

REMARKS OF SENATOR BOB DOLE
JOHNSON COUNTY BAR ASSOCIATION LUNCHEON

RAMADA INN
OVERLAND PARK, KANSAS

WEDNESDAY, OCTOBER 8, 1980

DURING THE 96TH CONGRESS I HAVE HAD THE OPPORTUNITY TO SERVE FOR THE FIRST TIME ON THE SENATE JUDICIARY COMMITTEE. AS YOU PROBABLY KNOW, THIS CONGRESS SENATOR KENNEDY BECAME THE CHAIRMAN OF THE JUDICIARY COMMITTEE. THE KENNEDY STYLE IS, AS YOU CAN IMAGINE, QUITE DIFFERENT FROM THAT OF THE FORMER CHAIRMAN, SENATOR EASTLAND, THUS, THE JUDICIARY COMMITTEE HAS BEEN VERY ACTIVE DURING THIS CONGRESS, THOUGH I DO NOT BELIEVE THE OVERALL OUTPUT OF LEGISLATION HAS APPRECIABLY INCREASED.

DURING THIS CONGRESS, A LITTLE OVER 1,000 BILLS AND RESOLUTIONS HAVE BEEN REFERRED TO THE JUDICIARY COMMITTEE, OUT OF A TOTAL NUMBER OF ABOUT 3,900 INTRODUCED IN THE SENATE. IN ADDITION TO HANDLING SUCH A LARGE VOLUME OF LEGISLATION - ABOUT ONE QUARTER OF THE SENATE'S BUSINESS - THE JUDICIARY COMMITTEE CONSIDERS SOME OF THE MOST COMPLEX AND TECHNICALLY SOPHISTICATED ISSUES BEFORE THE SENATE. YET ONLY A RELATIVE HANDFUL OF THESE ISSUES GETS WIDESPREAD POPULAR ATTENTION. MUCH OF THE COMMITTEE'S WORK INVOLVES HIGHLY TECHNICAL MATTERS WHICH APPEAR TO INVOLVE ARCHANE LEGAL SUBJECTS, BUT WHICH CAN HAVE A SIGNIFICANT IMPACT ON VARIOUS ASPECTS OF OUR NATIONAL LIFE.

SINCE I EXPECT THAT MANY OF THESE SUBJECTS WOULD BE OF INTEREST TO THIS AUDIENCE, THIS AFTERNOON I PROPOSE TO SURVEY SOME OF THE MAJOR ISSUES THE JUDICIARY COMMITTEE HAS CONSIDERED DURING THE PAST CONGRESS.

JUDICIAL NOMINATIONS

UNDER THE CONSTITUTION THE PRESIDENT IS REQUIRED TO NOMINATE FEDERAL JUDGES WITH THE ADVICE AND CONSENT OF THE SENATE. EVER SINCE THE FIRST CONGRESS, HOWEVER, SENATORS HAVE EFFECTIVELY DONE THE NOMINATING, AND THE PRESIDENT HAS CONFIRMED THE SENATE'S CHOICES. SENATORS, FROM THE PRESIDENT'S PARTY, SEND NAMES TO THE WHITE HOUSE WHEN VACANCIES IN THEIR STATES OCCUR, AND THE PRESIDENT HAS VIRTUALLY ALWAYS SENT THE SENATORS' CHOICES ALONG TO THE SENATE FOR CONFIRMATION.

THIS SO-CALLED "BLUE SLIP" SYSTEM HAS ALLOWED ANY SENATOR FROM THE APPOINTEE'S HOME STATE EFFECTIVELY TO VETO A NOMINATION THROUGH "SENATORIAL COURTESY." THAT IS, IF A SENATOR FELT STRONGLY ENOUGH ABOUT AN APPOINTEE, OTHER SENATORS WOULD HONOR HIS OBJECTION AND THE NOMINATION WOULD NOT BE BROUGHT UP.

THIS FASHION OF ADVISING AND CONSENTING IS OF COURSE FIRST EXPRESSED IN THE JUDICIARY COMMITTEE. ATTEMPTING TO MODIFY THIS PRACTICE, SENATOR KENNEDY ANNOUNCED AT THE BEGINNING OF THIS CONGRESS THAT UNDER HIS CHAIRMANSHIP THE COMMITTEE WOULD CHANGE THIS FAMILIAR PROCEDURE IN ORDER TO CONFIRM ONLY THE MOST QUALIFIED JUDGES. THUS, IT IS CHAIRMAN KENNEDY'S VIEW THAT, WHILE A SENATOR FROM THE APPOINTEE'S STATE SHOULD BE ALLOWED TO EXPRESS HIS OBJECTIONS TO A NOMINATION, THESE OBJECTIONS SHOULD NOT PRECLUDE THE MEMBERS OF THE JUDICIARY COMMITTEE FROM RECOMMENDING THE NOMINATION TO THE SENATE. AN OPPORTUNITY TO TEST THE COMMITTEE'S NEW POLICY ON "BLUE SLIPS" HAS NOT YET ARISEN. INDEED, IF THE RECORD NUMBER OF JUDGES WE HAVE CONFIRMED IS ANY GAUGE, THIS SUPPOSEDLY NEW POLICY HAS NOT CHANGED THE COMMITTEE'S PERFORMANCE AT ALL.

IN THE OMNIBUS JUDGESHIP ACT OF 1978, CONGRESS CREATED 152 NEW

FEDERAL JUDGESHIPS -- 117 DISTRICT JUDGES AND 35 APPELLATE JUDGES. UNDER THE ACT, KANSAS RECEIVED ONE ADDITIONAL DISTRICT COURT JUDGESHIP. THE NORMAL RATE OF ATTRITION CREATED AN ADDITIONAL 66 POSITIONS, OF WHICH 50 APPOINTMENTS HAVE BEEN CONFIRMED. IN ALL, PRESIDENT CARTER HAS APPOINTED 235 JUDGES, MORE THAN ONE THIRD OF THE ENTIRE FEDERAL JUDICIARY -- THE LARGEST NUMBER APPOINTED BY ONE PRESIDENT. YOU, AS LAWYERS, CERTAINLY APPRECIATE HOW THESE LIFETIME APPOINTMENTS WILL SHAPE THE LIVES OF AMERICANS FOR YEARS TO COME. FOR EXAMPLE, FEDERAL JUDGES HAVE ORDERED FUNDS FOR THE CONSTRUCTION OF ROADS AND PRISONS, REAPPORTIONED LEGISLATURES AND MANDATED INTEGRATION OF THE SCHOOLS. THESE ARE DECISIONS THAT GO TO THE HEART OF OUR NATIONAL GOVERNANCE. IN A VERY REAL SENSE OUR SOCIETY IS BEING MOLDED BY NON-ELECTED JUDICIAL APPOINTEES.

CERTAINLY, JUDICIAL NOMINATIONS HAVE BEEN HANDLED BY THE COMMITTEE ON A REMARKABLY BIPARTISAN BASIS. THERE ARE 17 MEMBERS OF THE SENATE JUDICIARY COMMITTEE, 10 DEMOCRATS AND 7 REPUBLICANS. AS A QUORUM FOR THE CONDUCT OF THE COMMITTEE'S BUSINESS IS 9, THE 10 DEMOCRATS ON THE COMMITTEE CAN MEET AT ANY TIME TO PROCESS JUDICIAL NOMINATIONS. YET ONLY ONCE DURING THIS SESSION OF CONGRESS DID THE DEMOCRATS MAKE A QUORUM WITHOUT THE PRESENCE OF REPUBLICAN COMMITTEE MEMBERS. IN ADDITION, THE FACT THAT 235 JUDICIAL NOMINATIONS WERE PROCESSED THROUGH THE COMMITTEE ATTESTS TO THE COOPERATION THAT THE REPUBLICANS HAVE GIVEN. THIS SHOULD BE CONSIDERED IN LIGHT OF THE FACT THAT IN THE LAST YEAR OF PRESIDENT FORD'S ADMINISTRATION, 31 JUDGES WERE CONFIRMED; IN THE LAST YEAR OF PRESIDENT NIXON'S FIRST TERM, 39 JUDGES WERE CONFIRMED; AND IN PRESIDENT EISENHOWER'S LAST YEAR IN OFFICE, 19 JUDGES WERE CONFIRMED.

IN LIGHT OF THE EVER INCREASING ROLE THAT THE COURTS PLAY IN THE

DAY-TO-DAY LIVES OF OUR PEOPLE, I FEEL THAT IT IS IMPORTANT THAT KANSAS DISTRICT COURT JUDGES BE SELECTED ON THE BASIS OF PROFESSIONAL MERIT, WITHOUT REGARD TO PARTISAN CONSIDERATIONS. INTEGRITY, JUDICIAL TEMPERAMENT, AND EXPERIENCE, RATHER THAN POLITICAL INFLUENCE SHOULD BE THE GUIDELINES FOR APPOINTMENT TO THE FEDERAL BENCH. FOR THESE REASONS I WORKED TO ESTABLISH A MERIT SELECTION COMMISSION FOR KANSAS. UNDER THE MERIT SELECTION SYSTEM, KANSANS NOT ONLY GET BETTER JUDGES, BUT THEY ALSO SEE THEIR JUDGES CHOSEN OPENLY, IN A MANNER SUBJECT TO PUBLIC SCRUTINY. THEY CAN BE CONFIDENT THAT CAREFUL STUDY AND INVESTIGATION PRECEDED EACH NOMINATION, THAT OBJECTIVE CRITERIA RATHER THAN PARTISAN POLITICS WERE THE BASIS FOR SELECTING MEMBERS OF THE FEDERAL BENCH.

CRIMINAL CODE

ANOTHER FOCUS OF EXTENSIVE COMMITTEE WORK HAS BEEN THE EFFORT TO RECODIFY AND MODERNIZE THE FEDERAL CRIMINAL LAWS. INDEED, THIS YEAR HAS SEEN FAR MORE PROGRESS IN THE PASSAGE OF A NEW CODE THAN AT ANY TIME IN THE PAST. ON DECEMBER 4, 1979, THE COMMITTEE REPORTED OUT FOR FULL SENATE CONSIDERATION S.1722, THE CRIMINAL CODE REFORM BILL. THE BILL, SPONSORED BY SENATORS THURMOND, HATCH, AND KENNEDY, MARKS THE CULMINATION OF FIFTEEN YEARS OF EFFORT BY THE CONGRESS TO ENACT A REVISED, OMNIBUS FEDERAL CRIMINAL CODE REFORM BILL. THIS ENDEAVOR BEGAN IN 1965 WHEN SENATOR ROMAN HRUSKA OF NEBRASKA AND CONGRESSMAN RICHARD POFF OF VIRGINIA AUTHORED LEGISLATION TO CREATE A NATIONAL COMMISSION ON REFORM OF THE FEDERAL CRIMINAL LAWS. SENATORS HRUSKA AND MCCLELLAN CONTINUED THIS EFFORT, STARTING WITH THE INTRODUCTION OF S.1 IN 1971. IN 1978, THE SENATE PASSED S.1437, A CRIMINAL CODE REFORM BILL. HOWEVER, THE HOUSE TOOK NO ACTION DURING THAT SESSION OF CONGRESS,

NOW, FOR THE FIRST TIME IN THE LEGISLATIVE HISTORY OF CRIMINAL CODE REFORM, THE HOUSE JUDICIARY COMMITTEE TOOK ACTION BY PASSING H.R. 6915 ON JULY 2, 1980. HOWEVER, THE HOUSE LEADERSHIP HAS INDICATED THAT THEY WOULD ACT ON H.R. 6915 ONLY AFTER THE SENATE HAD CONSIDERED S.1722. SINCE S.1722 HAS YET TO BE BROUGHT BEFORE THE FULL SENATE, CONGRESSIONAL ACTION ON CRIMINAL CODE REFORM IN THIS SESSION IS INCREASINGLY DOUBTFUL.

S.1722 IS GENERALLY A COMMENDABLE BILL BECAUSE IT ASSEMBLES AND MODERNIZES THE ENTIRE BODY OF FEDERAL CRIMINAL LAW. IT ELIMINATES OR CORRECTS MANY ANTIQUATED, VAGUE, AND CONFLICTING CRIMINAL STATUTES WHICH HAVE ACCUMULATED SINCE 1789. SUCH MODERNIZATION IS ESSENTIAL IF WE ARE TO PRESENT A CREDIBLE, REASONABLE CODE TO THE AMERICAN PEOPLE. BY ELIMINATING ARCHAIC, CONTRADICTORY LAWS, WE CAN ONLY BRING ABOUT GREATER RESPECT FOR THE LAW BY ALL CITIZENS.

FOR THESE REASONS, I TOOK A SPECIAL INTEREST IN S.1722 DURING THE SENATE JUDICIARY COMMITTEE DELIBERATIONS LAST YEAR. A DOZEN AMENDMENTS WHICH I PROPOSED WERE ACCEPTED BY THE COMMITTEE AND, IN MY JUDGMENT, SIGNIFICANTLY STRENGTHEN THE BILL IN DEALING WITH CRIME AT THE FEDERAL LEVEL. MY EFFORTS INCLUDED SUCH PROVISIONS AS TOUGHENING THE GRADING SCHEME FOR THE CRIME OF JUMPING BAIL, INCREASING THE GRADING PENALTY FOR THOSE CONVICTED OF TRAFFICKING IN UNUSUALLY HIGH QUANTITIES OF NARCOTICS, AND EXPANDING THE FEDERAL CRIME OF ENGAGING IN A FRAUDULENT SCHEME TO INCLUDE CERTAIN TRANSACTIONS CONCERNING ARSON BY HIRE, NARCOTICS DEALING, AND SOLICITATION FOR UNDISCLOSED PURPOSES.

NARCOTICS AND CRIME GENERALLY

ONE OF THE MOST DIFFICULT AND CRITICAL DIMENSIONS OF OUR NATION'S CRIME PROBLEMS HAS TO DO WITH NARCOTICS ABUSE. WITH VERY LITTLE

INTERRUPTION, THE PROBLEM HAS INTENSIFIED DRAMATICALLY OVER THE PAST TWO DECADES. ENFORCEMENT ACTIVITIES AT THE FEDERAL, STATE, AND LOCAL LEVEL HAVE GENERALLY BEEN UNABLE TO KEEP ABREAST OF THE BURGEONING PROBLEMS -- ALL INDICATORS OF SERIOUS DRUG ABUSE, SUCH AS HEROIN OVERDOSE DEATHS, INCREASES OF SERUM HEPATITIS AND SO FORTH. SOME PROGRESS HAS BEEN MADE IN CUTTING OFF THE SUPPLY OF MEXICAN HEROIN BUT THIS SHORT-FALL APPEARS TO BE MORE THAN MADE UP BY INCREASED AVAILABILITY FROM SOUTHEAST ASIA AND IRAN.

JUST LAST WEEK, THE DISTRICT ATTORNEY OF MANHATTAN, ROBERT MORGENTHAU, SAID THAT THE PROBLEM OF HEROIN ADDICTION ON THE EASTERN SEABOARD WAS "IN THE EARLY STAGES OF A MASSIVE CRISIS." NEW YORK CITY ALONE WILL HAVE ABOUT 600 HEROIN RELATED DEATHS AS OPPOSED TO 472 IN 1979 AND 246 IN 1978. THE COMMANDANT OF THE COAST GUARD TESTIFIED BEFORE CONGRESS VERY RECENTLY THAT INTERDICTION ACTIVITIES TO CUT OFF THE FLOW OF COCAINE AND MARIJUANA FROM THE CARIBBEAN HAVE FALLEN OFF 90 PERCENT FROM APRIL TO AUGUST OF 1980 OVER THE SAME PERIOD A YEAR AGO BECAUSE OF THE DIVERSION OF COAST GUARD ENFORCEMENT RESOURCES TO DEAL WITH THE CUBAN REFUGEE PROBLEM.

SIMPLY STATED, MARIJUANA AND COCAINE ARE READILY AVAILABLE TO OUR YOUNG PEOPLE THROUGHOUT THE COUNTRY. HEROIN AND VARIOUS SYNTHETIC DRUGS ARE BECOMING QUITE AVAILABLE ALSO.

AS THE SUPPLY AND THE QUALITY GOES UP AND THE PRICE GOES DOWN, THE PROBLEM OF DRUG ABUSE BECOMES MORE SEVERE. ONE RECENT STUDY SUGGESTS THAT 100 UNTREATED HEROIN ADDICTS CAN BE RESPONSIBLE FOR AS MANY AS 50,000 STREET CRIMES OVER THE COURSE OF A YEAR TRYING TO SUPPORT THEIR HABITS.

AGAIN WHILE THE PROBLEMS SEEM TO BE DRAMATICALLY INCREASING, FEDERAL BUDGET CUTTERS ARE NOT ONLY CAUSING REALIGNMENTS AND CUTBACKS IN FEDERAL LAW ENFORCEMENT CAPABILITIES, BUT ALSO CUTTING OFF ASSISTANCE TO

THE STATE AND LOCAL AGENCIES DEALING WITH THESE PROBLEMS. THIS IS AT A TIME WHEN OVERALL FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN THE 1200 ODD FEDERAL AID PROGRAMS HAS INCREASED ABOUT 10 PERCENT.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

ONE OF THE MAJOR OVERSIGHT RESPONSIBILITIES OF THE SENATE JUDICIARY COMMITTEE CONCERNS THE FEDERAL GOVERNMENT'S PROGRAMS TO ASSIST STATE AND LOCAL GOVERNMENTS IN COMBATTING CRIME. IN THE LAST TEN YEARS, THIS HAS MEANT OVERSIGHT OF THE PROGRAMS OF THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION.

FIGURES RELEASED TWO WEEKS AGO BY THE FEDERAL BUREAU OF INVESTIGATION OF TREND DATA IN REPORTED SERIOUS CRIMES REVEAL A DRAMATIC UPSURGE IN SERIOUS CRIME FOR 1979 OVER THE PRECEDING YEAR, PARTICULARLY IN CRIMES OF VIOLENCE, WHICH RECORDED AN 11 PERCENT INCREASE. PROPERTY CRIMES WERE UP 9 PERCENT. PRELIMINARY FIGURES FOR THE FIRST HALF OF 1980 SHOW SIMILAR INCREASES AGAIN.

THE ADMINISTRATION SEEMS TO HAVE ADOPTED A HANDS-OFF, HEAD-IN-THE-SAND ATTITUDE TOWARD THESE TRENDS. AT THE SAME TIME CRIME IS DRAMATICALLY INCREASING, THE ADMINISTRATION'S PROGRAM IS RAPIDLY BEING SHUT DOWN. WITH GREAT FANFARE IN A ROSE GARDEN CEREMONY, PRESIDENT CARTER SENT TO CONGRESS IN THE SUMMER OF 1978, A PROPOSED RESTRUCTURING OF THE LEAA PROGRAM INTO A NEW OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS. IN DECEMBER OF 1979, THE PRESIDENT SIGNED A FOUR-YEAR EXTENSION WHICH INCLUDED THE NEW, REVAMPED ORGANIZATIONAL STRUCTURE. A MONTH LATER, IN LATE JANUARY OF THIS YEAR, THE PRESIDENT SENT FORWARD A BUDGET REQUESTING A 10 PERCENT INCREASE FOR LEAA, A TOTAL OF APPROXIMATELY \$659 MILLION, MOST OF WHICH WOULD HAVE GONE TO THE STATES AND LOCAL GOVERNMENTS. JUST 60 DAYS LATER, IN HIS

"BUDGET BALANCING" MESSAGE TO CONGRESS, THE PRESIDENT CALLED FOR A DEEP 70 PERCENT CUT IN THESE PROGRAMS, INCLUDING ALMOST 90 PERCENT OF THE STATE ASSISTANCE. THE DEMOCRATIC-CONTROLLED CONGRESS FOR THE MOST PART WENT ALONG WITH THESE REQUESTS AND THE DISMANTLING PROCESS HAD BEGUN. NOW THE ADMINISTRATION HAS PREPARED A SO-CALLED "TRANSITION" PLAN WHICH WOULD COMPLETELY ELIMINATE STATE ASSISTANCE PROGRAMS DURING THE FISCAL YEAR THAT BEGAN OCTOBER 1, AND LEAVE A SKELETON OF RESEARCH AND STATISTICS.

AS BEST AS CAN BE DETERMINED, THE ADMINISTRATION'S ACTION WAS TOTALLY ARBITRARY AND EVIDENCES THE VACILLATION IN POLICY WITH WHICH WE HAVE BECOME FAMILIAR. THE SHUTDOWN WAS NOT BASED ON ANY EVALUATION OR FINDINGS OF ANY THOROUGH STUDY, BUT SIMPLY USED THE LEAA PROGRAM, WHICH DID NOT HAVE ANY PARTICULAR INTEREST GROUP FIGHTING FOR IT, AS A POLITICALLY CHEAP SOURCE OF SPENDING CUTS IN THE EFFORT.

THE SENATE JUDICIARY COMMITTEE, IN RESPONSE TO THIS DISTURBING TURN OF EVENTS, ADDED A RIDER TO THE FISCAL '81 DEPARTMENT OF JUSTICE AUTHORIZATION BILL THAT WOULD IN EFFECT SUSPEND THE JUSTICE SYSTEM IMPROVEMENT ACT OF 1979 AND ALLOW THE SEMBLANCE OF A STATE ASSISTANCE PROGRAM TO CONTINUE, PENDING A THOROUGH REVIEW OF WHAT THE CARTER ADMINISTRATION REALLY HAS IN MIND. THE AUTHORIZATION BILL, INCLUDING THE SENATE COMMITTEE RIDER, HAS PASSED THE SENATE, BUT IS AWAITING FURTHER ACTION BY THE HOUSE. MOST LIKELY THIS REVIEW WILL NOT BEGIN UNTIL AFTER THE ELECTION.

MEANWHILE, MAJOR PROBLEMS SEEM TO BE DEVELOPING IN THE ABILITY OF THE JUSTICE DEPARTMENT AND THE STATES TO MAINTAIN ACCOUNTABILITY OVER THE MORE THAN \$600 MILLION WORTH OF LEAA FUNDS NOW IN THE PIPELINE WHICH HAVE BEEN LEGALLY OBLIGATED, BUT WILL NOT ACTUALLY BE SPENT FOR ANOTHER YEAR AND A HALF. ALREADY LARGE NUMBERS OF ADMINISTRATIVE PERSONNEL AT THE STATE AND

LOCAL LEVEL HAVE LEFT AND AGENCIES ARE BEING SHUT DOWN LEAVING ONLY MINIMAL ABILITY TO EXPEND AND MONITOR PROGRAM FUNDS.

SINCE ITS INCEPTION, THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION HAS BEEN A CONTROVERSIAL AGENCY AND HAS BEEN CRITICIZED REPEATEDLY. PERSISTENT CHARGES HAVE BEEN LEVELLED AGAINST ITS BLOCK GRANT PROGRAMS FOR WASTE AND INEFFICIENCY FOR MANY OF THE PURPOSES FOR WHICH THE STATES HAVE USED THESE FUNDS. THE ADMINISTRATIVE AND PLANNING MACHINERY WHICH HAD BEEN CREATED AT THE STATE AND LOCAL LEVEL WAS ALSO THE SUBJECT OF CRITICISM. AS A RESULT, THE LEAA PROGRAM, WHICH HAS NEVER HAD A BROAD BASED CONSTITUENCY, HAS SEEN ITS FUNDING LEVEL DRASTICALLY REDUCED.

REGULATORY REFORM

THE JUDICIARY COMMITTEE HAS ALSO DONE A FAIR AMOUNT OF WORK THIS CONGRESS IN THE AREA POPULARLY CALLED "REGULATORY REFORM." WITHIN THIS JURISDICTION OF THE JUDICIARY COMMITTEE, "REGULATORY REFORM" GENERALLY REFERS TO GOVERNMENT-WIDE CHANGES IN REGULATORY PROCEDURES AND MANAGEMENT. OVER 100 BILLS HAVE BEEN INTRODUCED IN THIS CONGRESS DEALING WITH REGULATORY REFORM. THESE MEASURES TAKE A VARIETY OF APPROACHES TO THE SUBJECT, RANGING FROM GIVING CONGRESS A VETO OVER REGULATIONS, THROUGH REQUIRING AGENCIES TO PERFORM VARIOUS KINDS OF ANALYSES OF NEW RULES, TO TERMINATING REGULATORY PROGRAMS WHICH ARE NO LONGER JUSTIFIED, THE SO-CALLED "SUNSET" MECHANISM.

THREE "OMNIBUS" BILLS, DRAWING PROVISIONS FROM MANY OF THESE EARLIER PROPOSALS, HAVE MADE SOME PROGRESS IN THIS CONGRESS. THESE BILLS HAVE BEEN SHAPED BY THE IDEA THAT THE CENTRAL PROBLEM WITH FEDERAL REGULATION IS MANAGEMENT, AND THAT THIS CAN BE CURED BY CHANGES INTENDED TO MAKE AGENCIES MORE EFFICIENT.

THUS, THE JUDICIARY COMMITTEE BILL, S.2147, SETS OUT NEW REQUIREMENTS FOR VARIOUS REVIEWS, INDICES, AGENDA, AND ANALYSES OF AGENCY ACTIVITIES TO BE DONE BY THE AGENCIES THEMSELVES, OR BY SOME NEW ENTITY. THESE REQUIREMENTS ARE DESCRIPTIVE ONLY; THAT IS, RATHER THAN IMPOSE NEW STANDARDS DIRECTLY ON WHAT AGENCIES DO, THESE PROVISIONS RELY ON THE HOPE THAT AN AGENCY REVIEW OR "ANALYSIS" OF ITS WORK WILL SOMEHOW PRODUCE AN UNDEFINED "REFORM."

THE SECOND MAJOR PART OF S.2147 ESTABLISHES A SCHEDULE, RUNNING FOR TWELVE YEARS, FOR AN EXECUTIVE BRANCH REVIEW OF EACH AGENCY'S ACTIVITIES ENDING WITH A PRESIDENTIAL REPORT TO CONGRESS PROPOSING REGULATORY REFORM LEGISLATION. IN BULK, S.2147 IS, FIRST, A BILL SEEKING UNSPECIFIED REFORM THROUGH NEW PAPERWORK REQUIREMENTS FOR AGENCIES, AND SECOND, IT IS A REGULATORY REFORM BILL ESTABLISHING A PROCEDURE FOR PROPOSING REGULATORY REFORM BILLS.

THE JUDICIARY COMMITTEE BILL HAS YET TO COME TO THE SENATE FLOOR, AND MAY WELL NEVER COME UP DURING THIS CONGRESS. THE GOVERNMENTAL AFFAIRS COMMITTEE REPORTED ITS OWN REGULATORY REFORM BILL, AND THE STAFF SPENT ALL SUMMER TRYING TO PUT BOTH BILLS TOGETHER INTO ONE REGULATORY REFORM MEASURE FOR SENATE CONSIDERATION. THE FACT THAT WE DO NOT YET HAVE A BILL FOR THE FLOOR INDICATES EXACTLY HOW KNOTTY SOME OF THE INVOLVED ISSUES ARE.

AS YOU CAN TELL BY MY CHARACTERIZATION, I AM NOT COMPLETELY PLEASED BY THE RESULTS OF ALL THIS LABOR. OBVIOUSLY, NO ONE PROPOSAL IS THE KEY TO THE DIVERSE AND COMPLICATED PROBLEMS OF FEDERAL REGULATION. I HAVE TAKEN THE APPROACH THAT REGULATORY REFORM MUST BE VIEWED AS PART OF ANY EFFORT TO REDUCE INFLATION.

IT IS ESTIMATED THAT THE CUMULATIVE COST OF COMPLYING WITH FEDERAL

REGULATIONS REACHED ALMOST \$120 BILLION IN 1979. A STUDY DONE BY THE TAX FOUNDATION CONCLUDED THAT THE COST TO THE CONSUMER OF COMPLYING WITH FEDERAL REGULATIONS IN 1979 AMOUNTED TO \$102.7 BILLION, OR ABOUT \$400 PER MAN, WOMAN, AND CHILD LIVING IN THE UNITED STATES. A STUDY CONDUCTED BY THE CENTER FOR THE STUDY OF AMERICAN BUSINESS INDICATES THAT THE COST OF FILLING OUT FEDERAL PAPERWORK ALONE COMES TO ABOUT \$25 TO \$32 BILLION ANNUALLY.

IN SHORT, FEDERAL REGULATION AGGRAVATES OUR ALREADY EXTREME RATE OF INFLATION BY IMPOSING COSTS ON THE PRIVATE SECTOR WHICH RAISE PRICES WITHOUT A CORRESPONDING RISE IN PRODUCTIVITY. INDEED, AS DR. JAMES MILLER OF THE AMERICAN ENTERPRISE INSTITUTE HAS NOTED:

REGULATION OFTEN HAS A GREATER EFFECT UPON
CONSUMER WELFARE (THAN OTHER INFLATIONARY FACTORS)
BECAUSE IT OPERATES DIRECTLY UPON THE REAL SUPPLY OF
GOODS AND SERVICES.

CONSEQUENTLY, LAST FALL, I INTRODUCED LEGISLATION WHICH REQUIRES AN AGENCY, IN THE CONTEXT OF THE USUAL INFORMAL RULEMAKING PROCEDURES, TO SET OUT THE TRADE-OFFS OF A PROPOSED REGULATION, AND WHICH ALLOWS NEW REGULATIONS TO BECOME EFFECTIVE ONLY WHEN THE AGENCY CAN REASONABLY CONCLUDE THEY ARE WORTH THEIR COSTS. THIS IS ESSENTIALLY A MODIFIED FORM OF COST-BENEFIT ANALYSIS FOR REGULATIONS WHICH, IT SEEMS TO ME, IS A COMMON-SENSE TYPE OF REFORM.

BY CREATING REGULATORY AGENCIES WITH BROAD AUTHORITY, WE HAVE PASSED ON TO THESE AGENCIES THE RESPONSIBILITY TO MAKE, IN THE FORM OF ADMINISTRATIVE REGULATIONS, THE KIND OF POLICY JUDGMENTS WHICH PROPERLY WE IN THE CONGRESS SHOULD MAKE. WE HAVE DELEGATED AUTHORITY TO THE AGENCIES TO ACHIEVE MULTIPLE, AND OFTEN INCONSISTENT, OBJECTIVES. WE WANT AGENCIES TO REDUCE

CERTAIN RISKS TO HEALTH, SAFETY, OR ENVIRONMENTAL QUALITY WHILE AVOIDING, OR AT LEAST MINIMIZING, THE ADVERSE IMPACT ON THE SUBJECTS OF AGENCY REGULATIONS, WHETHER INDUSTRY, CONSUMERS, OR THE NATION AT LARGE.

BY REQUIRING AGENCIES TO IDENTIFY SUCH TRADE-OFFS UNDER PUBLIC SCRUTINY, AND BY ALLOWING NEW REGULATIONS TO BE PROMULGATED ONLY IF THE AGENCY CAN CONCLUDE THAT ITS BENEFITS OUTWEIGH ITS COSTS, MY PROPOSAL WOULD MAKE REGULATION MORE RATIONAL AND LESS COSTLY.

I PLAN TO OFFER THIS PROPOSAL AS AN AMENDMENT TO ANY OMNIBUS REGULATORY REFORM BILL WHICH MAY COME TO THE SENATE FLOOR DURING THE "LAME DUCK" SESSION. THE RESPONSE OF KANSANS TO THIS PROPOSAL HAS BEEN GRATIFYING. EXPRESSIONS OF SUPPORT HAVE COME FROM SUCH DIVERSE GROUPS AS THE KANSAS ASSOCIATION OF COMMERCE AND INDUSTRY, THE KANSAS BANKERS ASSOCIATION, THE KANSAS FARM BUREAU, AND THE KANSAS MEDICAL SOCIETY.

ANTITRUST LEGISLATION

DURING THIS CONGRESS, EXTENDED TIME WAS DEVOTED TO A WIDE RANGE OF ANTITRUST MEASURES, BUT VERY FEW OF THEM BECAME LAW. OUT OF SOME FIFTY ANTITRUST RELATED BILLS INTRODUCED IN THE SENATE, ONLY THREE HAVE BEEN ENACTED. INCLUDED IN THE NEW LEGISLATION IS THE SOFT DRINK INTERBRAND COMPETITION ACT (THE "BOTTLER'S BILL"), A MEASURE IN WHICH I TOOK ACTIVE PARTICIPATION IN THE SENATE DEBATE AND PASSAGE, WHICH CLARIFIES THE RULE OF REASON IN CASES REGARDING EXCLUSIVE TERRITORIAL RIGHTS. THE OTHER NEWLY ENACTED ANTITRUST LAWS ARE THE "ANTITRUST PROCEDURAL IMPROVEMENTS ACT," WHICH EXPEDITES THE TREATMENT AND REDUCES THE COSTS OF COMPLEX ANTITRUST CASES, AND P.L. 96-133, WHICH EXTENDED THE ANTITRUST EXEMPTION TO MARCH 15, 1981, FOR OIL COMPANIES TO PARTICIPATE IN THE INTERNATIONAL ENERGY PROGRAM.

A MEASURE WHICH PASSED THE SENATE THIS PAST JUNE, BUT RECEIVED NO CONSIDERATION IN THE HOUSE IS THE "GASOHOL COMPETITION ACT." THIS BILL, WHICH I CO-SPONSORED, AMENDS THE CLAYTON ACT TO PROHIBIT RESTRICTIONS ON THE USE OF CREDIT INSTRUMENTS IN THE PURCHASE OF GASOHOL.

FINALLY, THERE WERE TWO VERY CONTROVERSIAL BILLS, THE ANTITRUST ENFORCEMENT ACT (ILLINOIS BRICK BILL) AND THE OIL WINDFALL ACQUISITION ACT (THE OIL MERGER BILL), WHICH RECEIVED JUDICIARY COMMITTEE APPROVAL BY VOTES OF 9 TO 8 LAST YEAR, AND HAVE BEEN AWAITING SENATE ACTION EVER SINCE. THE ILLINOIS BRICK BILL REVERSES THE ILLINOIS BRICK SUPREME COURT DECISION TO ALLOW INDIRECT PURCHASERS AND SELLERS OF GOODS TO SUE FOR TREBLE DAMAGES. THE OIL MERGER BILL PROHIBITS THE EIGHTEEN LARGEST MAJOR OIL COMPANIES FROM ACQUIRING ANY NON-ENERGY CORPORATION WITH ASSETS OF \$50 MILLION OR MORE AND ANY ENERGY-RELATED CORPORATION WITH ASSETS OF \$100 MILLION OR MORE UNLESS IT CAN BE SHOWN TO ENHANCE COMPETITION. GIVEN THE CONTROVERSIAL NATURE OF THESE TWO BILLS, IT IS VERY UNLIKELY THAT ANY FURTHER SENATE ACTION WOULD BE TAKEN ON EITHER MEASURE BEFORE CONGRESS ADJOURNS.

BANKRUPTCY LAW CHANGES

FINALLY, WE HAVE BEEN INVOLVED IN FURTHER WORK IN OUR NEW BANKRUPTCY LAWS. ON NOVEMBER 6, 1978, THE BANKRUPTCY REFORM ACT OF 1978, A COMPREHENSIVE REVISION OF THE FEDERAL BANKRUPTCY LAWS, WAS SIGNED INTO EFFECT. SINCE THAT TIME, JUDGES, SCHOLARS, AND BANKRUPTCY PRACTITIONERS HAVE REVIEWED ITS PROVISIONS AND SUGGESTED TO THE JUDICIARY COMMITTEE NUMEROUS TECHNICAL AMENDMENTS AND MINOR SUBSTANTIVE CHANGES. ON SEPTEMBER 7, 1979, THE SENATE PASSED S.658 WHICH EMBODIED MANY OF THOSE RECOMMENDATIONS. JUST TWO WEEKS AGO, THE HOUSE PASSED ITS VERSION, H.R. 5447. IT NOW REMAINS FOR THE SENATE AND HOUSE CONFEREES, OF WHICH I AM ONE, AND

THEIR STAFFS TO WORK OUT DIFFERENCES BEFORE THE END OF THIS SESSION OF CONGRESS.

THERE IS ALSO AN ONGOING SUBSTANTIVE REVIEW AND EVALUATION OF THE FEDERAL BANKRUPTCY LAWS BY A COMMISSION SPONSORED BY THE AMERICAN BANKERS ASSOCIATION.

CONCLUSION

AT THIS POINT, I WILL CALL A HALT TO MY SURVEY OF THE BUSINESS OF THE JUDICIARY COMMITTEE DURING THIS CONGRESS. THERE ARE MANY OTHER PIECES OF LEGISLATION WHICH WE DO NOT HAVE THE TIME HERE TO DISCUSS. HOWEVER, I THINK THIS OVERVIEW GIVES YOU SOME IDEA OF HOW BROADLY WE HAVE RANGED OVER THE LEGAL LANDSCAPE IN OUR WORK.

AS YOU CAN ALSO SURMISE, MUCH OF THESE LABORS WILL CONTINUE IN THE NEXT CONGRESS. WE IN THE JUDICIARY COMMITTEE WILL BE ACTIVELY CONSIDERING LEGISLATION IN REGULATORY REFORM, IN CRIMINAL LAW RECODIFICATION, IN CHANGES TO THE FREEDOM OF INFORMATION ACT TO PROTECT BUSINESS SECRETS, AND IN MANY OTHER AREAS.

I HOPE MY REVIEW OF OUR WORK IN THIS CONGRESS HAS GIVEN YOU SOME INSIGHT FOR THE NEXT. AND I THANK YOU FOR YOUR KIND ATTENTION.

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