington. Was that the total substance of the amendment; did it not have any cut in it?

Mr. WALKER. No.

Mr. LOWRY of Washington. The gentleman's amendment; that was the total substance of it.

Mr. WALKER. The total substance of the amendment was simply to instruct the committees that they were to take the $11.7 billion that is going to be cut as of March 1 and allocate it in the ways that they regard it as being the responsible way of doing that.

It forced them to determine the priorities; it did not get them off the hook with regard to spending; it made each of the committees in their own areas do the cutting rather than trying to say "Well, you know, we're going to spend the money but take it out of defense." It had all of those things which in fact was not easy. I understand that.

It was an attempt to make certain that the committee sat down and did that job, and that is the amendment that was rejected, and so when we hear the suggestion on the floor that that is the way we should proceed, by a number of gentlemen from your side in the course of the afternoon here, we get a little suspicious that maybe nobody focused very much on that amendment when it was before us, or that there was a conscious attempt to try to hang this pain on the end of the process as of the end of the month.

In either case, as someone concerned about the legislative process around here, that is a concern to me.

Mr. LOWRY of Washington. If the gentleman will yield, I thank you and I want you to know that in my case, I think it was the—did not focus on the amendment. And I suspect I was in a Budget Committee hearing, as a matter of fact, which as you know we have a lot of.

I would like to make another comment, and I do not mean this against my friend from Idaho, who I consider a good friend. I think we do an awful lot of work in this body. I had four hearings today; had them all day yesterday, one of them being a markup. I am on a committee that is dealing with the Outer Continental Shelf problem and oil drilling question in California. We have been putting in a tremendous number of hours here.

I would not want a misconception to be put over because of the fact that we will not be voting that many times; that that means that the Members of this body are not working very hard because every Member of this body I know puts in an awful lot of time.

Mr. WALKER. The gentleman from Idaho can defend his own words. I do not believe he is here right now, but I think the point that he was making was this:

Under Gramm-Rudman, we were given a 30-day period to legislate the changes that would be necessary in order to have an implementation that did not involve sequestration on March 1.

I think what the gentleman was saying was, given that timeframe, we took several days of recess; we had at least 1 week where there was only one vote; the legislative schedule this week as the gentleman from Idaho pointed out, included basically taking up a bill on nuclear proliferation and we come up to the end of the week and we were prepared to quit here at about 2 o'clock this afternoon, before all of this hassle came up. We are not going to have any session tomorrow.

The gentleman from Idaho was simply saying, we had some responsibilities assigned to us under law that we chose not to take. The working people of this country do not have that option. The working people of this country, when they have an assigned responsibility in their job have to show up to do it.

I think what the gentleman was saying is, "We're not going to show up tomorrow to do it," and that in fact is something that we can be criticized for, I think.

Mr. LOWRY of Washington. Will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. LOWRY of Washington. I will be here; I will be here to object if they try to bring the dairy bill back in.

Mr. WALKER. The gentleman will be doing his job as he sees it.

Mr. LOWRY of Washington. I mean, we can differ on what it is, but since there has been the 4.3-percent cut in a lot of programs that I care a lot about, and I know other Members of this body care a lot about some of those, and so on, and are going to continue to try to work to make this a better process.

I would like to say during the recess, I was trying to figure here, I think I worked every day, including Sunday; and worked real hard every day on the job. I assume the gentleman did, too.

Mr. WALKER. I think that most Members of Congress in terms of their personal schedule put in 70, 80, 90 hours a week. But that is really not the question here. If we do not focus our work in ways that produces the product that the American people need done at the time they need it done, it does not matter how many hours we are individually putting in; we will have failed.

From our perception, in this month, we have failed and we have failed miserably. In large part because we geared a schedule in such a way that we assured that we never took up the thing that was our basic responsibility to do for the month.

Now we come down to the end of the month, and we are not even going to be in session tomorrow with any legislative business before us, because we are not prepared to bring up these items out of the committee, because we turned that down as a process at the beginning of the month.

Mr. LOWRY of Washington. We will be working hard on our job, though. For instance, the Budget Committee, which is our responsibility, we are working real hard. I feel confident that we are going to hit that 144 target; I really do think we are going to see that.

We are going to try to do it. We are trying very hard to do it by the target dates also within the Gramm-Rudman legislation.

Mr. WALKER. I say to the gentleman, that is fine for next year, but we have responsibilities this year.

Mr. LOWRY of Washington. That is right. That is why I objected to this debate.

Mr. WALKER. Well, the gentleman objected, though, to trying to gear the process in a way that met the mandates of Gramm-Rudman in a little different way; and because he did not agree that we ought to do it in only this one area.

I say to the gentleman I do not think it ought to be done in only one area, too. That is the reason why the amendment was out here at the beginning of the month to suggest that all areas ought to do it. Everybody ought to take that option.

It was the proper step to take, in my opinion, at that point. But the fact is, we chose not to do it, and we instead chose to do everything but carry forth our responsibilities that are assigned to us under Gramm-Rudman.

Mr. LOWRY of Washington. Will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. LOWRY of Washington. I compliment the gentleman for that amendment. I compliment him as he described it.

Mr. WALKER. I wish you would have voted for it.

Mr. LOWRY of Washington. I do compliment the gentleman for that. I do not compliment him for voting for Gramm-Rudman, which I think is a mindless giving away of our responsibility; but that is a difference of our opinion of the approach on that.

Mr. WALKER. Let me say to the gentleman, it is only a mindless giving away of our responsibility if we let it be a mindless giving away of our responsibility.

If we do what we are supposed to do, and this month has been a miserable example of that, but if we do what we are supposed to do, we don't give away

one iota of responsibility. We take the responsibility, and the sequestration provisions of Gramm-Rudman never take effect. That is what we ought to be doing.

Mr. LOWRY of Washington. Will the gentleman yield?

Mr. WALKER. I yield to the gentleman.

Mr. LOWRY of Washington. Because of the impossible job of projecting growth, interest rates, unemployment, and the economic factors that so much affect the deficit, just as Paul Volcker confirmed yesterday; which was, it is impossible or what he called "imprecise art" of projection.

We absolutely can, and I think will do our job. We will do our job. We will pass a budget, I think, using honest projections; but if we are off 1 percent on the projection of the GNP, we can miss the target and sequestering will come in to effect.

As the gentleman well knows, just last quarter there was a projection that the growth would be in the 5 to 6 percent range, and come in at 3.8 percent under that. We were 3.8 percent off of the growth for that quarter.

So that is a real problem that we are going to have to be dealing with, or we can absolutely do our job; we can stand right up, make the tough decision to do our job, and still have sequestering come in, even though we had.

Mr. WALKER. Let me say to the gentleman, though, we still do not have to abdicate our responsibility. When sequestration takes place, the President announces a sequestration, and we have 30 days in which we can make other decisions. We can still carry out our obligations even after sequestration order is issued.

So my point to that is, that that is precisely us taking our responsibility. The gentleman is right, that if we miss our targets, we may in fact find ourselves with a need to do more than we anticipated having to do. But it does not mean that we abdicate our responsibility. Those automatic cuts never have to take place if we do our job right.

We, this month, have failed to do that.

Mr. LOWRY of Washington. Will the gentleman yield?

Mr. WALKER. I will be glad to yield to the gentleman.

Mr. LOWRY of Washington. But only within that very small piece of the pie. That problem is, of course, with Gramm-Rudman, were we to step forward and do what the gentleman's amendment was talking about, we should have been doing this time, and then put ourselves in that position in September.

Of course the problem is we are dealing with that small part of the pie which is estimated to be 28 percent. That still is where all of the burden of that fact that there was, of the growth projections being wrong, and that is why it would be very good to be able to put that into everything. Everything on the table.

Mr. WALKER. The gentleman is correct.

He may remember that most of us who favor Gramm-Rudman as a process, did not agree with exempting a lot of the programs that mainly the Members of the majority party insisted be put in as exemptions before they would vote for the legislation.

So from my standpoint, there are many portions of the bill or many parts of the Government that I would like to see back on the table. I do not think Social Security should be on the table; I do not think that we can default on our payments on the national debt, but beyond that, it seems to me that most everything else ought to be out on the table.

□ 1855

And we were prevented from doing that by many people who ended up voting against the legislation. One has to then interpret that, that maybe there was an attempt to sabotage the legislation by including all those exemptions that therefore inflict more pain on those who were not exempted. That is this gentleman's interpretation of what took place.

I yield to the gentleman from Washington.

Mr. LOWRY of Washington. Why does the gentleman think that Social Security should not be on the table?

Mr. WALKER. Because in large part we already have that on a pay-as-you-go basis. In 1983 we created in the trust fund a means to raise taxes every time we raise the COLA. So we have put that on a pay-as-you-go basis and we are raising taxes in order to pay for the money that is in that trust fund. I do not think those trust fund moneys ought to be applied against the general revenues of the Federal Government.

Plus the fact that we have covered that on a pay-as-you-go basis and I think that is the responsible action. There is no need to take that particular aspect then of our Government and stick it over into a process that I think would compromise what we decided to do with Social Security in 1983, which I voted for, I will tell the gentleman.

Mr. LOWRY of Washington. Does that apply to the other trust funds?

Mr. WALKER. No; because in most of the other trust funds we have not necessarily put them on a pay-as-you-go basis.

Mr. LOWRY of Washington. Many of them are. The gentleman's committee that the gentleman works with they have a lot of trust funds that do not have the same definition within it as the Social Security which the gentleman referred to, but as a matter of fact the financing does. Anyhow, I thank the gentleman.

Mr. WALKER. I thank the gentleman for his contribution. It has been a useful discussion. I have some more notes here, but I do not think it is anything of great importance to the Nation. The Speaker has been most patient.

Mr. Speaker, I yield back the balance of my time.

BLACK HISTORY MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas [Mr. ROBINSON] is recognized for 5 minutes.

Mr. ROBINSON. Mr. Speaker, as Black History Month 1986 draws to a close, it is most fitting that all Americans, particularly those of us from the South, take a few moments to reflect upon our shared culture and heritage, especially the significant role that blacks have played in the development of the country and the South.

I want to share with Members of the House the fantastic research project going on in my home State of Arkansas. This effort, called Persistence of the Spirit, reveals for the first time the part played by black Arkansans in the 300 years of the State's history. During the celebration of Arkansas' sequicentennial year of statehood this special project will include a touring photograhic exhibit, accompanying historical pamphlets and free public lectures.

With funding from the Arkansas Endowment for the Humanities, the National Endowment for the Humanities and leading Arkansas corporate citizens, the project is under the direction of Ken Hubbell. Already Persistence of the Spirit has uncovered hundreds of stories which otherwise might never have been widely known. One such story was discovered and written by Tom Dillard, a historian and member of the research team about Mufflin W. Gibbs. The text of the story follows:

M. W. GIBBS SUCCESSFUL IN MANY CAREERS

When slavery ended after the Civil War, black Arkansans were able to turn their attention to business activity. Most blacks, like most whites, made their living as small farmers or as farm workers. However, a surprising number of blacks were able to enter the business world. Mufflin Wistar Gibbs of Little Rock was one of the more successful.

Born in Philadelphia, Pennsylvania, in 1823, Gibbs jointed the California gold rush in 1850 and he became a successful merchant. Later, he moved to Victoria, Canada, where he ran a large store and helped open a coal mine.

In 1871 Gibbs moved to Little Rock where he soon established himself as a lawyer and politician. In November, 1873, Gibbs was elected Little Rock Police Judge, the first black man to win a city judgeship in American history.

When he was not involved in politics, Gibbs occupied himself with business activity. He was especially interested in buying land and his law firm doubled as real estate agency. He often urged his fellow blacks to buy land that would bring economic independence.

The years after the Civil War were times of great economic and industrial expansion in America, ranging from railroad construction to the formation of giant insurance companies.

Gibbs invested in a large number of business ventures, ranging from the Arkansas Anthracite Coal Company to the Little Rock electric power plant. In 1903, he organized the Capital City Savings Bank and later the People's Mutual Aid Association, a health insurance company. In 1907 a nationwide economic "panic" occurred and the Gibbs' bank was closed.

Despite the failure of his bank, Gibbs was still a wealthy man. He shared his resources with the less fortunate, including a donation to establish the M.W. Gibbs Old Ladies Home, a rest home for poor elderly black women.

When he died in 1915, Gibbs was mourned by both black and white. He had shown the black Arkansans could play an important role in the business life of our state.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. KLECZKA] is recognized for 5 minutes.

Mr. KLECZKA. Mr. Speaker, I am today introducing, along with 71 other Members of this House, a resolution of disapproval of the President's deferral of spending of $500 million in funds already appropriated for this year's Community Development Block Grant Program.

The numbers tell the story as to why this deferral should be disapproved.

Let us use the city of Milwaukee as an example. In fiscal 1985, the CDBG allocation for the city was $17.7 million.

The budget Congress adopted for this fiscal year required a 10-percent cut in CDBG funds. In addition, the Gramm-Rudman automatic cuts scheduled to go into effect March 1 require an additional reduction of 4.3 percent.

Milwaukee, as did other cities, anticipated these reductions and has been ready to operate with a reduced allocation of $15.3 million.

What the city is not willing to accept, nor should it have to accept, is the President's deferral of $500 million in fiacal 1986 funds.

The effect of this deferral would be to reduce the Milwaukee CDBG allocation from $17.7 million last year to $12.4 million this year.

A similar cut can be expected for all cities which receive CDBG funds.

We can block the block grant deferral. To do so, both Houses of the Congress must vote a resolution of disapproval.

I urge my colleagues to join me in sponsoring this resolution.

At this point, I would like to include in the RECORD a chart which compares the amounts in CDBG funds selected Wisconsin cities can expect this year to the amounts received last year if the President's deferral is allowed to stand.

I am also including for the RECORD an article from a recent issue of the National League of Cities newspapers which describes the successes of the Community Development Block Grant Program.

The material follows:

SELECTED WISCONSIN CITIES: CDBG ALLOCATION AFTER DEFERRAL

	1985 CDBG allocation	Fiscal year 1986 after deferral
Beloit	$642,000	$464,360
Green Bay	962,000	673,040
Janesville	532,000	371,300
Kenosha	1,050,000	768,920
Madison	1,975,000	1,369,580
Neenah	223,000	156,040
Oshkosh	886,000	632,620
Racine	1,904,000	1,356,420
Superior	902,000	649,540
Wasau	636,000	489,740
West Allis	1,231,000	844,120
Milwaukee	17,700,000	12,439,000

[From the Nation's Cities Weekly, Feb. 24, 1986]

CDBG: A SHINING PAST—A CLOUDED FUTURE

(By Bill McCarthy)

From Eastport, Maine to Long Beach, California, from Duluth, Minnesota to Brownsville, Texas, and in thousands of communities in between, one program of federal government assistance has made a world of difference in how downtowns, residential neighborhoods and local economies look today.

The program? The Community Development Block Grant program, known far and wide in cities as "CDBG".

A BRIEF HISTORY

Authorized in 1974, during the administration of President Gerald R. Ford, the CDBG program replaced a number of individual or "categorical" federal assistance programs to cities, the Model Cities Program and Urban Renewal among the major ones. In consolidating these programs into a single block grant program, the U.S. Department of Housing and Urban Development (HUD) sought to focus federal aid to cities more coherently.

Perhaps the single biggest change to result from the creation of the block grant program was that cities themselves were given the role of determining, within guidelines, what local priorities would be and, thus, how federal funds would ultimately be spent.

Pursuant to an application process developed by HUD—one which mandated public hearings to elicit neighborhood input—local communities generate proposals for spending CDBG money on a variety of eligible projects.

HUD funding is provided to metropolitan areas and urban counties (pop. 50,000 and above) on an entitlement basis, with individual allocations determined by a formula of poverty, population, overcrowded housing, growth lag and age of housing stock factors. Seventy percent of CDBG funds are currently distributed among entitlement areas.

For small cities, CDBG was distributed, until 1983, on a competitive basis, utilizing the remaining thirty percent of the total block grants. Prior to that year, the "Small Cities" Program was administered directly by HUD.

With the adoption of enabling legislation, 47 states elected to administer their own Small Cities program, employing state-adopted selection systems and priorities (HUD continues to administer the Small Cities CD programs in Hawaii, Maryland and New York).

ELIGIBLE ACTIVITIES UNDER CDBG

A major reason for the widespread success of the Community Development Block grant is the range and diversity of activities which cities can undertake. Eligible activities include:

Construction of public facilities;

Various types of housing rehabilitation;

Land acquisition;

Site clearance;

Provision of public services;

Completion of categorical grant programs; and

Economic development activities.

In planning for and utilizing CDBG funds, grant recipients must ensure that no less than 51 percent of the funds must be used for activities which benefit low- and moderate-income persons, over a period specified by the grantee, but not to exceed three years."

While disputes have surfaced in some communities over this "principal benefit" rule, particularly with respect to certain public facilities and economic development projects, overall the CDBG program claims that 87 percent of funds benefit low- and moderate-income persons (according to grantees reports).

Monitoring of the ways in which CDBG entitlement communities have allocated funds has shown increasingly larger spending in two activity categories: housing rehabilitation, totalling 36 percent of funds, and economic development, totalling 13 percent. Economic development projects have increased significantly in recent program years, in part due to cutbacks and terminations of other sources of government assistance. Public facilities construction and site clearance activities, on the other hand, are declining as local activity priorities.

A LEGACY OF LOCAL SUCCESS

Since its beginning in 1974, the Community Development Block Grants Program has achieved widespread success throughout the nation. Cities of all sizes, in all regions of the country, and with different types of needs and problems, have utilized CDBG funds to improve neighborhoods, downtowns and the overall quality of community life.

What follows are capsulized summaries of some local accomplishments involving CDBG funds:

Long Beach, California

With trends in suburbanization causing deterioration of its downtown economy, the City of Long Beach sought to counter the trends by constructing a large, suburban-type shopping mall in the heart of its central business district. Using $5.2 million in CDBG funds for land acquisition and payment of relocation costs, in conjunction with a public bond issue and private development financing, the Long Beach Plaza became a $145.7 million project. Opened in 1982, the Plaza itself provides 1,200 jobs and has saved another 600, while generating $600,000 a year in tax revenues.

The spinoff effects of this venture have been dramatic. In less than five years, private investment equaling $1.2 billion and generating 6,000 new jobs has taken place. And the Long Beach CD Department is currently at work on related downtown development projects totalling nearly $2 billion, including more than 1,500 residential units for moderate-income households.

It is interesting to note that the economic revitalization of Long Beach was cited by President Reagan himself, in a speech before the National League of Cities membership at the 1984 Congressional-City Conference, as an example of public and private resources working together successfully.

White Plains, New York

Improvement of this city's housing stock has been a major priority of its local officials since the late 1970's. By 1984, 1,378 units of housing had been rehabilitated and another 102 units newly constructed through the efforts of the White Plains Neighborhood Rehabilitation Project.

The key to White Plains' success has been its ability to generate financing from a local lending institution. This was accomplished with the deposit of $1.3 million in CDBG funds under regulations for a Lump Sum Drawdown, with about $90,000 a year accruing in interest. With the city responsible for pre-screening and preparation of loan applications, the bank agreed to financing arrangements for both single-family and multiple-family loans.

The result of the program, which also involved rehab assistance by the city and no tax reassessments after completion of work, has been a 5 to 1 ratio of private dollars ($10.5 million) to public investment ($2 million) with participation levels in some of targeted neighborhoods.

Birmingham, Alabama

Along with improvements in public amenities, this commercial area development has generated the new construction of six other buildings and improvements in 40 others. In all, the $5 million in public funds have generated $9 million in private investment, with increased employment and local tax revenues and reduced crime the ultimate payoffs.

The Neighborhood Commercial Revitalization program is now being expanded into five other neighborhoods.

Omaha, Nebraska

Assisting 20 low- and moderate-income families to become homeowners in Omaha, Nebraska has been the achievement, thus far, of the city's Urban Homestead Program. CDBG funds have been the primary ingredient in the success of the Program, with $432,000 invested in acquisition and rehabilitation of previously vacant properties. CD funds have provided low-interest loans for necessary move-in repairs, while the homesteaders provide other sources of funds to complete additional repairs over a three-year period.

In addition to conserving some of Omaha's private housing stock and providing homeownership opportunities for low- and moderate-income families, the Urban Homestead Program has also placed 28 parcels of real estate back on the city's tax rolls.

Priest River, Idaho

The infusion of CDBG funds into small communities can often mean the difference between ecomomic life and death. Amidst the decline of the timber industry in Idaho, the community of Priest River undertook to attract a high-tech employer back in 1979. Having acquired a site and having located a prospective computer component manufacturer, the problem confronting the local development corporation was how to finance improvements in the local water supply and a waste treatment plant to accommodate the companies needs.

The solution to Priest River's needs was a $342,000 CDBG grant from the state of Idaho for infrastructure development. The CD funds secured the deal with the company, which, in turn, invested $1.4 million to launch its facility.

As a result of community initiative and a critical infusion of CDBG funds, Priest River's new employer will eventually supply 20 percent of the community's employment and much needed dollars in the form of local tax revenues.

The list of local success stories involving CDBG funds goes on and on. The five stories recounted here depict communities of all types who have used the block grants for innovative and much-needed purposes. They also point to the critical role that CDBG money has played in leveraging and generating much larger amounts of funding from other sources, particularly private sources.

The many payoffs, including employment opportunities, quality housing, local tax revenues and, perhaps most important, enhanced quality of community life, would seem to augur well for CDBG's continuation and expansion.

Such, however, is not the case.

CDBG STATUS AND PROSPECTS

Despite its many successes, the Community Development Block Grants Program has been targeted for cuts and eventual termination since the Reagan administration took office in 1981. For example, the CDBG appropriation for FY86 is $3.12 billion, a cut of 10 percent from the FY85 level of $3.472 billion.

In his budget proposal for FY 87, the President has proposed deferring an additional $500 million from the FY86 appropriation, reducing the total to $2.6 billion. This same amount ($2.6 billion) is proposed for FY87.

Interestingly, the appropriations levels suggested by the Reagan Administration for FY86 and FY87 are only slightly higher than the $2.4 billion level at which CDBG was funded in 1975. Yet, in 1986, there are 201 more entitlement grantees than there were in 1975.

And despite this increase in entitlement grantees, the President proposes to reduce the entitlement portion of CDBG funds from 70 percent to 65 percent, and increasing the small cities share from 30 percent to 35 percent—although it also forces small cities into competition with each other as well as with larger cities. (This proposal results from the Administration's plan to eliminate the Farmers Home Administration, which has provided aid to small communities and rural areas in the past).

Thus, despite its record of successes and contributions to communities across the country, the outlook for the Community Development Block Grants Program is one of reduced and more dispersed resources in the future. In addition, the program faces potential termination if it is not reauthorized beyond Sept. 30, 1986.

ANNUAL REPORT ON THE TRADE AGREEMENTS PROGRAM, 1984-85—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means:

(For message see proceedings of the Senate of today, Thursday, February 27, 1986.)

MOTION TO ADJOURN

Mr. LOWRY of Washington. Mr. Speaker, I move that the House do now adjourn.

The question was taken; and on a division (demanded by Mr. JEFFORDS) there were—yeas 1, nays 2.

So the motion was rejected.

The SPEAKER pro tempore. Does any Member seek recognition.

Mr. LOWRY of Washington. Mr. Speaker, is the gentleman sure he was able to count correctly? It was a pretty hasty count, Mr. Speaker.

The SPEAKER pro tempore. I assure the gentleman from Washington the Speaker counted everyone he could count.

CHANGING THE INITIALS TO BE USED FOR THE ABBREVIATION OF THE WORD "JAPANESE"

(Mr. LOWRY of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOWRY of Washington. Mr. Speaker, frankly I have talked so much in the last couple of hours that I do not have anything more to say. But I suppose we have to have something going on at all times here.

I would like to address the House for 1 minute to inform the House of a resolution I introduced on February 19 joined by many of the cosponsors in this House. The resolution called for the initials "JPN" to be used for the abbreviation of "Japanese" as opposed to the initials "JAP" which are often used.

I would hope that this House would find itself ready to move on this resolution in the near future.

The use of the letters "JAP" as an abbreviation for "Japanese" to many of our citizens in this country and our friends in this country and our friends around the world is an offensive abbreviation. I think that the House will agree with me in changing that to "JPN."

Mr. JEFFORDS. Mr. Speaker, will the gentleman yield?

Mr. LOWRY of Washington. I yield to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding, as well as for buying the time.

Hopefully the Senate action which I presume they will make on the important agricultural legislation will wind its way over to the House where we can take appropriate action on it. I think it has been pointed out earlier that it is really I think extremely poor on the part of the House to try to adjourn today while we have such important legislation pending and the Senate is working diligently to reconcile the differences in that body on such matters which I know the gentleman from Washington is opposed to

but which will affect and have a great deal of impact on dairy farmers.

I understand they are working on insuring that the CCC has sufficient money in order to keep all of the agricultural programs going and I am hopeful that as time passes here tonight—and I intend to stay here as long as I can and will keep the House in session until such time as that legislation is able to get over here and we can act on it—I do not intend to embarrass anybody by calling for a rollcall, but until such time as the other side of the aisle can find sufficient people to wander over here to perhaps outvote those of us who are still insisting on our position, I intend to do whatever is appropriate. I would like to tell the gentleman that notwithstanding that we stand on the opposite sides of this, I understand his position on that, wrong as it may be, that I do appreciate his sharing this Hall with me today and the ability to be able to try as long as I can to hold this body in session until such time as maybe the other Members of the majority will be able to come over and rescue the gentleman from having to exercise his tongue for as long as he has had to.

Mr. LOWRY of Washington. I thank the gentleman for his comments. Obviously it will take a large number of people to get over here to win by division. How many hours does it take?

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YATES (at the request of Mr. WRIGHT), for today, on account of illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BATEMAN) to revise and extend their remarks and include extraneous material:)

Mr. GUNDERSON, for 60 minutes, today.

Mr. JEFFORDS, for 60 minutes, today.

Mr. BROYHILL, for 60 minutes, today.

Mr. WALKER, for 60 minutes, today.

(The following Members (at the request of Mr. SWIFT) to revise and extend their remarks and include extraneous material:)

Mr. WRIGHT, for 5 minutes, today.

Mr. ALEXANDER, for 5 minutes, today.

Mr. KLECZKA, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. HAMILTON, for 5 minutes, today.

Mr. UDALL, for 15 minutes, today.

Mr. CROCKETT, for 20 minutes, today.

Mr. DYMALLY, for 60 minutes, on March 3.

Mr. DASCHLE, for 60 minutes, on March 4.

Mr. LELAND, for 60 minutes, on March 5.

(The following Member (at the request of Mr. JEFFORDS) to revise and extend his remarks and include extraneous material:)

Mr. BEREUTER, for 60 minutes, today.

(The following Member (at the request of Mr. MILLER of California) to revise and extend his remarks and include extraneous material:)

Mr. ROBINSON, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. BATEMAN) and to include extraneous matter:)

Mr. DEWINE.

Mr. SCHAEFER.

Mr. MCCOLLUM.

Mr. MADIGAN.

Mr. KINDNESS.

Mr. LAGOMARSINO.

Mr. O'BRIEN.

Mr. RINALDO.

(The following Members (at the request of Mr. SWIFT) and to include extraneous matter:)

Mr. BARNES in two instances.

Mr. MARKEY.

Mrs. KENNELLY.

Mr. DORGAN of North Dakota in two instances.

Mr. HOWARD.

Ms. OAKAR.

Mr. WIRTH.

Mr. ADDABBO.

Mr. WYDEN in two instances.

Mr. TALLON in two instances.

Mr. GUARINI.

Mr. BONIOR of Michigan.

Mr. EDWARDS of California.

BILL PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, a bill of the House of the following title:

On February 27, 1986:

H.R. 4130. An act to establish, for the purpose of implementing any order issued by the President for fiscal year 1986 under any law providing for sequestration of new loan guarantee commitments, a guaranteed loan limitation amount applicable to chapter 37 of title 38, United States Code, for fiscal year 1986.

ADJOURNMENT

Mr. FOLEY. Mr. Speaker, I move that the House do now adjourn.

The question was taken; and on a division (demanded by Mr. JEFFORDS) there were—yeas 2, nays 2.

The SPEAKER pro tempore. A tie; the Chair votes "aye."

So the motion was agreed to; accordingly (at 6 o'clock and 35 minutes p.m.), the House adjourned until tomorrow, Friday, February 28, 1986, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2850. A letter from the Military Executive, Reserve Forces Policy Board, Department of Defense, transmitting the Board's fiscal year 1985 annual report, pursuant to 10 U.S.C. 133(c); to the Committee on Armed Services.

2851. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 6-138, "Nursing Home and Community Residence Facility Residents' Protections Act of 1985," and report, pursuant to Public Law 93-198, section 602(c); to the Committee on the District of Columbia.

2852. A letter from the Secretary of Education, transmitting notice of proposed "Final Funding Priorities—Innovative Programs for Severely Handicapped Childrens Program," pursuant to GEPA, section 431(d)(1) (88 Stat. 567; 90 Stat. 2231; 95 Stat. 453); to the Committee on Education and Labor.

2853. A letter from the Department of Education, transmitting a draft of proposed legislation to improve the quality of teaching in American secondary schools and enhance the competence of American secondary students and thereby strengthen the economic competitiveness of the United States, and for other purposes; to the Committee on Education and Labor.

2854. A letter from the Administrator, Energy Information Administration, Department of Energy, transmitting a copy of the quarterly coal report, July-September 1985, pursuant to 42 U.S.C. 7277(a); to the Committee on Energy and Commerce.

2855. A letter from the Acting Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting the annual report of the Anti-Terrorism Assistance Program for 1985, pursuant to FAA, section 574(b) (97 Stat. 972); to the Committee on Foreign Affairs.

2856. A letter from the Acting Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a copy of the Secretary of State's determination to authorize continuation of certain assistance to Haiti and a statement of justification for this determination, pursuant to Public Law 99-83, section 705(c) (99 Stat. 242); to the Committee on Foreign Affairs.

2857. A letter from the Director, Defense Security Assistance Agency, transmitting a report on NATO standardization agreements for cooperative furnishing of training, or similar agreements with Japan, pursuant to 22 U.S.C. 2761(g); to the Committee on Foreign Affairs.

2858. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, Department of State, transmitting a report on politicial contributions for Ronald S. Lauder, Ambassador-designate to Austria, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

2859. A letter from the Chairman, Commission on Security and Cooperation in Europe, transmitting the 1985 annual report of the Commission's activities, pursuant to Public Law 94-304, section 6; to the Committee on Foreign Affairs.

2860. A letter from the Acting Administrator, Health Care Financing Administration, Department of Health and Human Services, transmitting notification of a proposed new system of records, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

2861. A letter from the Acting Archivist, National Archives, transmitting the proposed final set of regulations governing access to the Nixon Presidential materials, pursuant to Public Law 93-526, section 107; to the Committee on Government Operations.

2862. A letter from the Secretaries of Agriculture and the Interior, transmitting a draft of proposed legislation to enhance effective administration of certain Federal Lands and for other purposes; jointly, to the Committees on Agriculture and Interior and Insular Affairs.

2863. A letter from the Deputy Assistant Secretary of Defense for Administration, Department of Defense, transmitting a report on NATO acqusition and cross-servicing agreements, pursuant to 10 U.S.C. 2330; jointly, to the Committees on Armed Services and Foreign Affairs.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. COELHO:

H.R. 4265. A bill to suspend for 5 days the application of the sequestration order for fiscal year 1986 to the Dairy Price Support Program; to the Committee on Agriculture.

By Mr. ALEXANDER:

H.R. 4266. A bill entitled "Farm Foreclosure Relief Act"; to the Committee on Agriculture.

By Mr. BEDELL (for himself, Mr. DASCHLE, Mr. VOLKMER, Mr. ENGLISH, Mr. PENNY, Mr. GLICKMAN, Mr. EVANS of Illinois, Mr. DORGAN of North Dakota, Mr. SYNAR, Mr. MCCURDY, Mr. WILLIAMS, Mr. SIKORSKI, Mr. WATKINS, Mr. JONES of Oklahoma, Mr. KASTENMEIER, and Mr. ALEXANDER):

H.R. 4267. A bill to amend the Agricultural Act of 1949 to provide increased income to producers of wheat and feed grains for the 1986 through 1990 crops of such commodities, to amend the Consolidated Farm and Rural Development Act to provide by law for a debt adjustment program and to require the interest rate for buy-down loans to be not greater than the cost of money to the lending institution, and for other purposes; to the Committee on Agriculture.

By Mr. BROWN of Colorado (for himself, Mr. STRANG, Mr. CHENEY, Mr. KRAMER, Mrs. SCHROEDER, and Mr. SCHAEFER):

H.R. 4268. A bill to recognize the organization known as the Mining Hall of Fame and Museum; to the Committee on the Judiciary.

By Mr. COOPER:

H.R. 4269. A bill to establish labeling requirements for food or drink which are labeled "lite" or "light" or which make similar comparative claims to describe fat, sodium, or calorie content; jointly, to the Committees on Energy and Commerce; Agriculture; and Ways and Means.

By Mr. DYSON:

H.R. 4270. A bill to authorize the 11th Airborne Division Association to establish a memorial in the District of Columbia or its environs; to the Committee on House Administration.

By Mr. EVANS of Illinois:

H.R. 4271. A bill to require the President to direct the Secretary of Defense, the Secretary of Health and Human Services, and the Administrator of Veterans' Affairs to submit to the appropriate committees of Congress a joint report addressing the question of U.S. Government responsibility for providing benefits and services to individuals who served with certain voluntary organizations in support of the Armed Forces in the Republic of Vietnam during the Vietnam era; to the Committee on Armed Services.

H.R. 4272. A bill to amend title XVIII of the Social Security Act to require that Medicare beneficiaries be given a notice of discharge rights at the time of admission to a hospital; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. EVANS of Illinois (for himself and Mr. LEACH of Iowa):

H.R. 4273. A bill to amend title 10, United States Code, to require the Department of Defense to exclude from consideration for contracts those firms in which a hostile foreign government or a covered foreign national owns or controls a significant interest; to the Committee on Armed Services..

By Mr. FEIGHAN:

H.R. 4274. A bill to amend the Housing and Community Development Act of 1974 to permit the use of assistance under the Community Development Block Grant Program for uniform emergency telephone number systems; to the Committee on Banking, Finance and Urban Affairs.

By Mr. GEJDENSON:

H.R. 4275. A bill to amend title IX of the Social Security Act to require peer review organizations to act within 2 days on requests of hospital inpatients for reconsideration of determinations denying payment for continuing care in the hospital; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. HAMILTON (for himself, Mr. STOKES, Mr. BEILENSON, Mr. KASTENMEIER, Mr. ROE, Mr. BROWN of California, Mr. MCHUGH, and Mr. DWYER of New Jersey):

H.R. 4276. A bill to require that any U.S. Government support for military or paramilitary operations in Angola be openly acknowledged and publicly debated; jointly, to the Committees on Foreign Affairs and the Permanent Select Committee on Intelligence.

By Mr. LEVINE of California (for himself and Mr. WAXMAN):

H.R. 4277. A bill to direct the Food and Drug Administration to conduct a study of the health effects of toxic contamination of fish in Santa Monica Bay, CA; to the Committee on Energy and Commerce.

By Mr. LOWERY of California:

H.R. 4278. A bill to amend the Internal Revenue Code of 1954 to deny foreign tax credits attributable to activities conducted in foreign countries which repeatedly provide support for acts of international terrorism; to the Committee on Ways and Means.

By Ms. SNOWE (for herself, Mr. ROYBAL, Mr. LAGOMARSINO, Mr. MRAZEK, Mr. STANGELAND, Mr. WORTLEY, Mrs. BOXER, Mr. BOEHLERT, Mr. WEAVER, Mr. EVANS of Illinois, Mr. SMITH of Florida, Mr. MARTINEZ, Mr. LEHMAN of Florida, Mr. HOWARD, Mr. TOWNS, Mr. SHAW, Mr. SAXTON, Mr. BIAGGI, Mr. MITCHELL, and Mr. RINALDO):

H.R. 4279. A bill to amend title XIX of the Social Security Act to require States to provide for enforcement of the rights of patients in long-term care facilities, and for other purposes; to the Committee on Energy and Commerce.

By Mr. TORRES (for himself and Mr. ST GERMAIN):

H.R. 4280. A bill to amend title 34, United States Code, to establish new recordkeeping and reporting requirements in order to combat money laundering, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. UDALL (for himself and Mr. MCCAIN):

H.R. 4281. A bill to provide for the exchange of certain lands between the Hopi and Navajo Indian Tribes, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. WILLIAMS:

H.R. 4282. A bill to establish a program for the prevention and control of diabetes among native Americans; jointly, to the Committee on Interior and Insular Affairs and Energy and Commerce.

By Mr. WIRTH:

H.R. 4283. A bill to suspend temporarily the duty on d-6-methoxy-oc-methyl-2-naphthaleneacetic acid and its sodium salt; to the Committee on Ways and Means.

By Mr. BIAGGI (for himself and Mr. PEPPER):

H.J. Res. 539. Joint resolution to designate April 1986 as "National Parkinson's Disease Awareness Month"; to the Committee on Post Office and Civil Service.

By Mr. MICHEL (for himself and Mr. MURTHA):

H.J. Res. 540. Joint resolution relating to Central America pursuant to the International Security and Development Cooperation Act of 1985; jointly, to the Committee on Appropriations, Foreign Affairs, Armed Services, and the Permanent Select Committee on Intelligence.

By Mr. KLECZKA (for himself, Mr. MOODY, Mr. MORRISON of Connecticut, Mr. BONKER, Mr. KASTENMEIER, Mr. RUSSO, Mr. MOAKLEY, Mr. ERDREICH, Mr. MILLER of Washington, Mr. WAXMAN, Mr. SWIFT, Mr. RODINO, Mr. FUSTER, Mr. GILMAN, Mr. MARKEY, Mr. BROWN of California, Mr. DICKS, Mr. SAVAGE, Mr. COYNE, Mr. PRICE, Mr. FRANK, Mr. BOSCO, Mr. PEASE, Mr. RAHALL, Mr. TOWNS, Mr. WISE, Mr. VISCLOSKY, Mr. ACKERMAN, Mr. CONYERS, Mr. BUSTAMANTE, Mr. FOGLIETTA, Mr. COLEMAN of Texas, Mr. ADDABBO, Mr. GUARINI, Mr. MATSUI, Mr. BEDELL, Mr. RIDGE, Mr. HAYES, Mr. GARCIA, Mr. ROWLAND of Georgia, Mrs. BURTON of California, Mr. PANETTA, Mr. GRAY of Illinois, Mr. EVANS of Illinois, Mr. ROYBAL, Mr. FISH, Mr. DURBIN, Mr. FORD of Tennessee, Mr. MARTINEZ, Ms. MIKULSKI, Mrs. SCHROEDER, Mrs. LLOYD, Mr. LIPINSKI, Mr. FAZIO, Mr. MITCHELL, Mr. STUDDS, Mr. MAVROULES, Mr. PERKINS, Mr. TRAFICANT, Mr. WHEAT,

Mr. OWENS, Mr. ROSE, Mr. WEISS, Mr. SOLARZ, Mr. MINETA, Mr. DASCHLE, Mr. PEPPER, Mrs. KENNELLY, Mr. MCCLOSKEY, Mr. CROCKETT, Mr. DWYER of New Jersey, and Mr. BRUCE):

H.J. Res. 541. Joint resolution disapproving the proposed deferral of budget authority for the Community Development Block Grant Program; to the Committee on Appropriations.

By Mr. McCOLLUM (for himself, Mr. WOLF, Mr. THOMAS of Georgia, Mr. LUNDINE, Mr. BIAGGI, Mr. SHAW, Mr. RANGEL, Mr. STALLINGS, Mr. IRELAND, Mr. WYDEN, Mr. CROCKETT, Mr. GUARINI, Mr. LAGOMARSINO, Mr. KASTENMEIER, Mr. BUSTAMANTE, Mr. BORSKI, Mr. NIELSON of Utah, Mr. GILMAN, Mr. FEIGHAN, Mr. RALPH M. HALL, Mrs. LONG, Mrs. MARTIN of Illinois, Mr. MARTINEZ, Mr. MATSUI, Mr. MAVROULES, Mr. MICHEL, Mr. MILLER of Ohio, Mr. MOAKLEY, Mr. MOORHEAD, Mr. MURPHY, Mr. NEAL, Mr. OBERSTAR, Mr. O'BRIEN, Mr. OWENS, Mr. PEPPER, Mr. CLINGER, Mr. HERTEL of Michigan, Mr. HUNTER, Mr. HUTTO, Mr. HYDE, Mr. KASICH, Mr. BERMAN, Ms. KAPTUR, Mr. ROE, Mr. BRYANT, Mr. ORTIZ, Mr. VALENTINE, Mr. LIGHTFOOT, Mr. PICKLE, Mr. WATKINS, Mr. VANDER JAGT, Mr. MOODY, Mrs. COLLINS, Mr. EVANS of Illinois, Mr. DASCHLE, Mr. SKELTON, Mr. PASHAYAN, Mr. CARNEY, Mr. CHAPPELL, Mr. MCCAIN, Mr. HAYES, Mr. MARTIN of New York, Mr. DWYER of New Jersey, Mr. LELAND, Mr. NELSON of Florida, Mr. BOLAND, Mr. WORTLEY, Mr. MANTON, Mr. SMITH of Florida, Mr. TOWNS, Mr. DARDEN, Mr. REGULA, Mr. YOUNG of Alaska, Mr. WILSON, Mr. KINDNESS, Mr. FASCELL, Mr. SCHEUER, Mr. TRAFICANT, Mr. BILIRAKIS, Mr. YOUNG of Missouri, Mr. BONER of Tennessee, Mr. HORTON, Mr. STOKES, Mr. LEHMAN of Florida, Mr. STANGELAND, Mr. CARPER, Mr. RAHALL, Mr. COATS, Mr. MRAZEK, Mr. PURSELL, Mr. HUGHES, Mr. BEDELL, Mrs. JOHNSON, Mr. HOWARD, Mrs. BYRON, Ms. MIKULSKI, Mr. DAUB, Mr. ACKERMAN, Mr. YOUNG of Florida, Mr. BATEMAN, Mrs. HOLT, Mr. MCGRATH, Mr. LEHMAN of California, Mr. SISISKY, Mr. BEVILL, Mr. MCHUGH, Mrs. LLOYD, Mr. GUNDERSON, Mr. LANTOS, Mr. DYMALLY, Mr. FROST, Mr. ADDABBO, Mr. SCHUMER, Mr. BURTON of Indiana, Mr. WEBER, Mr. DYSON, Mr. BARNES, Mr. VENTO, Mr. CONTE, Mr. MADIGAN, Mr. KILDEE, Mr. KOLTER, Mr. LAFALCE, Mr. LEWIS of Florida, Mr. LEWIS of California, Mr. DOWNEY of New York, Mr. EDGAR, Mr. ROBERTS, Mr. SHUMWAY, Mr. CHAPPIE, Mr. EVANS of Iowa, Mr. FAZIO, Mr. FISH, Mr. FRENZEL, Mr. FUSTER, Mr. RODINO, Mr. TORRICELLI, Mr. ROTH, Mr. REID, Mr. TRAXLER, Mr. HENRY, Mr. ROYBAL, Mr. NATCHER, and Mr. QUILLEN):

H.J. Res. 542. Joint resolution designating May 1986 as "Older Americans Month"; to the Committee on Post Office and Civil Service.

By Mr. TAUZIN (for himself, Mr. BEVILL, Mr. FLIPPO, Mr. ERDREICH, Mr. SHELBY, Mr. YOUNG of Alaska, Mr. MCCAIN, Mr. UDALL, Mr. STUMP, Mr. KOLBE, Mr. ANTHONY, Mr. CHAPPIE, Mr. MATSUI, Mr. FAZIO, Mr. STARK, Mr. LANTOS, Mr. ZSCHAU, Mr. MINETA, Mr. SHUMWAY, Mr. COELHO, Mr. PANETTA, Mr. PASHAYAN, Mr. LAGOMARSINO, Mr. THOMAS of California, Mr. WAXMAN, Mr. LEVINE of California, Mr. DIXON, Mr. MARTINEZ, Mr. DYMALLY, Mr. ANDERSON, Mr. DORNAN of California, Mr. DANNEMEYER, Mr. LUNGREN, Mrs. KENNELLY, Mr. GEJDENSON, Mr. MORRISON of Connecticut, Mr. MCKINNEY, Mrs. JOHNSON, Mr. HUTTO, Mr. BILIRAKIS, Mr. SMITH of Florida, Mr. GINGRICH, Mr. HEFTEL of Hawaii, Mr. STALLINGS, Mr. SAVAGE, Mr. HYDE, Mrs. COLLINS, Mr. YATES, Mr. PORTER, Mr. GROTBERG, Mr. MADIGAN, Mr. EVANS of Illinois, Mr. DURBIN, Mr. GRAY of Illinois, Mr. SHARP, Mr. COATS, Mr. TAUKE, Mr. EVANS of Iowa, Mr. HUBBARD, Mr. LIVINGSTON, Mrs. BOGGS, Mr. HUCKABY, Mr. ROEMER, Mr. MOORE, Mr. BREAUX, Mrs. BENTLEY, Mrs. HOLT, Mr. CONTE, Mr. BOLAND, Mr. EARLY, Mr. MAVROULES, Mr. MARKEY, Mr. MOAKLEY, Mr. CONYERS, Mr. PURSELL, Mr. WOLPE, Mr. HENRY, Mr. CARR, Mr. TRAXLER, Mr. BONIOR of Michigan, Mr. CROCKETT, Mr. VENTO, Mr. SABO, Mr. SIKORSKI, Mr. WHITTEN, Mr. FRANKLIN, Mr. MONTGOMERY, Mr. DOWDY of Mississippi, Mr. LOTT, Mr. YOUNG of Missouri, Mr. SKELTON, Mr. VOLKMER, Mr. DAUB, Mrs. SMITH of Nebraska, Mr. REID, Mrs. VUCANOVICH, Mr. FLORIO, Mr. HUGHES, Mr. DWYER of New Jersey, Mr. RINALDO, Mr. ROE, Mr. TORRICELLI, Mr. RODINO, Mr. GALLO, Mr. RICHARDSON, Mr. CARNEY, Mr. MRAZEK, Mr. LENT, Mr. MCGRATH, Mr. ADDABBO, Mr. SCHEUER, Mr. MANTON, Mr. OWENS, Mr. GREEN, Mr. RANGEL, Mr. WEISS, Mr. BIAGGI, Mr. DIOGUARDI, Mr. FISH, Mr. SOLOMON, Mr. MARTIN of New York, Mr. WORTLEY, Mr. HORTON, Mr. KEMP, Mr. LUNDINE, Mr. VALENTINE, Mr. NEAL, Mr. HEFNER, Mr. HENDON, Mr. DORGAN of North Dakota, Mr. HALL of Ohio, Mr. LATTA, Mr. MCEWEN, Mr. KINDNESS, Ms. KAPTUR, Mr. MILLER of Ohio, Mr. WYLIE, Mr. APPLEGATE, Ms. OAKAR, Mr. STOKES, Mr. SYNAR, Mr. EDWARDS of Oklahoma, Mr. AUCOIN, Mr. BORSKI, Mr. KOLTER, Mr. KOSTMAYER, Mr. MCDADE, Mr. RITTER, Mr. WALGREN, Mr. MURPHY, Mr. ST GERMAIN, Mr. HARTNETT, Mr. SPENCE, Mr. DERRICK, Mr. CAMPBELL, Mr. SPRATT, Mr. TALLON, Mr. DASCHLE, Mr. QUILLEN, Mrs. LLOYD, Mr. BONER of Tennessee, Mr. SUNDQUIST, Mr. JONES of Tennessee, Mr. CHAPMAN, Mr. WILSON, Mr. HALL OF TEXAS, Mr. BRYANT, Mr. FIELDS, Mr. BROOKS, Mr. PICKLE, Mr. DE LA GARZA, Mr. COLEMAN of Texas, Mr. STENHOLM, Mr. LELAND, Mr. COMBEST, Mr. LOEFFLER, Mr. BUSTAMANTE, Mr. ANDREWS, Mr. ORTIZ, Mr. JEFFORDS, Mr. SISISKY, Mr. DANIEL, Mr. SLAUGHTER, Mr. BOUCHER, Mr. WOLF, Mr. RAHALL, Mr. KLECZKA, Mr. FUSTER, Mr. DE LUGO, Mr. SUNIA, Mr. BROYHILL, Mr. ACKERMAN, Mr. CALLAHAN, Mr. AKAKA, Mr. WYDEN, Mr. TOWNS, Mr. SKEEN, Mr. BLILEY, Mr. BLAZ, Mr. SOLARZ, and Mr. LEVIN of Michigan):

H.J. Res. 543. Joint resolution to designate March 21, 1986, as "National Energy Education Day"; to the Committee on Post Office and Civil Service.

By Mrs. VUCANOVICH (for herself, Mr. HORTON, Mr. SUNIA, Mr. DIXON, Mr. CHAPPELL, Mr. BUSTAMANTE, Mrs. BENTLEY, Mr. MACK, Mr. GINGRICH, Mr. OWENS, Mr. MCEWEN, Mr. DYMALLY, Mr. SCHUMER, Mr. RAHALL, Mr. SABO, Mr. MRAZEK, Mr. HEFTEL of Hawaii, Mr. REID, Mr. HUTTO, Mr. WORTLEY, Mr. GEJDENSON, Mr. STANGELAND, Mr. BATEMAN, Mr. BONER of Tennessee, Mr. DE LUGO, Mr. WOLF, Mr. SHUMWAY, Mr. VENTO, Mr. GUNDERSON, Mr. PASHAYAN, Mr. DWYER of New Jersey, Mr. LAGOMARSINO, Mr. DOWDY of Mississippi, Mrs. BOXER, Mr. TOWNS, Mr. HAYES, Mr. MINETA, Mr. MCGRATH, Mr. HUNTER, Mr. BARNES, Mr. SMITH of Florida, Mr. SISISKY, Mr. CALLAHAN, Mr. WYLIE, and Mr. WEISS):

H.J. Res. 544. Joint resolution to designate May 7, 1986, as "National Barrier Awareness Day"; to the Committee on Post Office and Civil Service.

By Mr. PASHAYAN:

H.J. Res. 545. Joint resolution recognizing Bobby Fisher as the official world chess champion; to the Committee on Post Office and Civil Service.

By Mr. FASCELL:

H. Res. 384. Resolution to certify the contempt report regarding Ralph Bernstein and Joseph Bernstein; considered and agreed to.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

295. By the SPEAKER: Memorial of the Senate of the State of West Virginia, relative to the occupation of Afghanistan; to the Committee on Foreign Affairs.

296. Also, memorial of the Legislature of the State of Idaho, relative to the construction of the superconducting supercollider; to the Committee on Science and Technology.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 97: Mr. SILJANDER, Mr. BROYHILL, and Mr. GROTBERG.

H.R. 147: Mr. JONES of Oklahoma.

H.R. 1345: Mr. GROTBERG, Mr. HUTTO, Mr. BROYHILL, Mr. THOMAS of Georgia, Mr. SILJANDER, Mr. HENDON, and Mr. TALLON.

H.R. 1398: Mrs. SCHROEDER.

H.R. 2739: Mr. FRANK.

H.R. 2902: Mr. AKAKA, Mr. LUJAN, Mr. MOLLOHAN, and Mr. STAGGERS.

H.R. 3024: Mr. DONNELLY, Mr. KANJORSKI, Mr. BEDELL, Mr. DICKS, Mr. WEBER, and Mr. EVANS of Iowa.

H.R. 3582: Mr. MRAZEK and Mr. GALLO.

H.R. 3598: Mr. BURTON of Indiana, Mr. SMITH of New Jersey, Mrs. BENTLEY, Mr. COURTER, Mr. CAMPBELL, Mr. DORNAN of California, Mr. SMITH of Florida, Mr. LAGOMARSINO, Mr. GINGRICH, Mr. GREGG, Mr. WILSON, Mr. GALLO, Mr. LIVINGSTON, Mr. WALKER, and Mr. ARMEY.

H.R. 3660: Mr. DONNELLY.

H.R. 3710: Mr. COLEMAN of Missouri.

H.R. 3733: Mr. TORRICELLI, Mr. BRYANT, Mr. WEAVER, Mrs. BOXER, Mr. TRAXLER, Ms. OAKAR, Mr. WEISS, Mr. FEIGHAN, Mr. HERTEL of Michigan, Mr. DURBIN, Mr. EDGAR, Mr. OWENS, Mr. MRAZEK, Mr. TOWNS, Mr.

COELHO, Mr. MCHUGH, Mr. MILLER of California, Mr. FAZIO, Mrs. BURTON of California, Mr. ROEMER, Mr. LELAND, Mr. HALL of Ohio, Mr. REID, Mr. LEACH of Iowa, Mr. FISH, Mr. COOPER, Mr. ALEXANDER, and Mr. DASCHLE.

H.R. 3766: Mr. BENNETT and Mr. MOORHEAD.

H.R. 3932: Mr. KLECZKA.

H.R. 3952: Mr. ARCHER.

H.R. 3968: Mr. FLORIO, Mrs. LONG, Mr. NIELSON of Utah, Mr. SPRATT, Mr. TORRICELLI, Mr. YATRON, and Mr. FORD of Michigan.

H.R. 4003: Mr. CLAY, Mr. COELHO, Mrs. JOHNSON, Mr. BROWN of California, Mr. GEJDENSON, Mr. PENNY, Mr. WORTLEY, Mr. OWENS, Mr. GARCIA, Mr. SCHUMER, Mr. DIOGUARDI, Mr. MONSON, Mr. FAZIO, Mr. GILMAN, Mr. BOEHLERT, Mr. FLORIO, Mr. RANGEL, and Mr. LANTOS.

H.R. 4017: Mr. MORRISON of Connecticut, Ms. KAPTUR, Mr. SPENCE, Mr. WORTLEY, Mr. HUGHES, Mr. DYSON, Mrs. BYRON, Mr. CLINGER, Mr. BARNARD, Mr. RICHARDSON, and Mr. EVANS of Iowa.

H.R. 4021: Mr. BIAGGI, Mr. ECKART of Ohio, and Mr. FOLEY.

H.R. 4029: Mr. FUSTER, Mr. LEHMAN of Florida, Mr. MILLER of California, Mr. TORRES, Mr. KLECZKA, Mr. DYMALLY, Mr. RICHARDSON, Mr. TOWNS, Mr. BARNES, and Mr. TORRICELLI.

H.R. 4033: Mr. CLINGER, and Mr. Guarini.

H.R. 4051: Mr. KINDNESS, Mr. HILER, Mr. ECKERT of New York, and Mr. SENSENBRENNER

H.R. 4054: Mr. KOLBE.

H.R. 4056: Mr. JACOBS, Mr. CHAPPELL, Mr. CRANE, Mr. ANTHONY.

H.R. 4080: Mr. HORTON, Mr. GINGRICH, and Mr. WILLIAMS.

H.R. 4103: Mr. LEVINE of California.

H.R. 4104: Mr. LEVINE of California.

H.R. 4115: Mr. RANGEL and Mr. MARTINEZ.

H.R. 4128: Mr. BEDELL, Mr. SMITH of Florida, Mrs. SMITH of Nebraska, Mr. TOWNS, Mr. RANGEL, Mr. TORRES, Mr. MINETA, and Mr. MRAZEK.

H.R. 4135: Ms. MIKULSKI, Mr. CHANDLER, Mr. FORD of Michigan, Mr. WOLPE, Mr. FAZIO, Mr. KOLBE, Mr. LEVINE of California, Mr. BORSKI, Mr. MAVROULES, Mr. FEIGHAN, Mr. GUARINI, Mr. DORNAN of California, Mr. CRANE, Mr. GEJDENSON, and Mr. MACKAY.

H.R. 4141: Mr. DELAY, Mr. TAUKE, Mr. BURTON of Indiana, Mr. EMERSON, Mr. CRANE, Mr. MONSON, and Mr. PARRIS.

H.R. 4157: Mr. BURTON of Indiana, Mr. MCDADE, Mr. MARTINEZ, Mr. COBEY, Mr. KINDNESS, Mr. YOUNG of Missouri, Mr. HYDE, Mr. DORNAN of California, and Mr. LAGOMARSINO.

H.R. 4186: Mr. ADDABBO, Mr. BIAGGI, Mr. BOEHLERT, Mr. CRANE, Mr. DIOGUARDI, Mr. GUARINI, Mr. IRELAND, Mr. LEHMAN of Florida, Mr. LEWIS of Florida, Mr. MATSUI, Mr. MILLER of Washington, Mr. MOORHEAD, Mr. O'BRIEN, Mr. RUDD, Mr. SILJANDER, and Mr. YATRON.

H.R. 4224: Mr. STARK, Mrs. VUCANOVICH, Mr. MILLER of California, Mr. WISE, Mr. ROYBAL, Mr. FUSTER, Mr. MARTINEZ, and Mr. DORNAN of California.

H.R. 4240: Mr. PACKARD and Mr. MONSON.

H.J. Res. 381: Mr. TOWNS, Mr. MOORHEAD, Mr. MOODY, Mr. CONTE, and Mr. ANDERSON.

H.J. Res. 435: Mr. LEVIN of Michigan, Mr. RANGEL, and Mr. WORTLEY.

H.R. Res. 451: Mr. BOLAND, Mr. COLEMAN of Texas, Mr. RINALDO, Mr. ROTH, Mr. VANDER JAGT, Mr. LEWIS of California, Mr. KASICH, Mr. LELAND, Mr. MCCAIN, Mr. YOUNG of Alaska, Mr. DREIER of California, Mr. DANIEL, Mr. MOAKLEY, Mr. CARNEY, Mr. WEBER, Mr. MRAZEK, Mr. SHELBY, Mr. DOWDY of Mississippi, Mr. BONER of Tennessee, Mrs. LLOYD, Mr. LEATH of Texas, Mr. FRENZEL, Mr. OLIN, Mr. DICKS, Mr. GREEN, Mr. MCCLOSKEY, Mr. DE LUGO, Mr. EVANS of Illinois, Mr. ANNUNZIO, Mr. WHITTAKER, Mr. RICHARDSON, and Mr. ROWLAND of Connecticut.

H.J. Res. 460: Mr. WIRTH.

H.J. Res. 470: Mr. BLAZ, Mr. SOLARZ, Mr. RALPH M. HALL, Mr. YATRON, Mr. MCGRATH, Mr. FOGLIETTA, Mr. GORDON, and Mr. VANDER JAGT.

H.J. Res. 516: Mr. RALPH M. HALL, Mr. DORNAN of California, Mr. LAGOMARSINO, and Mr. SMITH of Florida.

H.J. Res. 521: Mr. FORD of Michigan, Mr. MINETA, Mr. MOLLOHAN, Mr. APPLEGATE, and Mr. DWYER of New Jersey.

H.J. Res. 522: Mr. ADDABBO, Mr. DURBIN, Mr. DWYER of New Jersey, Mr. FRANK, Mr. BEDELL, Mr. FISH, Mr. KOSTMAYER, and Mr. STAGGERS.

H. Con. Res. 278: Mr. HILER, Mr. MACKAY, Mr. HUNTER, Ms. KAPTUR, Mr. STARK, Mr. ROSE, Mrs. COLLINS, Mr. BENNETT, Mr. NOWAK, Mr. MADIGAN, Mr. TAUZIN, Mr. STUMP, Mr. WYLIE, Mr. DYSON, Mr. SAXTON, Mr. LELAND, Mr. FORD of Tennessee, Mr. BROOKS, Mr. SCHAEFER, Mr. WIRTH, Mr. OBERSTAR, Mr. MCDADE, Mrs. KENNELLY, Mr. KASICH, Mr. SEIBERLING, Mr. SISISKY, Mr. OBEY, Mr. YATES, Mrs. BYRON, Mr. TORRES, Mr. ALEXANDER, Mr. GILMAN, Mr. LAFALCE, Mr. WALGREN, Mr. BORSKI, Mr. COELHO, Mrs. JOHNSON, Mr. HUGHES, Mr. ORTIZ, Mr. TRAFICANT, Mr. PRICE, Mr. ROSTENKOWSKI, Mr. SMITH of New Jersey, Mr. GIBBONS, Mr. LUKEN, Mr. ROWLAND of Connecticut, Mr. TORRICELLI, Mr. BROWN of California, Mr. MARTIN of New York, Mr. FAZIO, Mr. DONNELLY, and Mr. Bosco.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1809: Mr. FISH.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

278. By the SPEAKER: Petition of the Board of Governors, American Bar Association, Washington, DC, relative to the exclusion of the retirement pay of senior Federal judges from the coverage of the Social Security Act; to the Committee on Ways and Means.

279. Also, petition of the President, Capt. James Smith Memorial Foundation, New York, NY, relative to the Congressional Medal of honor commemoration resolution; to the Committee on Post Office and Civil Service.