

OUTLINE OF REMARKS

NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

April 18, 1983--8:45 a.m.--Hyatt Regency

Handwritten notes:
Carter
St. Louis
[A large handwritten mark resembling a checkmark or the number '1' is drawn over the right side of the page.]

I. The President and the New Congress

A. In his State of the Union message, President Reagan made clear that he and the 98th Congress must work together to deal with an active agenda. That means action on the deficit, on unemployment, on social security, and attention to the shifting patterns of industry and job creation in our economy. At the same time we have to realize there will be major areas where we will not agree. No one is going to compromise away the gains won towards restraining the growth of spending, controlling the tax burden, and beating back inflation. The American people still overwhelmingly support those goals.

B. The President, the House leadership, and the Senate leadership will have to work together to forge a consensus on major decisions if we are to get the job done. On some issues we simply cannot afford to have a legislative stalemate: the bipartisan social package is a prime example.

C. The President still sets the agenda. On taxes, spending, deficits, employment, and trade the President proposes, and Congress must dispose. Those of us who have ideas of our own will work with the White House to get things done--but leadership still must come from the President. That is why we are unlikely to see any major departure from the principles of government Ronald Reagan has espoused in his first two years in office.

D. There is no coherent alternative to Republican leadership. The people still recognize that our economic problems were a long time in the making, and that the cure will take time too. According to CBS/New York Times voter exit polls in the last election, voters by a 5 to 4 margin blamed our economic problems on past Democratic policies rather than on President Reagan.

II. The Economy

A. Prognosis. We have to realistically assess the state of the economy and the prospects for the next few years. The fact is that the groundwork has been laid for a stable and lasting recovery, without renewed inflation. It is absolutely crucial that we proceed with care at this point, and not throw away the gains already made.

No one should doubt that we are making progress. In January the index of leading economic indicators jumped 3.6 percent--the biggest one-month rise since 1950, and the ninth increase in the last 10 months. In addition, the "concurrent indicators" of

current economic performance rose .6 percent in January, showing we are in recovery.

1. Inflation was cut to 3.9 percent in 1982, from 12.4 percent in 1980. This is the lowest inflation rate since 1972. And the trend is continuing: consumer prices dropped 0.2 percent in February.

2. Interest rates are down and still falling. The prime rate is down to 10 1/2 percent, way down from the 21 percent that prevailed when President Reagan took office. Home mortgage rates are down 3 points since last year. Long-term rates for business loans are off 3 to 4 points from a year ago.

3. Government spending growth rate is down to 11.2 percent this year from 17.4 percent in 1980. The 1983 budget resolution projects the growth rate of government to fall to 7.5 percent by 1985.

4. Lower taxes with major improvements in tax equity will help buoy the recovery, both on the consumer side and on the investment side. The combined effect of the 1981 and 1982 tax bills has been to lower individual taxes over 3 years by \$344 billion, as well as improve compliance and tax fairness. Lower individual rates boost personal income and restore incentive, while favorable capital cost recovery rules should spur investment.

5. In January, industrial production was up 0.9 percent; housing starts were up 36 percent; the stock market is up 300+ points over last August. These are tangible evidence of recovery.

B. Unemployment. The January drop in unemployment to 10.4 percent was followed by a further decline to 10.3 percent in March. That is major good news, and the decline has not been reversed, although there may be a few "blips" upward. Unemployment, of course, remains the major negative in the economic picture. High unemployment has to come down and stay down without inflationary stimulus--that is what we have failed to do in the past.

o Clearly there is a bipartisan consensus for more jobs. But resuming the inflationary policies of the past will not create lasting jobs, just an illusion of prosperity that leaves us worse off the next time we try to get "off the wagon."

o That means the most important thing we must do is judge carefully the degree of stimulus the economy can and should take, consistent with a firm anti-inflation policy. The Federal Reserve will play a key role, and has already shown a willingness to adjust its short-term goals based on an assessment of the

weakness of the economy. We will not allow the recession to continue, but we will not reflate the economy, either.

o While the main emphasis must remain on the long-term goals of growth with low inflation, there are steps we can take in the short term to deal with the plight of the unemployed. Many things have already been done:

- A new Federal supplemental unemployment compensation program was passed with the 1982 tax bill, providing additional unemployment benefits to about 2 million workers in 38 States. The House and Senate have agreed to extend this program through September 30.

- The President signed into law the new Job Training Partnership Act, which emphasizes training for permanent employment rather than make-work jobs. New initiatives outlined by the President focus on the long-term unemployed, youth, and on training or relocating displaced workers who lost jobs due to plant closures or force reductions.

- The targeted jobs tax credit, which was extended for 2 years by the 1982 tax bill, gives employers a real incentive to hire the disadvantaged--about 600,000 workers are certified under the program.

- The administration's enterprise zone legislation, reported last fall by the Finance Committee, can provide us with an experiment in private-sector job creation in depressed areas, through a combination of Federal tax incentives and State and local efforts to target an area for development with regulatory and tax relief, neighborhood participation, and capital and other improvements. Hearings will be held in the Finance Committee April 22.

- The 5¢ per gallon gas tax increase can create over 300,000 jobs by funding much needed repairs and construction of the Federal highway system.

C. The Deficit and Interest Rates.

1. All our economic difficulties are, of course, related--high interest rates and slow growth boost the deficit, and higher deficits create greater uncertainty in the business community as to our future course; will there be more inflation, or less credit available for business expansion?

2. Because of this, it makes sense first of all to chart a path that is most likely to bring stable growth without inflation. Higher growth boosts revenues and cuts unemployment costs, thereby reducing the deficit as well: already, upward

revisions of growth estimates are being made in light of the economic indicators.

3. In the short term, as the President urges, it makes sense to continue to review every part of the Federal budget in an effort to bring the deficit down. This means both defense and entitlements must be under scrutiny to maximize the efficiency of every dollar spent. A balanced deficit reduction program is still our goal.

4. Continued efforts to restrain the deficit by controlling Federal spending will give the Federal Reserve a bit more room to accommodate the potential for real growth that exists in the economy without inflationary pump-priming. But restraint in both fiscal and monetary policy is crucial if we want to maintain long-term confidence in the economic program. That means long-range goals must be carefully reconciled with efforts to respond to particular weaknesses in the economy. Radical attempts to reverse course would be self-defeating and must be resisted.

III. The Budget: The House and the President

A. We all know that developing a credible, deficit-reducing budget for 1984 and beyond is going to take a lot of hard work and give and take on all sides, Democrat and Republican, liberal and conservative. The President has made his proposal, and the House has adopted a radically different alternative. We are likely to end up with something in between, but we ought to consider for a moment who is closer to the mark in terms of the vital needs of our economy and in terms of national priorities.

B. House resolution. The House-passed budget resolution, engineered by the Democratic leadership, simply is not a credible plan for meeting our priorities and achieving sustained economic growth. The House recommends a \$30 billion tax increase in FY 1984 alone. That is not only an unreasonable increase in the tax burden as we come out of a recession, it can only mean that House Democrats want to repeal the third year of the tax cut for the working people. Reneging on promises is no way to run the government, and that proposal must be rejected. Even the members of the House Ways and Means committee have expressed strong doubts that any more than \$8 billion in revenue can or should be raised in 1984.

C. Defense spending. The President has recommended a 10 percent real increase in defense spending, and the House recommends a mere 4 percent increase: 2.3 percent compared with the President, if you factor out the military pay increase. We all know that defense, like every area of the budget, will have to assume a fair share of the burden of deficit reduction. But surely we ought to take more seriously the President's concern

about our national strength vis-a-vis the Soviet Union. We can and probably will have to modify the President's defense request, and the President will have to deal with both the Senate and the House leadership if we are to get agreement. We do have to get more out of each defense dollar spent. But the House-proposed increase is not wise, reasonable, or in the national interest. The Senate Budget Committee has voted for a 5 percent increase exclusive of pay, which is at least closer to the mark.

D. Domestic spending. There is widespread agreement that we cannot let the burden of deficit reduction continue to fall on benefits for lower-income Americans. But that does not mean domestic spending is untouchable--it can and must be reduced, something the Democratic budget fails to acknowledge. The House resolution provides \$25 billion more for nonmilitary spending than does the President's budget. \$6 billion of that difference is in the health area: and certainly we have reached the point where we should acknowledge that Federal health program costs are not under control, and that changes to control costs are very much in order. The American people do want to share the cost of reducing the deficit in a fair way. But they do not want national security risked, or the tax burden on individuals raised to an unconscionable degree, just because some members of Congress do not want to reexamine programs that may have outlived their usefulness or have become grossly inefficient. Instead, let us work together, and with the President, to reach a bipartisan agreement like that worked out on social security.

IV. The Budget: Tax Issues

A. There are lots of ways to raise revenue, but our job is to choose ways that are fair and consistent with good tax policy. We should resist the temptation to undo the progress that has been made in providing greater incentives for savings, work, and investment: those incentives will become more important as recovery proceeds. There are many base-broadening measures still to be considered that would improve the equity and efficiency of the tax code.

B. Indexing. The House budget assumes repeal of the tax indexing provision of the 1981 tax act, which takes effect in 1985. We all know that we have to compromise to get things done, but this is one area that we ought to leave alone if we are interested in sound tax policy and honesty in government. We can raise revenues--but why resort once again to back-door revenue increases generated by inflation? Tampering with indexing further risks sending a signal that we are prepared to reflate the economy and generate revenues through bracket creep to deal with the deficit. That would mean undoing all the progress we have made over the past two years, and it would be a tremendous mistake.

C. Outyear tax increases. The President's budget recommends a contingency tax to raise \$46 billion in FY 1986, consisting of a 5% surcharge and an oil tax, to be triggered if the deficit remains too high despite adoption of major spending cuts. It is not clear why we would need to use a "trigger" device to raise taxes based on deficit levels. It seems unlikely that a "trigger" mechanism would create the kind of reassurance on the deficit that the country is looking for.

If growth and revenues turn out better than now projected, we can always reduce taxes to the extent that becomes fiscally desirable. One possibility is to enact some additional base-broadening measures--improvements in equity and eliminating tax provisions that are economically inefficient--then provide for further rate reductions if the deficit is brought under control more rapidly than is now expected. This would maintain the momentum for a lower-rate, broader-based tax system that has been built over the last two years. It is also consistent with the administration's consideration of a streamlined and simplified tax structure with lower rates.

V. Tax Issues of Continuing Concern

A number of issues that have been around for some time may receive attention from the 98th Congress.

1. 6-month holding period. Efforts to reduce the capital gains holding period to 6 months will continue. There is very strong support for this change, because it can give a boost to capital markets at a time when greater savings and investment is vitally important to sustained economic recovery. This change was approved by the House in 1981 and by the Senate on three separate occasions in 1982, so it is time to get it enacted into law.

2. Withholding on Interest and Dividends. The withholding repeal campaign threatens a major setback to the tax reform effort begun last year. Withholding is an equitable compliance measure, not a new tax--without the \$4 billion per year from withholding, we will have to raise someone else's taxes. On a \$1,000 account, withholding would mean only a 50-cent loss each year on compounding--and banks can help people avoid that by opting for annual withholding.

3. Tuition Tax Credits. Although the Finance Committee fashioned a compromise tuition tax credit proposal last year after extensive consideration, the bill received no further action last year. But the Committee's efforts could form the basis for legislation in the 98th Congress. Legislation, S. 528, was introduced February 17.

4. Enterprise Zones. The Finance Committee reported out a modified version of the administration's enterprise zone proposal last September, but no further action was taken. New legislation has been sent up by the President, and the proposal is likely to come up again in connection with discussion of job-creation and economic development proposals, and possibly could be acted on with further refinements. A major question is whether the House will take an interest in the idea, which they did not in the 97th Congress. Finance Committee hearing is set for April 22.

5. DISC. While no specific DISC proposal was made in the 97th Congress, the issue was extensively discussed-- particularly the question of legality under the GATT. The search is clearly on for an alternative way to encourage exports, and the administration is likely to be active.

VI. Social Security

A. The National Commission developed a bipartisan package that deserves support. It is not perfect, and everyone had to swallow hard on some items: that is the cost of reaching agreement.

B. The work of the Commission made clear that we had to confront the crisis in social security. The Commission agreed that \$150-\$200 billion is needed between 1983 and 1989 to ensure the solvency of the system through 1990. This means providing about a 15 percent reserve ratio by 1990 under the pessimistic-- some would say realistic--assumptions.

C. The bipartisan package, includes a 6-month delay in cost-of-living adjustments, partial acceleration of scheduled payroll tax increases, coverage of new Federal workers and non-profit organizations, and partial taxation of benefits for higher-income beneficiaries.

D. We cannot forget that the payroll tax burden is already heavy and scheduled to increase, and the confidence of young people is critically low. The long-term deficit can be reduced considerably by very gradually slowing the growth of the system as people come on to the rolls in the future. The bill raises the retirement age to 67, again very gradually, for people retiring some 20 or 30 years from now. Ample time is available for people to adjust their savings and retirement decisions.

VII. Trade

A. Trade deficit is too large. The size of our trade deficit (which is now projected at \$75 billion in merchandise trade and \$30 billion in current account) alone means Congress will continue to look hard for ways to reform our trade policy.

The system of multilateral arrangements has been called into serious question as many believe it fails to meet our needs. Many voters and members of Congress will want to see us approach more of our trade problems on a bilateral basis. The average American simply does not understand why Japanese cars and TV's sell well here but American cigarettes, beef, baseball bats, and cosmetics cannot be sold in Japan. Remedies for this type of situation are certain to be a major focus of attention in the new Congress.

B. Export issues. Unfortunately, the GATT ministerial failed to make progress on the question of foreign subsidies for agricultural exports. This will continue if pressure from Congress to resolve this situation through negotiation or for other export promotion actions like the recent wheat flour sale to Egypt. I will be introducing legislation which will facilitate such activities in the future. This does not mean trade war, but does mean seeking to expand East-West trade, developing a viable substitute for DISC, utilizing Ex-Im Bank resources more adeptly, and moving the trade reciprocity bill that the Finance Committee approved in 1982. Fair access to markets must be a two-way street, and Congress will be under considerable pressure to see that that is so.

C. Import issues. As you know, the House passed "local content" legislation at the end of the last Congress. That is a drastic proposal and likely to be counterproductive in the long run if our goal is to increase access to markets and to gain maximum benefit from the mutual advantages of international trade. There may be other areas, however, where we might make adjustments: in considering extension of the Generalized System of Preferences, there may be an interest on the part of some members of the Finance Committee to restrict the program, particularly in light of the failure of the GATT ministers to agree on a new round of negotiations between developed and developing countries concerning tariffs. Similarly, there may be some objection to the trade provisions of the CBI proposal, and it may be difficult to extend the President's authority to negotiate tariff reductions on a limited basis. It is a good sign that the Japanese have agreed to continue to voluntarily restrain their automobile imports to this market for a third year until the domestic industry has had an adequate time to get back on its feet.

D. Clearly the heat is on when it comes to seeing that American producers get fair treatment under our system of international trade. If we choose our battles carefully to secure an appropriate response from our trading partners, we have an opportunity to making trade freer and fairer, to the advantage of everyone. But we must avoid the two extremes of allowing the world to think only the U.S. will play by the rules of free trade, regardless of disadvantage to our citizens; or, on the

other hand, taking extreme unilateral actions that may look good politically but that, in the long run, will provoke severe reaction and deprive us of market opportunities. We need just the right amount of leverage to open more doors, not have them slammed in our face.

VI. Conclusion

The months and years ahead must not be dominated by rigid ideologies on either side--but neither can the President or the Republican leadership be expected to cast aside the principles of Government the American people so soundly endorsed in 1980. Those principles--a more restrained Government, a freer economy, greater accountability to the American people--are as valid today as they ever were, and there is no indication that the people have changed their commitment to these same principles. Guided by these principles, we will try to work together to build on the sound foundation for recovery that has already been laid.

BANKRUPTCY POINTS: NACM SPEECH

Action on S. 445; Help for good faith creditors by updating procedures;
Ending jurisdictional confusion in courts.

Committee action will be completed today on S. 445, my bill to reform inefficient procedures in bankruptcy. After long and difficult negotiations with Senator Metzenbaum, agreement has been reached on a number of points which were in dispute. Our compromises will make possible rapid action on the bill in the Senate.

The bill contains a number of measures that will benefit the members of this group who have been adversely affected by provisions of the bankruptcy laws that have unduly restricted creditors seeking to recover on legitimate claims. We have updated Code sections dealing with preferences in bankruptcy, representation on the committee of creditors, and other important areas.

I know the members of this group generally favor action to remedy the problem with the bankruptcy courts, and in particular, creation of Art. III status for bankruptcy judges. I supported a measure in Committee that would have provided for handling of bankruptcy cases by Art. III judges. Unfortunately, that measure was defeated in Committee. But the Senate is moving on legislation that will end the confusion over jurisdiction in the Courts, and I will be pushing to obtain action in the next few weeks on both of these bills on the floor.

This group provides financial
services to businesses -
not individuals.

TOPICAL SUMMARY: S. 445

- Subt.A: Consumer Credit Amendments. S. 2000 in the 97th Congress. (Dole)
- Subt.B: Grain Elevator Bankruptcy Amendments. Text is drawn from S. 3037 in 97th Congress. Provides procedures for expedited abandonment of grain from bankrupt elevators. (Dole)
- Subt.C: Shopping Centers Bankruptcy Amendments. S. 2297 in 97th, S. 549 in 98th. Establishes a timetable within which trustee would have to accept or reject leases on shopping center properties in bankruptcy. (Hatch)
- Subt.D: Drunk Drivers' Nondischargeability of debts. S. 2159 in 97th Congress. Prohibits debts incurred as a result of an act of drunk driving from being discharged in bankruptcy. (Danforth)
- Subt.E: Referee's Salary and Expense Fund Amendments. (Drawn from S. 863 in 97th Congress). Corrects a drafting error in the 1978 Act which requires a handful of corporate debtors in bankruptcy to continue making payments to the non-existent fund.
- Subt.F: Repurchase Agreements Amendments. Proposal of the Federal Reserve Board, which exempts repurchase agreements from the automatic stay in bankruptcy.
- Subt.G: Timesharing Agreements Amendments. S. 3027 in the 97th Congress, S. 492 in the 98th. This subtitle provides that persons who hold timesharing agreements shall be granted a lien on the property involved when the timesharing contractor goes bankrupt and the trustee terminates the timesharing contract.
- Subt.H: Bankruptcy Oversight. This subtitle directs the Administrative Office to collect information on bankruptcy filings regarding levels of debtor income and assets, debtor living expenses, and total amounts recovered for creditors in proceedings under Chapters 7, 11, and 13. This information will assist Congress in analyzing the functioning of the bankruptcy system.
- Subt.I: Technical and Clarifying Amendments. The bulk of the provisions in this subtitle are drawn from S. 863, which passed the Senate by unanimous consent in 1981. The provisions correct grammatical, punctuation, and spelling errors in the code, clarify the intent of the drafters in certain sections, and generally refine procedures.

NOTES ON THE JUDGES' BILL:

The Senate Judiciary Committee rejected S. 443, which would have transferred all bankruptcy cases to the Article III district courts for handling. The Committee has also rejected proposals which would have transformed the present Art. I bankruptcy courts into specialized, Art. III bankruptcy courts. Members of the NACM generally support handling of bankruptcy by Art. III courts, but are most concerned about clearing up the constitutional problem created by Northern Pipeline so that the confusion in the court system is eliminated.

The Committee adopted a proposal by Senator Thurmond which preserves the present Art. I courts, but gives the Art. III district courts complete supervisory responsibility over the decisions of the Art. I courts. Under the Thurmond approach, the Constitutional problem is dealt with by requiring all cases to be filed in the district courts, and allowing the district courts to refer those cases to the bankruptcy courts which do not require the attention of an Art. III judge under Northern Pipeline.

In addition, parties may consent to the jurisdiction of the Art. I bankruptcy courts even if their case is one that falls under Northern Pipeline. The ability to consent to jurisdiction of the Art. I court allows litigants to seek quick action in the bankruptcy -- as opposed to the district -- court where they are confident of the bankruptcy judges' ability to render a fair decision.

The Thurmond bill, which the Committee approved in late March and which should go to the floor very soon, is modeled after the procedures that the courts have been following under an interim rule promulgated by the Judicial Conference. The American Bar Association has endorsed the Thurmond bill, and most observers feel that the courts will be able to handle the cases reasonably well under this system, if it is enacted into law.

SPECIFIC CHANGES IN LAW OF INTEREST TO NACM:

1. Assignment for Benefit of Creditors:

Under Section 543 of the Code, creditors who have received assets of the debtor under a general assignment of rights by the debtor can be required to turn those assets received over to the trustee in bankruptcy. This can happen even where the assignment took place many months before a bankruptcy petition was filed; and where the trustee demands return of assets delivered to creditors long before the bankruptcy was filed, tremendous financial uncertainty is created for lending institutions that may be trying to recover on accounts receivable or trying to liquidate inventory.

DOLE BILL: Places a time limit on the trustee's authority to require a turnover of property. Where the assignment occurred more than four months prior to the bankruptcy, it cannot be upset by the trustee. This is basically a return to the practices which prevailed under the pre-1978 bankruptcy law.

2. Trade Association Acting as Secretary for Creditors Committee:

Under Section 1103(b) of the Code, a trade association representative is effectively prohibited from serving as secretary to a committee of creditors appointed by the bankruptcy judge. Yet, the trade association representative may be the best party to serve in that position since the association is in a better position to keep members of the association that may be creditors in the bankruptcy proceeding abreast of developments affecting their interest. Changing the laws to permit a trade association representative to serve in that capacity -- provided there is no actual conflict of interest between that association and other creditors -- would simplify the work of a creditor's committee and serve the interests of creditors better.

DOLE BILL: Amends the law to permit the representative of a trade association to serve as Secretary to a Creditor's Committee.

3. Letters of Credit

Under the 1978 Reform Act, some courts have invalidated payments made by banks upon letters of credit on the grounds that they constitute a "preferential transfer" under the bankruptcy laws -- even though no money has come out of the debtor's pocket. These rulings have upset the certainty that the law has always attached to letters of credit, since parties who have shipped goods on the basis of such a guarantee cannot be certain they will receive payment if there is a bankruptcy.

DOLE BILL: Amends the Code to specifically provide that letter of credit payments shall not be considered preferential transfers. Page 13 of 28

1. Content of Bill

The Bankruptcy Improvements Act of 1982 contains over thirty substantive, CREDIT amendments to the Bankruptcy Reform Act of 1978. The key provisions:

- the bill would require the bankruptcy court to look at future income of the debtor in determining whether or not the debtor should qualify for straight bankruptcy;
- reaffirmation agreement procedures are simplified so as to encourage good faith agreements between debtors and creditors to repay debts outside of bankruptcy;
- provisions are added to the law which will discourage "loading up" by debtors going on a buying spree just prior to filing of bankruptcy;
- powers of the trustee to set aside payments made to creditors in the ordinary course of business prior to the bankruptcy -- such as installment debt payments -- are limited. Under S. 2000, trustee would have to show that the recipient of the payment had "reasonable cause to believe" a debtor was insolvent;
- an aggregate dollar limit - \$3000 - is placed upon the value of personal property that the debtor can claim as exempt under the federal exemptions. This change prevents debtors from "stacking" dollar value of exempt items without limit, as is possible under the present law (which merely places a limit on the claimable value of any individual item);
- persons filing in joint cases (husband and wife) will be required to elect to use state or federal exemptions together. That is, husband and wife could no longer "split" their exemptions in bankruptcy, with one spouse choosing state exemptions and one spouse choosing federal exemptions;
- debtors in Chapter 13 cases (wage-earner plans) will be required to devote most of their discretionary income to the plan. This is income which is not needed for the support of the debtor and his dependents. Under current law, payments proposed by debtor must only represent "good faith" -- an open-ended standard which has resulted in a large number of plans proposing payment of 10% or less on debts when debtors could pay more.
- The bill conforms the treatment of nondischargeable debts in Chapter 13 to that accorded them in Chapter 7. Under present law, a debtor can obtain a discharge of otherwise nondischargeable debts at the conclusion of a Chapter 13 plan even though he may pay only 1% on those debts in the plan. Only exceptions to this are alimony and child support payments; other debts, such as taxes, debts incurred by fraud, fines, penalties, and similar items, can be discharged.

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Handwritten notes:
Clem
1/18/83
K. St. John

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revisions of growth estimates are being made in light of the economic indicators.

3. In the short term, as the President urges, it makes sense to continue to review every part of the Federal budget in an effort to bring the deficit down. This means both defense and entitlements must be under scrutiny to maximize the efficiency of every dollar spent. A balanced deficit reduction program is still our goal.

4. Continued efforts to restrain the deficit by controlling Federal spending will give the Federal Reserve a bit more room to accommodate the potential for real growth that exists in the economy without inflationary pump-priming. But restraint in both fiscal and monetary policy is crucial if we want to maintain long-term confidence in the economic program. That means long-range goals must be carefully reconciled with efforts to respond to particular weaknesses in the economy. Radical attempts to reverse course would be self-defeating and must be resisted.

III. The Budget: The House and the President

A. We all know that developing a credible, deficit-reducing budget for 1984 and beyond is going to take a lot of hard work and give and take on all sides, Democrat and Republican, liberal and conservative. The President has made his proposal, and the House has adopted a radically different alternative. We are likely to end up with something in between, but we ought to consider for a moment who is closer to the mark in terms of the vital needs of our economy and in terms of national priorities.

B. House resolution. The House-passed budget resolution, engineered by the Democratic leadership, simply is not a credible plan for meeting our priorities and achieving sustained economic growth. The House recommends a \$30 billion tax increase in FY 1984 alone. That is not only an unreasonable increase in the tax burden as we come out of a recession, it can only mean that House Democrats want to repeal the third year of the tax cut for the working people. Reneging on promises is no way to run the government, and that proposal must be rejected. Even the members of the House Ways and Means committee have expressed strong doubts that any more than \$8 billion in revenue can or should be raised in 1984.

C. Defense spending. The President has recommended a 10 percent real increase in defense spending, and the House recommends a mere 4 percent increase: 2.3 percent compared with the President, if you factor out the military pay increase. We all know that defense, like every area of the budget, will have to assume a fair share of the burden of deficit reduction. But surely we ought to take more seriously the President's concern

about our national strength vis-a-vis the Soviet Union. We can and probably will have to modify the President's defense request, and the President will have to deal with both the Senate and the House leadership if we are to get agreement. We do have to get more out of each defense dollar spent. But the House-proposed increase is not wise, reasonable, or in the national interest. The Senate Budget Committee has voted for a 5 percent increase exclusive of pay, which is at least closer to the mark.

D. Domestic spending. There is widespread agreement that we cannot let the burden of deficit reduction continue to fall on benefits for lower-income Americans. But that does not mean domestic spending is untouchable--it can and must be reduced, something the Democratic budget fails to acknowledge. The House resolution provides \$25 billion more for nonmilitary spending than does the President's budget. \$6 billion of that difference is in the health area: and certainly we have reached the point where we should acknowledge that Federal health program costs are not under control, and that changes to control costs are very much in order. The American people do want to share the cost of reducing the deficit in a fair way. But they do not want national security risked, or the tax burden on individuals raised to an unconscionable degree, just because some members of Congress do not want to reexamine programs that may have outlived their usefulness or have become grossly inefficient. Instead, let us work together, and with the President, to reach a bipartisan agreement like that worked out on social security.

IV. The Budget: Tax Issues

A. There are lots of ways to raise revenue, but our job is to choose ways that are fair and consistent with good tax policy. We should resist the temptation to undo the progress that has been made in providing greater incentives for savings, work, and investment: those incentives will become more important as recovery proceeds. There are many base-broadening measures still to be considered that would improve the equity and efficiency of the tax code.

B. Indexing. The House budget assumes repeal of the tax indexing provision of the 1981 tax act, which takes effect in 1985. We all know that we have to compromise to get things done, but this is one area that we ought to leave alone if we are interested in sound tax policy and honesty in government. We can raise revenues--but why resort once again to back-door revenue increases generated by inflation? Tampering with indexing further risks sending a signal that we are prepared to reflate the economy and generate revenues through bracket creep to deal with the deficit. That would mean undoing all the progress we have made over the past two years, and it would be a tremendous mistake.

C. Outyear tax increases. The President's budget recommends a contingency tax to raise \$46 billion in FY 1986, consisting of a 5% surcharge and an oil tax, to be triggered if the deficit remains too high despite adoption of major spending cuts. It is not clear why we would need to use a "trigger" device to raise taxes based on deficit levels. It seems unlikely that a "trigger" mechanism would create the kind of reassurance on the deficit that the country is looking for.

If growth and revenues turn out better than now projected, we can always reduce taxes to the extent that becomes fiscally desirable. One possibility is to enact some additional base-broadening measures--improvements in equity and eliminating tax provisions that are economically inefficient--then provide for further rate reductions if the deficit is brought under control more rapidly than is now expected. This would maintain the momentum for a lower-rate, broader-based tax system that has been built over the last two years. It is also consistent with the administration's consideration of a streamlined and simplified tax structure with lower rates.

V. Tax Issues of Continuing Concern

A number of issues that have been around for some time may receive attention from the 98th Congress.

1. 6-month holding period. Efforts to reduce the capital gains holding period to 6 months will continue. There is very strong support for this change, because it can give a boost to capital markets at a time when greater savings and investment is vitally important to sustained economic recovery. This change was approved by the House in 1981 and by the Senate on three separate occasions in 1982, so it is time to get it enacted into law.

2. Withholding on Interest and Dividends. The withholding repeal campaign threatens a major setback to the tax reform effort begun last year. Withholding is an equitable compliance measure, not a new tax--without the \$4 billion per year from withholding, we will have to raise someone else's taxes. On a \$1,000 account, withholding would mean only a 50-cent loss each year on compounding--and banks can help people avoid that by opting for annual withholding.

3. Tuition Tax Credits. Although the Finance Committee fashioned a compromise tuition tax credit proposal last year after extensive consideration, the bill received no further action last year. But the Committee's efforts could form the basis for legislation in the 98th Congress. Legislation, S. 528, was introduced February 17.

4. Enterprise Zones. The Finance Committee reported out a modified version of the administration's enterprise zone proposal last September, but no further action was taken. New legislation has been sent up by the President, and the proposal is likely to come up again in connection with discussion of job-creation and economic development proposals, and possibly could be acted on with further refinements. A major question is whether the House will take an interest in the idea, which they did not in the 97th Congress. Finance Committee hearing is set for April 22.

5. DISC. While no specific DISC proposal was made in the 97th Congress, the issue was extensively discussed--particularly the question of legality under the GATT. The search is clearly on for an alternative way to encourage exports, and the administration is likely to be active.

VI. Social Security

A. The National Commission developed a bipartisan package that deserves support. It is not perfect, and everyone had to swallow hard on some items: that is the cost of reaching agreement.

B. The work of the Commission made clear that we had to confront the crisis in social security. The Commission agreed that \$150-\$200 billion is needed between 1983 and 1989 to ensure the solvency of the system through 1990. This means providing about a 15 percent reserve ratio by 1990 under the pessimistic--some would say realistic--assumptions.

C. The bipartisan package, includes a 6-month delay in cost-of-living adjustments, partial acceleration of scheduled payroll tax increases, coverage of new Federal workers and non-profit organizations, and partial taxation of benefits for higher-income beneficiaries.

D. We cannot forget that the payroll tax burden is already heavy and scheduled to increase, and the confidence of young people is critically low. The long-term deficit can be reduced considerably by very gradually slowing the growth of the system as people come on to the rolls in the future. The bill raises the retirement age to 67, again very gradually, for people retiring some 20 or 30 years from now. Ample time is available for people to adjust their savings and retirement decisions.

VII. Trade

A. Trade deficit is too large. The size of our trade deficit (which is now projected at \$75 billion in merchandise trade and \$30 billion in current account) alone means Congress will continue to look hard for ways to reform our trade policy.

The system of multilateral arrangements has been called into serious question as many believe it fails to meet our needs. Many voters and members of Congress will want to see us approach more of our trade problems on a bilateral basis. The average American simply does not understand why Japanese cars and TV's sell well here but American cigarettes, beef, baseball bats, and cosmetics cannot be sold in Japan. Remedies for this type of situation are certain to be a major focus of attention in the new Congress.

B. Export issues. Unfortunately, the GATT ministerial failed to make progress on the question of foreign subsidies for agricultural exports. This will continue if pressure from Congress to resolve this situation through negotiation or for other export promotion actions like the recent wheat flour sale to Egypt. I will be introducing legislation which will facilitate such activities in the future. This does not mean trade war, but does mean seeking to expand East-West trade, developing a viable substitute for DISC, utilizing Ex-Im Bank resources more adeptly, and moving the trade reciprocity bill that the Finance Committee approved in 1982. Fair access to markets must be a two-way street, and Congress will be under considerable pressure to see that that is so.

C. Import issues. As you know, the House passed "local content" legislation at the end of the last Congress. That is a drastic proposal and likely to be counterproductive in the long run if our goal is to increase access to markets and to gain maximum benefit from the mutual advantages of international trade. There may be other areas, however, where we might make adjustments: in considering extension of the Generalized System of Preferences, there may be an interest on the part of some members of the Finance Committee to restrict the program, particularly in light of the failure of the GATT ministers to agree on a new round of negotiations between developed and developing countries concerning tariffs. Similarly, there may be some objection to the trade provisions of the CBI proposal, and it may be difficult to extend the President's authority to negotiate tariff reductions on a limited basis. It is a good sign that the Japanese have agreed to continue to voluntarily restrain their automobile imports to this market for a third year until the domestic industry has had an adequate time to get back on its feet.

D. Clearly the heat is on when it comes to seeing that American producers get fair treatment under our system of international trade. If we choose our battles carefully to secure an appropriate response from our trading partners, we have an opportunity to making trade freer and fairer, to the advantage of everyone. But we must avoid the two extremes of allowing the world to think only the U.S. will play by the rules of free trade, regardless of disadvantage to our citizens; or, on the

other hand, taking extreme unilateral actions that may look good politically but that, in the long run, will provoke severe reaction and deprive us of market opportunities. We need just the right amount of leverage to open more doors, not have them slammed in our face.

VI. Conclusion

The months and years ahead must not be dominated by rigid ideologies on either side--but neither can the President or the Republican leadership be expected to cast aside the principles of Government the American people so soundly endorsed in 1980. Those principles--a more restrained Government, a freer economy, greater accountability to the American people--are as valid today as they ever were, and there is no indication that the people have changed their commitment to these same principles. Guided by these principles, we will try to work together to build on the sound foundation for recovery that has already been laid.

1. Content of Bill

The Bankruptcy Improvements Act of 1982 contains over thirty substantive, CREDIT amendments to the Bankruptcy Reform Act of 1978. The key provisions:

- the bill would require the bankruptcy court to look at future income of the debtor in determining whether or not the debtor should qualify for straight bankruptcy;
- reaffirmation agreement procedures are simplified so as to encourage good faith agreements between debtors and creditors to repay debts outside of bankruptcy;
- provisions are added to the law which will discourage "loading up" by debtors going on a buying spree just prior to filing of bankruptcy;
- powers of the trustee to set aside payments made to creditors in the ordinary course of business prior to the bankruptcy -- such as installment debt payments -- are limited. Under S. 2000, trustee would have to show that the recipient of the payment had "reasonable cause to believe" a debtor was insolvent;
- an aggregate dollar limit - \$3000 - is placed upon the value of personal property that the debtor can claim as exempt under the federal exemptions. This change prevents debtors from "stacking" dollar value of exempt items without limit, as is possible under the present law (which merely places a limit on the claimable value of any individual item);
- persons filing in joint cases (husband and wife) will be required to elect to use state or federal exemptions together. That is, husband and wife could no longer "split" their exemptions in bankruptcy, with one spouse choosing state exemptions and one spouse choosing federal exemptions;
- debtors in Chapter 13 cases (wage-earner plans) will be required to devote most of their discretionary income to the plan. This is income which is not needed for the support of the debtor and his dependents. Under current law, payments proposed by debtor must only represent "good faith" -- an open-ended standard which has resulted in a large number of plans proposing payment of 10% or less on debts when debtors could pay more.
- The bill conforms the treatment of nondischargeable debts in Chapter 13 to that accorded them in Chapter 7. Under present law, a debtor can obtain a discharge of otherwise nondischargeable debts at the conclusion of a Chapter 13 plan even though he may pay only 1% on those debts in the plan. Only exceptions to this are alimony and child support payments; other debts, such as taxes, debts incurred by fraud, fines, penalties, and similar items, can be discharged.

SPECIFIC CHANGES IN LAW OF INTEREST TO NACM:

1. Assignment for Benefit of Creditors:

Under Section 543 of the Code, creditors who have received assets of the debtor under a general assignment of rights by the debtor can be required to turn those assets received over to the trustee in bankruptcy. This can happen even where the assignment took place many months before a bankruptcy petition was filed; and where the trustee demands return of assets delivered to creditors long before the bankruptcy was filed, tremendous financial uncertainty is created for lending institutions that may be trying to recover on accounts receivable or trying to liquidate inventory.

DOLE BILL: Places a time limit on the trustee's authority to require a turnover of property. Where the assignment occurred more than four months prior to the bankruptcy, it cannot be upset by the trustee. This is basically a return to the practices which prevailed under the pre-1978 bankruptcy law.

2. Trade Association Acting as Secretary for Creditors Committee:

Under Section 1103(b) of the Code, a trade association representative is effectively prohibited from serving as secretary to a committee of creditors appointed by the bankruptcy judge. Yet, the trade association representative may be the best party to serve in that position since the association is in a better position to keep members of the association that may be creditors in the bankruptcy proceeding abreast of developments affecting their interest. Changing the laws to permit a trade association representative to serve in that capacity -- provided there is no actual conflict of interest between that association and other creditors -- would simplify the work of a creditor's committee and serve the interests of creditors better.

DOLE BILL: Amends the law to permit the representative of a trade association to serve as Secretary to a Creditor's Committee.

3. Letters of Credit

Under the 1978 Reform Act, some courts have invalidated payments made by banks upon letters of credit on the grounds that they constitute a "preferential transfer" under the bankruptcy laws -- even though no money has come out of the debtor's pocket. These rulings have upset the certainty that the law has always attached to letters of credit, since parties who have shipped goods on the basis of such a guarantee cannot be certain they will receive payment if there is a bankruptcy.

DOLE BILL: Amends the Code to specifically provide that letter of credit payments shall not be considered preferential transfers.

NOTES ON THE JUDGES' BILL:

The Senate Judiciary Committee rejected S. 443, which would have transferred all bankruptcy cases to the Article III district courts for handling. The Committee has also rejected proposals which would have transformed the present Art. I bankruptcy courts into specialized, Art. III bankruptcy courts. Members of the NACM generally support handling of bankruptcy by Art. III courts, but are most concerned about clearing up the constitutional problem created by Northern Pipeline so that the confusion in the court system is eliminated.

The Committee adopted a proposal by Senator Thurmond which preserves the present Art. I courts, but gives the Art. III district courts complete supervisory responsibility over the decisions of the Art. I courts. Under the Thurmond approach, the Constitutional problem is dealt with by requiring all cases to be filed in the district courts, and allowing the district courts to refer those cases to the bankruptcy courts which do not require the attention of an Art. III judge under Northern Pipeline.

In addition, parties may consent to the jurisdiction of the Art. I bankruptcy courts even if their case is one that falls under Northern Pipeline. The ability to consent to jurisdiction of the Art. I court allows litigants to seek quick action in the bankruptcy -- as opposed to the district -- court where they are confident of the bankruptcy judges' ability to render a fair decision.

The Thurmond bill, which the Committee approved in late March and which should go to the floor very soon, is modeled after the procedures that the courts have been following under an interim rule promulgated by the Judicial Conference. The American Bar Association has endorsed the Thurmond bill, and most observers feel that the courts will be able to handle the cases reasonably well under this system, if it is enacted into law.

BANKRUPTCY POINTS: NACM SPEECH

Action on S. 445; Help for good faith creditors by updating procedures;
Ending jurisdictional confusion in courts.

Committee action will be completed today on S. 445, my bill to reform inefficient procedures in bankruptcy. After long and difficult negotiations with Senator Metzenbaum, agreement has been reached on a number of points which were in dispute. Our compromises will make possible rapid action on the bill in the Senate.

The bill contains a number of measures that will benefit the members of this group who have been adversely affected by provisions of the bankruptcy laws that have unduly restricted creditors seeking to recover on legitimate claims. We have updated Code sections dealing with preferences in bankruptcy, representation on the committee of creditors, and other important areas.

I know the members of this group generally favor action to remedy the problem with the bankruptcy courts, and in particular, creation of Art. III status for bankruptcy judges. I supported a measure in Committee that would have provided for handling of bankruptcy cases by Art. III judges. Unfortunately, that measure was defeated in Committee. But the Senate is moving on legislation that will end the confusion over jurisdiction in the Courts, and I will be pushing to obtain action in the next few weeks on both of these bills on the floor.

This group PROVIDES FINANCIAL
SERVICES TO BUSINESSES -
NOT INDIVIDUALS.

TOPICAL SUMMARY: S. 445

- Subt.A: Consumer Credit Amendments. S. 2000 in the 97th Congress. (Dole)
- Subt.B: Grain Elevator Bankruptcy Amendments. Text is drawn from S. 3037 in 97th Congress. Provides procedures for expedited abandonment of grain from bankrupt elevators. (Dole)
- Subt.C: Shopping Centers Bankruptcy Amendments. S. 2297 in 97th, S. 549 in 98th. Establishes a timetable within which trustee would have to accept or reject leases on shopping center properties in bankruptcy. (Hatch)
- Subt.D: Drunk Drivers' Nondischargeability of debts. S. 2159 in 97th Congress. Prohibits debts incurred as a result of an act of drunk driving from being discharged in bankruptcy. (Danforth)
- Subt.E: Referee's Salary and Expense Fund Amendments. (Drawn from S. 863 in 97th Congress). Corrects a drafting error in the 1978 Act which requires a handful of corporate debtors in bankruptcy to continue making payments to the non-existent fund.
- Subt.F: Repurchase Agreements Amendments. Proposal of the Federal Reserve Board, which exempts repurchase agreements from the automatic stay in bankruptcy.
- Subt.G: Timesharing Agreements Amendments. S. 3027 in the 97th Congress, S. 492 in the 98th. This subtitle provides that persons who hold timesharing agreements shall be granted a lien on the property involved when the timesharing contractor goes bankrupt and the trustee terminates the timesharing contract.
- Subt.H: Bankruptcy Oversight. This subtitle directs the Administrative Office to collect information on bankruptcy filings regarding levels of debtor income and assets, debtor living expenses, and total amounts recovered for creditors in proceedings under Chapters 7, 11, and 13. This information will assist Congress in analyzing the functioning of the bankruptcy system.
- Subt.I: Technical and Clarifying Amendments. The bulk of the provisions in this subtitle are drawn from S. 863, which passed the Senate by unanimous consent in 1981. The provisions correct grammatical, punctuation, and spelling errors in the code, clarify the intent of the drafters in certain sections, and generally refine procedures.