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Party Leadership and Floor Management in the United States Senate

A Dissertation Presented for the Doctor of Philosophy Degree

The University of Tennessee, Knoxville

William Eric Davis
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Any serious intellectual product cannot result from the efforts of one person alone. During the course of researching and writing this dissertation there were numerous persons from whom I learned a great deal and who contributed in some way to the final product.

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In the realm of presidential studies there are a number of works that claim to have disproven the concept of presidential 'coattails.' This is the notion that some presidential candidates' "coattails" during an election were long enough to carry fellow partisans seeking congressional seats into office along with him. There may or may not be presidential coattails, but everyone mentioned above, on whose coattails I rode, are owed an eternal debt of gratitude that can never be fully repaid. Of course, any errors that may be contained in this dissertation are my own. But, if there is any value in this dissertation whatsoever, those mentioned above should be given much of the credit.

ABSTRACT

This dissertation analyzes the floor activities of Senate party leaders. The focus of the study is on how the parties, through their leaders, attempt to attain their objectives on the Senate floor. In the process, the use of various persuasive and procedural strategies as revealed by the *Congressional Record* will be explored.

The basic purpose of the analysis is to develop insights into the dynamics of Senate party leadership and contemporary patterns in floor management. It is concluded that party leaders in the Senate have resources at their disposal to effectively lead the Senate and that one majority leader in particular, Howard H. Baker, Jr. used those resources to great effect. In the process, a new model for conceptualizing Senate leadership is offered.

Neo-institutionalism, as a scientific approach, provides the undercurrent for the analysis. The study supports the proposition that institutions are important to the product they deliver. The position of Senate majority leader is a part of the "institution" in that his actions provide context to the environment in which the Senate operates. His actions can have a great affect on legislative outcomes.

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LIST OF ABBREVIATIONS

Department of Justice	DOJ
House Bill (#)	HR (#)
House Joint Resolution (#)	H. J. Res. (#)
National Labor Relations Board	NLRB
Oil Producing and Exporting Countries	OPEC
Senate Bill (#)	S. (#)
Senate Joint Resolution (#)	S. J. Res. (#)
Unanimous Consent Request	UCR
Unanimous Consent Agreement	UCA
The University of Tennessee at Knoxville	UTK

Chapter One

Introduction

This dissertation analyzes the floor activities of Senate party leaders. The focus of the study is on how the parties, through their leaders, attempt to attain their objectives on the Senate floor. In the process, the use of various persuasive and procedural devices as revealed by the *Congressional Record* will be explored. Attention is also paid to leadership cooperation and conflict. The basic purpose of the analysis is to develop insights into the dynamics of inter-party and intra-party relationships on the Senate floor as well as contemporary patterns in floor management.

What is proposed here is a systematic examination of what made Howard H. Baker, Jr. an effective minority and majority leader. That is, what is it that causes legislative scholars to place Baker in the company of Senate leadership giants such as Lyndon Johnson, Mike Mansfield, and Alben Barkley? One possible response points to the formal resources of office available to Baker to lead his party in the Senate. That response is inadequate, because if resources made for an effective leader, then any Senate leader would be just as effective as any other due to the fact that leadership resources have not changed much over time.

A second and complementary component may lie in "how" Baker approached his job as leader. Lyndon Johnson was a great leader because of his single-minded determination to push his party's legislation through the Senate against seemingly

insurmountable obstacles. He was very good at it. The time for strong-arm tactics, however, has come and gone. Such an approach would have alienated Johnson's successor, Mike Mansfield, from members who by then wanted more influence over what came out of the Senate. After the Johnson era the Senate was ready for a new style of leadership, one more amenable to the preferences of individual members. For Mansfield to accomplish his goals as leader, he had to find a way to help members accomplish their goals. Such an approach went a long way toward securing for Mansfield a place in congressional literature as a great leader (Stewart 1971). He was chosen to succeed Johnson because of member expectations of how he would approach the job.

Are the two approaches taken by Johnson and Mansfield the only alternatives? Is there some middle ground that a leader can claim and still go on to be a great leader? The latter question provides the undercurrent for this study and thus constitutes the research problem.

Research Objectives and the Scope of the Analysis

From 1977 to 1985 there was new Senate leadership in both parties. In 1977 Robert Byrd became the majority (Democratic) party leader and Howard Baker became the minority (Republican) party leader. In 1981, fortunes changed for the two parties and the two leaders switched roles with Baker becoming the majority leader and Byrd the minority leader. Byrd continued to serve as his party leader after Baker retired in 1984.

Two years after that the Democratic party again became the majority. Byrd has since stepped down as his party's leader but continues to serve in the Senate.

The time frame of this study is 1977 to 1985 with most of the focus on the 1981-1985 period and on the majority leadership of Howard Baker. The time frame permits scholars to step back, after both men have ceased to lead their parties (in an official capacity, anyway) and examine from a certain perspective how leaders approach their roles. In other words, it is now less likely that a researcher will be influenced by gushing reviews of leaders that inevitably appear immediately after they, or any other member, retires from Congress.

Party Organization in the Senate

In the contemporary Congress, each party elects several of its members to fill positions of leadership. That has only been the case for about 70 or 80 years. Before that, most leadership positions were informal. The only exceptions were the constitutionally devised Speaker of the House, who is elected by its members; the President Pro Tempore of the Senate, elected by the full Senate; and the President of the Senate which is not an elected position but, per constitutional provision, is filled by the Vice President of the United States. None of the offices created by the Constitution were conceived to be party leadership positions, although early on some occupants used the power of their offices to pursue party objectives. Majority leaders, whips (also known as assistant majority leaders), and other official party leadership positions came along later and today exist in

each chamber (Bailey 1986, 1988; Baker and Davidson 1991; Baker 1995; Canon 1989; Cooper and Brady 1981; Cotter and Bibby 1980; Cox and McCubbins 1993; Davidson 1985; Davidson 1989; Davidson and Oleszek 1984; Deering 1986; Dodd and Oppenheimer 1989; Fenno 1982; Hammond 1991; Huitt 1961; Kayden and Mahe, Jr. 1985; Kelly 1995; Kornacki 1990; Munk 1974; Ornstein 1990; Patterson 1989, 1990; Peabody 1976, 1981; Peters, Jr. 1990; Riddick 1988; Ripley 1969a, 1969b; Sinclair 1986, 1989, 1990, 1992; Smith 1990, 1994; Stewart 1971; Ward 1993; Welborn 1993).

Prior to the Civil War, leadership was weak. Caucuses were important and powerful, but not in the sense of managing the Senate or a legislative program. A change came after 1840 when the party caucuses began offering committee slates for the chamber's approval. Prior to that, the full chamber voted to approve or disapprove the membership of committees and their chairmen on an individual basis. Determining committee membership, then, became a party (caucus) function after 1840, still without official party leaders. By the end of reconstruction, there was party unity, but still no formal party leadership. Leadership was factional with one or more members taking the responsibility to lead whatever faction they belonged to.

Between 1865 and 1920, the Senate was led by a type of junta that utilized the party machinery and the committee machinery to control what came out of the Senate. The four main leaders of that clique were Nelson Aldrich (R-RI), William Allison (R-OH), Orville Platt (R-CT), and John Spooner (R-WI). There was, to that point, no single party leader similar to a modern Senate majority leader.

Party leadership, since the 1920s, has become "institutionalized" in that party leadership positions are now formal positions recognized by the rules and filled on a regular basis through established procedures with a set of recognized responsibilities. The first time an official Senate party leader was elected was in 1920 when Oscar Underwood (D-AL) became leader. Since the time of Aldrich and Allison, and before 1920, "leader" was an informal classification given to those who were caucus chairmen or led forces on the floor, but did not hold a formal institutional position. Those informal leaders included Thomas Martin (D-VA), Shelby Cullom (R-IL), Jacob Gallinger (R-NH), John Kern (D-IN), Gilbert Hitchcock (D-NE), and Henry Cabot Lodge (R-MA). In 1925, five years after the Democrats did so, Republicans elected their first official party leader, Charles Curtis (R-KS).

There has not been much change since the 1920s, but a few developments are worth notice. Since the 1940s, sitting presidents have met regularly with congressional party leaders. In 1945, the Republicans separated the positions of conference (caucus) chair and floor leader. In the period between 1920 and 1970, party leadership in the Senate was never strong, though it was important, except for Lyndon Johnson who was a very strong majority leader from 1953 to 1961.

In the contemporary Senate, the chairs of the respective party conferences and the chairs of the policy committees are also a part of the leadership structure. The party conference is composed of all of the members of the party and serves mostly to elect leaders for the party. The policy committee for each party may set the broad outlines of what will be the party's position on various issues. For Senate Democrats during the

period examined here, the party leader is the floor leader, the conference chair, and the chair of the policy committee. For Senate Republicans, the conference elects separately the party leader, the whip, the chair of the conference, the chair of the policy committee, and the chair of the Senate Republican Campaign Committee. Thus, Republicans spread out the leadership positions more widely than the more centralized Democratic party. The conventional wisdom is that this causes problems for the Republican leader. He must occasionally compete with other party leaders who owe their jobs as whips or chairs of the conference or policy committee, not to the Republican leader, but to the Republican membership. It is interesting to note that when George Mitchell (D-ME) became the Democratic leader in 1986, he appointed Tom Daschle as chair of the Democratic Policy Committee. Thus, the Democrats have moved in the direction of the Republicans by spreading responsibility around a little more than in the past, but not to the extent that Republicans do. The practice of appointing a separate individual as chair of the policy committee has continued under the leadership of Tom Daschle who became the Democratic leader when Mitchell retired in 1994.

Party leadership did not come easily or naturally to the Senate. It remains something of an unnatural graft onto an institution marked by a sense of individualism. Members consider themselves representatives of their state, as opposed to party, on any particular matter. That is a central fact of life in the Senate with which majority leaders must regularly deal.

Perspectives on Party Leadership in the Senate

When Huitt wrote about Democratic party leadership in the Senate, he noted that, "We have no really adequate model of party leadership as it exists in Congress, and that none can be constructed because we lack simple descriptions of many of the basic working parts of the present system" (Huitt 1961, 334). Scholars since have worked diligently to fill in the gaps. Huitt's criticism began the process by focusing on the floor leader's job. The main contribution of his study was the notion that the leader's job is not the same at all times. In other words, political context must be taken into account. For instance, "Much depends upon the leader's objective situation *vis-a-vis* the White House and upon his subjective view of his relationship to the presidency" (Huitt 1961, 336). The president is considered the leader of his party by the sheer fact that he led his party into the White House. If the Senate majority leader is of the same party as the president, the leader's conception of his role will be influenced by his feelings of responsibility to the president. The leader may either consider himself the president's man in the Senate or a party leader in his own right.

If one were to take a cursory review of the literature on party leadership in the Senate, one would find a plethora of works devoted to perhaps the most powerful Senate leader to ever emerge: Lyndon Johnson. Huitt's article, too, focused on Johnson's tenure as majority leader. Many other scholars have followed suit. The reason has to do with Johnson's success in getting his party's program through the Senate. This obviously makes him the focus of much attention. However, when one considers Johnson's

resources as majority leader, he did not have much more in the way of institutional power than today's Senate leadership. Johnson relied on personal bargaining skill and what is referred to, often fondly, as the "Johnson treatment" (Stewart 1971). The Johnson treatment refers to the fact that Lyndon Johnson would attend or send flowers to the funerals of senator's loved ones and thereby curry favor with the member. If Johnson had not built up enough favor with a member whose vote Johnson wanted, he would approach the member when he was alone and back the member against a wall or desk. The leader would then stand close with his face very near the target's face and "explain" how his vote was vital. It would look something like a cat with its paw on the tail of his prey so that it could not escape. The cat would not immediately kill the prey but would toy with it and slowly drain any resistance. Then it would finish it off. Under such circumstances, it was difficult for Johnson' prey to refuse a request and that rarely happened.

While joining in the chorus of criticism for the lack of systematic examination of leadership patterns, Peabody (1981) describes Johnson as having "sensed the potential of party leadership in the Senate. His close association with Rayburn and his recollections of how earlier Senate leaders, namely Joseph Robinson of Arkansas and Alben Barkley of Kentucky, had made effective use of the office led Johnson to believe that a leader could exert decisive influence" (Peabody 1981, 55-57). Johnson's decisive influence, however, occurred behind the scenes rather than on the Senate floor, and the literature accordingly focuses on that aspect of his leadership.

As previously mentioned, Johnson's successor, Mike Mansfield, was an altogether different type of majority leader. By the time Mansfield rose to the leadership post, the

Senate had grown weary of strong-arm tactics and was ready for a leader who would be more accommodative to individual members than Johnson (Stewart 1971). The literature on Senate leadership responded with works that chronicled a change in what members came to expect of their leaders. Peabody, for example, noted that members came to expect leaders to assist them in reelection (1981, 65). Johnson did a great deal in this area by assuring every member of the Democratic party in the Senate at least one major committee assignment regardless of seniority, the so-called Johnson rule. This would give Democrats more publicity and more name-recognition, items very beneficial to a reelection campaign.

A main difference between the Johnson era and the Mansfield era is that members came to *expect* from their leaders more opportunities for participation. Further, individual members came to expect more public policy influence. This can come from favorable committee assignments with jurisdictions in areas in which members have a particular interest (Peabody 1981, 66). Members expect leaders to further individual members' careers in other ways as well through the manner in which they manage the party's organizational machinery, schedule legislation for consideration, and contribute to policy innovation. If the member is of the minority party, the expectation exists for the minority leader to convert his party into a majority. All members expect the majority and minority leaders to move legislation and not let Senate business get backed up (Peabody 1981, 70-90). Many of these tasks are accomplished, or at least attempted, on the floor of the Senate.

Rising individualism in the Senate has made the majority leader's job of managing the floor more difficult. Barbara Sinclair describes the "transformation" from a Senate in which there were vastly unequal shares of power and influence to a Senate much more equitable in its distribution of those commodities (Sinclair 1989, 2). This transformation was a cause of, and partly a response to, changing member expectations regarding member participation and Senate leadership. Assisting the rising individualism along was withering local party organization. This made legislators "more independent of party bosses, increasing legislators' electoral dependence on interest groups and encouraging legislators to pursue individually defined legislative agendas" (Smith 1994, 131). A contributor to and product of individualism was the decentralization and weakening autonomy of committee chairs in the early 1970s. That, too, gave members the resources and opportunities to pursue their own policy agendas (*Ibid.*).

Sinclair notes that "leaders must at least minimally satisfy member expectations to keep their positions" (Sinclair 1990, 130). That is one reason why leaders today are more likely to come more from the mold of Mike Mansfield than that of Lyndon Johnson. Accordingly, the literature on Senate leadership often focuses on how well particular leaders satisfy the expectations of the membership. However, very little focuses on the specifics of the floor activities of a leader. Some studies examine the activities of the leadership "behind the scenes." That is to say, they tend to analyze the relationship between party leaders and committee leaders, the president, or other important players. Other studies explore leadership in general and examine legislative success as the major criteria of effective leadership. However, these studies tend to look to variables such as

the party of the president, the number of fellow partisans in the Senate, and party cohesion as cornerstones for explaining leadership success (Ripley 1969a). These factors do not speak to the issue of other responsibilities of the leader aside from getting a particular bill passed, or defeated if you are the minority, as well as turning your party into a majority if it is currently the minority party.

The problem of obstruction and rampant individualism has led some scholars to question whether the contemporary Senate can be led at all. Davidson (1985) eloquently makes the point that new leadership styles, adopted by Hugh Scott, the Republican leader from 1969 to 1977, and Howard Baker, are necessary to lead the modern Senate. The new style respects the decentralized character of the Senate and represents a middle course between the two extremes of Johnson and Mansfield (Davidson 1985 ,235). The new style has not mitigated obstruction and difficulties in the Senate. It is one means for dealing with individualism in a way that helps to prevent institutional meltdown. It is a means of holding the line against the temptation to obstruct while at the same time advancing a party's political agenda. In other words, helping members to accomplish their own goals and performing other favors gives the leader leverage in negotiations over substantive matters.

Deering (1986) identifies several trends that complicate the work of party leaders. He uses the term "quorum-call government" to describe the fact that the modern Senate lapses into long series of quorum calls to work out difficulties. A quorum call is the device used to determine if enough members are present to conduct business legally. It can be used for other purposes. Deering refers to their use as a means of filling time on

the floor so that those in disagreement over the pending business can perhaps find an accommodation. Quorum calls are used, in this sense, when the leadership does not want to supplant the pending business with new business. This seems to be a device that helps the majority leader because disputes are not played out in public, especially those involving members of his party. It, however, does not save any real time. Since, during a quorum call, the Senate is not conducting any official business or getting bills or amendments out of the way, it appears to be wasted time. The Senate has, at times, spent about 25 percent of its time in quorum calls (Deering 1986, 38).

He also refers to "hostage politics." This occurs when one issue is held hostage to another such as when Reagan's nominee for attorney general, Edwin Meese, was held hostage to action on emergency farm aid legislation that was being pushed by farm state Democrats (Deering 1986, 39). When this occurs, it can be a time consuming tactic and time is a very precious commodity. It is most precious to the majority leader since he is the one most responsible for moving the Senate. The particular problem for a majority leader is that, in Deering's words, "Minorities within the chamber are more prepared than ever to pursue their interests by seizing a legislative hostage as leverage to gain consideration of their issues" (*Ibid.*, 39). It is a direct assault on a majority leader's prerogatives over scheduling.

Deering also notes the contemporary Senate's fixation on the budget. The contemporary Senate spends more time on budget bills and deadlines are missed more frequently. A majority leader continuously has to find ways to move the Senate despite the aforementioned trends. He must make sure that these "must-pass" bills are disposed

of, especially debt-limit increase bills that must be passed before the government runs out of money and must begin shutting operations down. The difficulty of modern budgetary bills is that they, too, rob him of his discretion in scheduling legislation. He must often set aside pending business to deal with the must pass legislation.

Deering is skeptical about the prospect that things will get better for the leadership and concludes by calling Baker's successor, Robert Dole, a "majority pleader." It was not a comment on Robert Dole personally, but rather a comment on the situation in which the majority leadership position finds itself. According to Deering, in order to be a successful Senate leader today, one must exploit the chamber's tendencies rather than always trying to work against them (*Ibid.*, 41). That is often easier said than done.

Bach and Smith (1988) describe how leaders in both chambers have had to become more flexible in scheduling bills. In the House, this has meant opening up the rules that govern the consideration of legislation because of the increased fragmentation and decentralization of power that has occurred in the late twentieth century. The Senate does not have a committee that performs the same function as the House Rules Committee, but the Senate's standing rules have been altered at times in order to change the environment in which debate and voting take place. For example, Rule XXII has been modified in recent years to reduce the number of senators required to invoke cloture. This makes the leadership's job of dealing with extended debate much easier, but it has not deterred the strategic use of filibusters, either in frequency or intensity.

Ornstein (1990), in an article appropriately titled, "Can Congress be Led?," points to the formal rules as perhaps the most important weapon in a leader's arsenal. More

importantly, he asserts that during and after the major reform era of the 1970s, norms and rules changed to make a wide variety of rewards including staff, committee assignments, office resources, and junkets virtually automatic for all members. This has made the selective use of reward and sanction "virtually unemployable" for the leadership (Ornstein 1990, 14). He concludes by arguing that "what had been precious commodities to be doled out by leaders and their allies became greatly expanded and diluted currency" (*Ibid.*).

The new style of leadership tries to accomplish goals in different ways than before. No longer does a leader try to bury a bill quietly in committee, or ram it through by sheer force or the "twisting of arms." Instead, the leader will allow members to exert influence on the form of legislation saving the strong-arm tactics for bills or issues on which he cannot compromise. That is, he helps members accomplish their policy goals while at the same time making sure that the end result still conforms to the desires of the president or the party. He does this, according to Patterson (1990), by insuring a collegial environment, giving personalized attention, mediating conflicts, and adopting an approach amenable to compromise. Leadership goals in the modern Senate, it seems, must be accomplished largely by using persuasion.

Baker had open to him three models of Senate leadership, each originally described by Ripley (1969). The models are based on the location of power or influence. They include the centralization model in which power holders are the formal leader or leaders; the decentralization model in which the true leaders are committee chairs or informal

leaders of regional or ideological blocs; and, finally, the individualism model in which a large number of senators function as leaders.

The centralization model never truly applied to the Senate. The Senate is better geared toward full and complete deliberation rather than quick action. Nor does the decentralization model fit the Senate. Committee chairs are important, but not as important as party leaders, especially on the floor. Informal leaders of regional and ideological blocs may lead their respective forces on the floor, but it is the party leadership that truly manages the floor and the legislative process as a whole. From most of the literature on Senate leadership, one gets the impression that the modern Senate is governed by the model of individualism with a form of anarchy resulting. This may be a misperception. Although the official leadership positions are many and, at least for Republicans, distributed widely, there are reasons to conclude that when Baker was the majority leader, he was the true leader, or "first among equals," to borrow a phrase from Baker and Davidson's (1991) book on Senate leadership. Baker had limited formal power, but was influential. He was able to use resources available to him to manage the floor and lead the Senate. Thus, we may need a reconceptualization of party leadership in Congress, especially in the Senate. What is proposed here is a modification of Ripley's typology to include a fourth model that better captures what happens on the Senate floor. That model will be developed in the analysis to follow.

Perspectives on Floor Management

One of the major responsibilities and expectations of a leader is to move the Senate along. A critical part of this involves floor action after committees have completed their work. A review of the relevant literature on this aspect of leadership, however, is necessarily limited because not much has been done with respect to party leaders' activities on the Senate floor or to the resources available to them to manage the floor, the primary focus of this dissertation. It is a topic ripe for examination.

Sinclair (1989) shows that the Senate, compared to thirty years ago, appears to be much more open in its distribution of power and, accordingly, influence is shared more equitably. Steven S. Smith (1989a, 1989b) eloquently describes how even junior senators, who may not necessarily be on a particular bill's committee, have gained broader access to the legislative process through offering amendments on the floor in ever increasing numbers. Allowing members to have more influence on legislation has its consequences for party leadership and floor management. It has forced leaders to adapt to a new environment in which they must now work not only with committee and subcommittee leaders but with policy entrepreneurs as well.

Like Sinclair and Smith, other scholars have noticed a significant change in Congress over time. Donald Matthews (1960) set the tone of the literature when he described how the Senate conducted its business in the 1950s. He spoke of "folkways" and norms such as apprenticeship whereby junior senators were seen but rarely heard. Matthews also showed how seniority as a norm was the governing factor in committee

appointments, transfers, and chair assignments. Although committees, parties, and seniority still play central roles, individual senators are more active in shaping legislation when it comes to the floor due to the weakening of the apprenticeship norm.

Other useful perspectives have been offered with respect to how floor leadership might be conceptualized. Ainsworth and Flathman assert that "unanimous consent agreements [UCAs] are the main tool that the majority leader uses to perform several functions" (Ainsworth and Flathman 1995, 177). They obviously are used as a management device for regulating floor activity. This is done by placing restrictions on the number and type of amendments that can be offered from the floor as well as limiting the time available for debate. This fits in with Peabody's (1981) typology of functions performed by the majority leader, predominant among them being floor management. Unanimous consent agreements, however, require that no one object and unanimity is difficult to obtain for major legislation.

Some scholars regard UCAs as simply a "service" tool in which the majority leader molds the agreement to accommodate any senator who wishes to offer amendments from the floor. However, as Ainsworth and Flathman argue, UCAs can also be a "leadership" tool, despite the fact that unanimous consent is required. In essence, "The leader's success is partly a function of the ability to discriminate between senators with a low cost from delay from those with a high cost from delay" (Ainsworth and Flathman 1995, 183). If a majority leader can sort out senators as to whether they can truly afford to delay Senate business, then the leader knows which senator or senators must be accommodated in a unanimous consent agreement. For example, if a senator has made known to the

leader his or her intention to object, ordinarily the leader would have to accommodate the concerns of that senator in the agreement. Yet, if the leader knows that other legislation important to that senator awaits consideration subsequent to the bill at issue, then the leader need not necessarily accommodate the threatening senator. That is, the threatening senator may have a high cost associated with delay and the leader who can determine the costs from delay of other members has a higher chance of success in obtaining unanimous consent for a time-limitation agreement. Thus, information available to a leader and how he uses it can play a decisive role in floor management. A leader with reliable information resources who knows how to use the information wisely may develop a reputation as an effective leader.

Calvert (1987) provides a potentially useful perspective on Senate leadership by describing how leaders can make effective use of their limited institutional resources. That is, leaders can negatively sanction uncooperative followers. "A member who steps out of line to oppose a measure favored by a leader may later be denied scheduling of his own bill, or be refused a desired committee assignment or denied other perquisites of office controlled by the leader" (Calvert 1987, 85) Most of his observations apply more to the House than the Senate. Regardless, a leader must not use sanctions autocratically but, instead, use them sparingly and wisely or the followers may undermine the leader or even replace him with a less autocratic one. An effective leader, then, is always probing and aware of the practical boundary of negative sanctions.

One notable gap in the literature, save for discussions of the Johnson "treatment," is the extent to which and how leaders may bring their colleagues along to attain their

objectives on the floor, not through coercion, but through subtle means. In this connection, the work of William Riker (1986) is useful. He coined the term heresthetics, the Greek word for choosing and electing, to refer to a political strategy. As a concept, heresthetics also may provide a useful theoretical perspective on floor management. It is more than just verbal persuasion in which someone's words are so eloquent that they persuade another as to the merit of an argument. That would be a difficult thing to prove anyway. Rather, people "win because they have set up the situation in such a way that other people will want to join them-or will be forced by circumstances to join them-even without any persuasion at all. And this is what heresthetics is about: structuring the world so you can win" (Riker 1986, ix).

Riker refers to heresthetics as an art rather than a science and asserts that it parallels the liberal arts of logic, rhetoric, and grammar. Whereas logic is concerned with the truth-value of sentences, grammar is concerned with the communications value of sentences, and rhetoric is concerned with the persuasive value of sentences, heresthetics is concerned with the strategic value of sentences (Riker 1986, x). Rhetoric, as a means of persuasion, is aimed at changing another's opinions. Heresthetics can be directed at changing the target's environment in which his or her opinion is formed (Riker 1990, 49). Since a Senate majority leader is responsible for a number of specific tasks and functions, it should be worth a researcher's effort to investigate his use of heresthetics.

Although the literature recognizes the importance of the floor management function and despite the studies mentioned above, it has been little studied. What this dissertation proposes to do, among other things, is to examine the resources available to a

party leader in the Senate, both persuasive and procedural, to assist in floor management through analysis of floor management by Senate party leaders over four sessions of Congress.

Problems in Floor Management and Leader Resources

When examining floor management, there are two dimensions to take into account. The first is the problems, constraints and obstacles that complicate matters. The second is the assortment of resources available to the leader. The Senate is intended to be a deliberative body and therefore many opportunities to obstruct are available. It should be noted that a great deal of attention is paid throughout the remaining chapters to Baker's, and to a lesser extent Byrd's, handling of difficult parliamentary situations, specifically, the intolerance of, or efforts to stifle delay from filibusters. Filibusters are an attempt to delay action in the Senate through extended debate and other means until the leader or the sponsors of offending legislation withdraw it or cease efforts to get to a vote.

Filibusters now arise much more frequently than historically has been the case, reflecting the institutional changes in the Senate discussed previously. When the cloture rule, Rule XXII, was adopted in 1917, the expectation was that there would be a reduction in the number of filibusters. The rule change has had the opposite effect. When, in 1975, the Senate lowered the number of senators required to invoke cloture from two-thirds of senators present and voting, 67 if all were present, to three-fifths of the full membership, or 60 senators, the rising frequency of filibusters continued unabated.

Although cloture is invoked more often today than previously, a leader must deal with many more situations which are deemed to require limitations on debate (Oppenheimer 1985).

Filibusters are not the only source of distress for a leader. The breakdown of the norm of seniority and apprenticeship has exhibited itself in a way that has created additional problems for contemporary leaders. The number of amendments on the floor has grown tremendously, and many of them are offered by junior members. In the three decades prior to Howard Baker's retirement the average number of amendments more than doubled and they became more complex. In 1955, about 750 amendments were offered on the floor of the Senate. Only a hundred or so of them were offered to major measures, bills identified as having at least one "key vote" attached.[1] The numbers steadily increased until they reached over 1800 amendments on the floor in 1986, 800 of them to major measures (Smith 1989b, 89).[2]

Amendments are not just a way for members in an individualistic institution to have an influence on policy. They have become important weapons in the arsenal of those seeking to obstruct. If, during a filibuster, cloture appears to be a real possibility, opponents of particular legislation may submit hundreds or thousands of amendments, each entitled to a time-consuming vote even if cloture is invoked. The amendments can effectively tie the Senate in knots for weeks.

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[1] "Key vote" is a designation given by *Congressional Quarterly* to important votes. They often are on presidential initiatives or on bills or amendments on which the president has taken a public position and staked some of the prestige of his office on the outcome. They also tend to pit parties against each other.
[2] Smith gathered this data from the *Congressional Record.*

A leader is not helpless when it comes to dealing with obstruction. There are various resources available to him to deal with obstacles. There are three basic categories of resources: rules and precedents, prerogatives, and persuasion. They are discussed generally here, and the next chapter will go into them in more detail.

There are several relevant rules and precedents. One is Rule XXII that allows any member, including the majority leader, to petition for cloture and, if successful, bring debate on a matter to an end. If obstruction is expected from a committee, Rule XIV allows a leader or other member to bypass the committee stage when a bill is introduced and have it proceed immediately to the calendar to be called up for floor debate and a possible vote. Other rules make numerous motions and procedural devices available that can assist a leader in moving the Senate. They include, but are not limited to, the motion to proceed, the motion to recommit, the motion to reconsider votes, the motion to table, and motions to adjourn or recess. These can and have been used at times by leaders to get the Senate out of a parliamentary tangle.

Precedents are set when rules are interpreted and applied. Thus, they serve as guides on how to proceed when certain situations arise. For example, Senate precedent gives the sponsor of an amendment property rights to it so that the senator may withdraw it if he wishes. However, if some action is taken on the amendment, such as a request for a recorded vote, the amendment becomes the property of the full Senate and the sponsor may not withdraw it at that point without unanimous consent. Also, prior to 1977, the presiding officer could not rule an amendment out-of-order as nongermane or improperly drafted unless a point-of-order was raised against it. After 1977, and this study includes

the floor battle that led to the change in the interpretation of the precedents, the presiding officer could take the initiative and rule it out after someone called up the amendment and without a point-of-order being raised. These are just two examples of what precedents do and how they are used. In the context of this analysis, the important point about precedents is that leaders have some capacity to influence their content to the leader's advantage. This is not done commonly, but, nevertheless, the potential is there.

Prerogatives belong to a single member, like a majority leader, or perhaps to every member. Of importance here are motions and actions that belong to the leadership or are at least considered the prerogative of leaders. For example, when numerous senators wish to speak and rise to be recognized by the presiding officer, the presiding officer will recognize the majority leader if he is among those desiring recognition. This is known as the right of first recognition. If the majority leader does not wish to speak, then the presiding officer will recognize the minority leader if he is among those seeking recognition. When neither leader is seeking recognition, the presiding officer will try to recognize the first member seeking his attention. If several senators desire recognition simultaneously, none of whom are the majority or minority leader, then the presiding officer has the discretion to recognize any one of those seeking recognition to speak.

The reason that the two party leaders are given this right of first recognition is because they possess another set of prerogatives, those related to scheduling business on the floor. The majority leader has to be able to get the attention of the chair because he is the one most responsible for determining what bills will be brought up, when they are to be brought up, and to keep the Senate moving.

Persuasion is a necessary element for leading the contemporary Senate and is thus an important resource. This is because leading the Senate is such a difficult job and the resources for leadership such as the rules, precedents and prerogatives are relatively weak. The task of the majority leader, especially in steering complex legislation while avoiding a massive logjam, cannot be performed with reliance on formal tools alone.

Persuasion can take many forms. In this context, it refers to attempts by the majority leader or others to verbally persuade members of the Senate to go along with or to agree to a request, for example, for a unanimous consent agreement to withdraw or withhold an amendment. The task is to get the target or targets of the strategy to think that it is in their interest to agree. It was Richard Neustadt who first noted the importance of persuasion in the field of presidential studies. He concluded that the power of the president was essentially the power to persuade. Persuasion is no less important for congressional leaders.

At least seven strategies of persuasion are available to Senate party leaders. These include, first, flattery, with its basic derivations of praise and ego-stroking. Webster's (1991) Ninth New Collegiate Dictionary defines flattery as:

> 1. To praise insincerely 2. To try to please, as by praise 3. To make seem more attractive than is so 4. To gratify the vanity of.

Baker did not use flattery in the sense of the first definition. Rather, when relying upon this strategy, he used flattery in accordance with the second, third, and fourth definitions.

A second strategy is shame. There is a story recounted by presidential scholar Forrest McDonald (1995) that in 1783, when the newly created United States was fighting its war for independence, a number of soldiers and officers were frustrated because they had received no pay for years. Circulars were distributed calling for a meeting among the officers where "plans" would be made to seek "justice" (*Ibid.*, 15). George Washington unexpectedly appeared at the meeting and took from his pocket a short speech which he had prepared. He also took out a pair of eyeglasses which only his closest friends and aides knew he needed and began his remarks: "Gentlemen, you will permit me to put on my spectacles, for I have not only grown gray, but almost blind, in the service of my country" (McDonald 1995, 15). McDonald recounts that Washington went on to, in a subtle way, shame the officers for betraying the revolution, and by the time he concluded his remarks the officers literally were reduced to tears.

Although Baker was not president, and the only army he commanded was the army of Republican members in the Senate, shame was a very important and useful element in his arsenal of persuasive devices. The task in using shame is to make a situation weigh upon the conscience of the target and move the recipient or recipients to change their minds or their behavior.

A third strategy is reward. That is, some type of reward is offered if the target should accommodate the leader in whatever request he is making at the time. Rewards essentially are favors at the disposal of a party leader which can be used to elicit desired behavior. An example would be when the majority leader announces that there will be no more votes that day. This allows a member with obligations elsewhere to fulfill them

without fear of missing an important vote. When a member requests the majority leader to make such an announcement, the leader may or may not accommodate the senator, but it can be used as the basis of negotiation. Sometimes the inquiry may come from the most unexpected sources such as when Corinne Quayle, daughter of Dan Quayle (R-IN) wrote to Majority Leader Dole in 1986 advising him that "I have my 2nd grade play tonight. Please make sure there aren't any votes between 7 and 9 p.m. so my daddy can watch me. Please come with him if you can" (quoted in Deering 1986, 37). The discretion here belongs to the majority leader. When he does grant the favor, he usually gets something for it.

The opposite of rewards are threats, a fourth strategy. A majority leader may make direct or veiled threats in order to persuade targets that it is in their interest to go along rather than suffer the sting of the threat should it be carried out. A common threat is that of a late session or a weekend session. Senators value their time away from the Capitol, and any threats to that time can be a powerful motivation to accommodate the leader's wishes.

A fifth strategy of persuasion at the disposal of leaders is a basic appeal to party loyalty. This is directed at party members to get them to support the party position so that the party will not be embarrassed by a loss on a partisan issue. This may also relate to appeals to support the president if he is one of their fellow partisans. Often, a leader will have to remind his colleagues that their own fortunes are tied up with those of their president.

Similarly, appeals to bipartisanship, a sixth strategy, are utilized upon occasion in order to show the public that the parties can work together for the good of the nation. This is particularly effective when there are complaints from the public about gridlock, stalemate and bitter partisanship. It is in both party's interest to work together at times. A majority leader must be able to identify situations and issues in which appeals for bipartisanship are likely to lead to success.

The seventh and final strategy of persuasion may not fit neatly into the typology of strategies of persuasion. It is the development of superior information as a means for getting agreement and as a foundation for the persuasiveness of appeals. Although information can be used strategically, especially the withholding of it, it is used primarily to control elements introduced into the decision calculus of members so that persuasion can be more effective. As such, it is included within the basic rubric of strategies of persuasion. When it is used, it is used most often in conjunction with some other persuasive device.

Other possibilities for inclusion in the strategies of persuasion are basic pleading, mockery, and ridicule. Senate debates often include mocking the opponent's position or argument as a means of persuasion. What better way to show the "absurdity" of your opponent than to mock his position or use his own arguments against him? There are instances of pleading by party leaders in this study, but not many instances of mockery or ridicule. The reason is that the party leaders must work with other members, even opposition party members, because so much is done by unanimous consent. Leaders want to protect the atmosphere and environment of cooperation so that future deals can be

made. Your opponent today does not have to be your opponent tomorrow. For this reason, resort to mockery or ridicule is rare for a leader. In fact, one of the reasons Baker is held in high esteem has to do with *how* he did his job. He was able to obtain objectives without hurting, irritating, or otherwise harming opponents. That would keep them as potential future allies.

Approach and Methods

This dissertation is essentially a case study of Howard Baker and to a lesser extent Robert Byrd as party leaders. Special emphasis will be given to the years in which Howard Baker was the majority leader. At times, however, the study will look back at events from the 1977-1981 period, when Byrd was the majority leader, in order to allow comparisons of the two leaders' approaches to their jobs as majority and minority leader. The primary source of data is the *Congressional Record.* The *Congressional Record* contains a complete verbatim account of what happens on the floor of the Senate and House of Representatives.

The basic approach that informs this research comes from the school of neo-institutionalism. This school posits that institutions and structures are important. Rules often determine the outcome of legislative decisionmaking. Additionally, the recent contributions of formal theory provide useful perspectives on how party leaders, and other agenda-controllers such as committee chairs and bill managers, can and have used the structure and rules of the institutions in which they serve in order to obtain a preferred

outcome (Ainsworth and Flathman 1990; Bach 1983; Bach and Smith 1988; Endersby 1993; Fleisher and Bond 1983; Gilligan and Krehbiel 1988; Krehbiel 1986, 1988, 1991; Krehbiel and Rivers 1990; McKelvey and Ordeshook 1984; Mouw and Mackuen 1992; Riker 1980, 1982, 1986; Shepsle and Weingast 1984; Sinclair 1985; Smith and Flathman 1989; Strom 1990; Weingast 1989).

William Riker (1982), for example, showed how the choice of a voting procedure itself can predetermine the outcome of a vote. That is, use of a simple majority vote rule may give us a different outcome than a Borda count method of voting, or approval voting, given constant preferences on the part of the voters. Of course, the Senate operates consistently under the simple majority vote rule except when consenting to treaties, which requires a two-thirds vote, and also with respect to cloture, which now requires three-fifths vote of the full chamber (60 senators), and when budget points-of-order have been made, which also requires 60 votes.[3] Riker further demonstrated how each of the various methods of legislative decisionmaking is vulnerable to manipulation either through control of the agenda, the sequencing of the voting alternatives, or through just plain strategic voting on the part of participating voters. We know that official party leaders are the major actors controlling the agenda on the floor of the Senate. They determine what bills will be brought up on the floor and when. The legislative schedule and the sequence of the vote can be manipulated in strategic fashion to maximize the probability that the party

[3] A budget point-of-order is when a member asserts on the floor that a particular amendment would have the effect of increasing spending above the ceiling set in the budget resolution. Prior to the Gramm-Rudman legislation in 1985, only a simple majority was required to waive a budget point-of-order. Today, if the point-of-order is made, 60 or more senators must vote to waive the provisions of *The Congressional Budget and Impoundment Control Act of 1974* in order for the amendment to be allowed. The same is true for amendments that would reduce government revenues below the level set in the budget resolution.

leaders', particularly the majority party leader's, preferred outcome will be the final result despite possible strategic voting by members.

Riker (1980) also specified that the choice of institutional rules can be expected to "inherit" the preferences over outcomes those rules would produce. Riker called this the "inheritability problem," and it essentially asserts that individuals vote for institutional forms and rules based on their preferences for the outcomes likely produced by them. Institutional reform has taken place in the Senate, just as it has in any enduring institution.

It is clear that the context governing the consideration is important in regard to what results. Gilligan and Krehbiel (1988) demonstrate, in the area of energy tax legislation in the House, that by skillfully controlling the type of rule under which a bill is considered, a party leader can and did dramatically affect the voting outcome on that piece of legislation.

Stanley Bach asserts that procedural rules "not only make for orderly debate but offer legislators strategic opportunities to advance their policy preferences by defining and ordering the choices to be made on the floor" (Bach 1983, 571). Bach goes on to say that these opportunities arise most often during the amendment process.

The neo-institutionalist perspective fits nicely with party leadership in the Senate. This study analyzes how Baker tried to develop and apply ad hoc rules within the framework of the standing rules of the Senate. That assumes a neo-institutionalist approach, but removed from the institution to the situation. A primary objective of both majority and minority party leadership is to move legislation to completion, passage or rejection, in a timely manner. That objective is, in fact, an institutional objective. It is for

the good of the institution that both party leaders work to keep the Senate moving, although the primary responsibility for floor management rests with the majority leader.

A precondition for floor management is to keep legislation off the floor that might be difficult to move or which might produce a result counter to the interests of a majority of a leader's party. Normally, however, the leader is dealing with legislation produced by committees controlled by his party and presumably in line with party interests. Despite a basic commitment to moving legislation, a minority leader may have partisan interests in getting legislation to the floor or developing situations on the floor that present floor management difficulties for a majority leader.

Applicable rules govern the capacity of both majority and minority leaders to meet their obligations. In this sense, the institution and its rules are important. The basic rules, precedents and established prerogatives are ongoing and, for the most part, institutional givens. They provide a general framework for the legislative process to proceed. The rules, precedents and prerogatives must be applied in particular cases. In the House of Representatives, this is mainly done by the Rules Committee, an instrument of majority leadership on which minority leadership is represented. The product of the Rules Committee is ad hoc rules to govern the legislative process in the House. Thus, in the House, bills are assigned rules that place limits on debate and amendment activity notwithstanding the standing rules of the House. They are formally adopted by the House prior to considering particular legislation on the floor.

There, of course, is no body in the Senate analogous to the House Rules Committee. Ad hoc rules, however, are used by all leaders and always have. The

responsibility for developing ad hoc rules in the Senate falls directly to the majority leader, and to a lesser extent the minority leader. It is almost as if the Senate majority leader is a one-man rules committee. In the House, a proposed rule can be rejected by the full House. In the Senate, a majority leader's unanimous consent request can also be rejected. The major difference is that in the House, it takes a majority of the membership to defeat a rule proposed by the Rules Committee. In the Senate, a single member can object to a majority leader's unanimous consent request and, thus, prevent the ad hoc rule from going into effect.

In the Senate, crafting ad hoc rules is done, ordinarily, in piecemeal and incremental fashion. Understandings, or agreements, build on prior understandings and agreements. Further, there is a legitimacy to ad hoc rules developed by the majority leader that does not automatically exist when other members attempt to create them.

In contrast to the House, in the Senate ad hoc rules are subject to continuing adjustment in the course of considering legislation. On important pieces of legislation, the majority leader ultimately is responsible for developing, enforcing and adjusting ad hoc rules--with all their behavioral consequences. As indicated previously, his resources are rules, precedents and prerogatives, and the opportunity to persuade. Rules, precedents and prerogatives, are not automatically translated into the ad hoc rules necessary to keep the Senate moving. There must be leadership for this to happen. An important element in this leadership is persuasion.

The leader has to lead in the process of developing ad hoc rules in the face of, among other things, policy and party disagreements and individualism that widens the

scope of conflict. The majority leader, then, is part of the institution. Through ad hoc rules and the application of the standing rules and precedents, a leader can and does affect the behavior of others, which, in turn, influences the outcome of the legislative process. Majority leaders can help themselves to accomplish objectives. That clearly places the majority leadership position within the neo-institutionalist framework. Neo-institutionalism, as an approach, is the basic thread that ties subsequent discussions of floor activities together. An essential question is how Howard Baker went about developing and securing compliance with ad hoc rules. In the process, his uses of the various resources at his disposal in floor management are explored.

Defense of the Case Study

The case study method is an empirical approach, in this case, because it examines the actual behavior of members of the Senate. In that sense it is a behavioral study. However, it also examines the structure of the institution, its rules and precedents, and its environment to explore the relationship between those things and actual legislative outcomes. The focus is on party leadership and one leader in particular. More precisely, the study is a collection of case studies in that Baker's leadership style is examined as one case; but, in addition, individual bills, amendments, and particular episodes are examined, each as a single unit of analysis comprising a system. Further, only the 1977-1985 period

is included with most of the focus on the 1981-1985 period, the period in which Baker was the Senate majority leader.[4]

This study in intended to make the case for the proposition that party leaders have the resources at their disposal that allow for effective leadership of the Senate. The intent is to show the existence and utility of those various resources, the ways in which they may be used effectively or have been used effectively, to demonstrate that party leaders, even in the Senate, are not completely at the mercy of the membership. Nor are they mere servants in an individualist institution. The author will draw no conclusions that any particular resource is more effective than others.

By utilizing the case study method, a fuller understanding of the "real" process or phenomenon results. Statistical control of large populations can contribute knowledge that may help achieve a desired mass effect without achieving it in any single instance (Diesing 1971, 261). In the Senate, it is important to achieve success in individual instances. This is because, often, the stakes are high. A majority leader, as a rule, is not interested in becoming majority leader so that he can create a record of success balanced against his failures. In other words, he is not so interested in winning the war that he ignores what is happening on the battlefield. Rather, he is interested in becoming majority leader so that he can lead, and hopefully win, individual battles for his party. A majority leader's job, in fact, can be described as a field marshall commanding troops in individual battles with the goal of winning the war, however that may be defined. The strategies that he develops are geared toward specific legislative episodes. From this analogy, the reader

[4] A senators term officially ends when the new Congress is sworn in, usually the first week of January following an election. Thus, Baker's term as senator and as majority leader ended in January 1985.

should have by now equated the battlefield with the Senate floor. After having concluded the research for this dissertation, that analogy is an appropriate one.

The case study method, as a starting point, provides information about the internal mechanisms and dynamics of an existing system. The goal of a case study is to understand the system from the inside. The question of how the system works is something that may subject itself more easily to formal deductive approaches. The focus of this study, however, is on how the system can be used. A good case study provides that type of information. Many of the activities that occur on the Senate floor are not explained in the rules, but rather a member will take the logical implications of the rules and use them to accomplish goals. After that has been adequately outlined, then a scholar has a better understanding of how the process works. This is why the case study method is a useful starting point for this type of analysis. The reader will find in these pages a description, and perhaps an explanation, of a real legislative chamber that actually existed. From that, advocates of other methods, may step in and fill in part of the picture that the case study cannot do alone.

A number of research questions have been selected for analysis and inclusion in this dissertation. Making that task more difficult is the selection of the primary source of data: the *Congressional Record*. It may be pointed out by some that the *Record* is subject to editing by members seeking to clean up their remarks or to remove some embarrassing comments. Although the potential exists, self-editing is generally of a grammatical nature. That is, the changes are intended to correct grammar and other mistakes. Any changes made in the *Record* between the time remarks were made and the

printing of the permanent bound edition are not likely to affect conclusions drawn in this study, because the general intent of the comments are left intact. That is, if one opposed an amendment on the floor, it is not likely that his remarks will have been edited to reflect favor toward the amendment in the final edition. Motions, votes and other more tangible actions are not altered in the *Record.* If a member wishes to change his or her vote after the gavel comes down, for example, they usually must state on the floor that they wish to do so, and even that requires unanimous consent. If a member missed a vote, he or she generally announces on the floor, subsequent to the vote, how he or she *would have voted* if they had been present. Thus, the primary source of data used to address the questions of interest is reliable enough to accomplish intended goals.

Contributions and Organization of the Study

The descriptive and analytical significance of this project will come in the form of understanding how the parties, through their leaders, have reacted to the changes that have occurred in the Senate, particularly increased individualism. Very few studies have been published on floor leadership in the United States Senate, especially that of the minority party. In fact, Smith (1989b) stands nearly alone in directing some of his research efforts toward the Senate floor. This study aims to partially fill a gap in our understanding of the contemporary Senate. Although it is limited to two leaders and is somewhat exploratory in nature, it will add to our understanding of party leadership in the Senate and of two important men who served at a vital point in history. By focusing on

the floor, the analysis omits much that is significant about Senate leadership but, for now, that is left to other scholars. Floor management is important and is perhaps the most neglected area of legislative studies. The analysis provided by this study should offer a useful basis for thinking further about Senate leadership in theoretical terms.

Some hints have already been given as to what will be covered or included in various chapters of this study. A more formal presentation of the organization is as follows. Chapter two basically introduces some of the major resources available to leaders that are based upon the rules, precedents and prerogatives--of which scheduling is among the most important.

Chapter three begins the analysis of persuasion. It gives an operational definition to persuasive strategies and concepts and contains an almost play-by-play description of Baker navigating a difficult tax bill through the Senate. Chapter four takes up where chapter three leaves off. It begins with the same tax bill discussed in the chapter three, but at the point in the process in which Baker decided to take stronger steps to put the Senate on a smooth and circumscribed path. Baker will begin to negotiate, mostly on the floor, an ad hoc rule in the form of a unanimous consent agreement that will limit the amendments that can be offered, provide for a "time certain" for vote on final passage, and preclude delaying tactics. Since unanimous consent is required, Baker must rely predominantly on persuasion and negotiation to get all of the other members to agree to place restrictions on their parliamentary rights. Chapters three and four are necessarily quite detailed so that the reader can get a fuller understanding of the difficulty of pushing a major bill through the Senate and all of the gauntlets that must be overcome. Most

literature on how a bill becomes a law skips over many of the barriers, or only provides a one sentence or so description of them.

Chapter five is organized somewhat differently. It does not use a play-by-play analysis of a particular bill working its way through the Senate. Rather, it is organized around various procedures, each with origins in the standing rules of the Senate and/or in the precedents, which can be used by a majority leader to effectively lead the Senate, or at least to aid in that process. In this sense, it is organized much like chapter two. Chapter five begins with a general discussion of filibusters, along with the rule that provides for proceedings once cloture is invoked, and other basic foundation for the material that follows. It then moves to particular bills and events that illustrate management, or attempts at management, of the Senate floor as members contend with difficult and contentious matters.

The destination to which the first five chapters lead will be found in the concluding chapter. Chapter six reviews the evidence and analyses contained throughout the dissertation and the conclusions drawn from them. It outlines the basic character of Howard Baker's leadership and the basic approach or approaches he took to fulfill his responsibilities as majority leader and how they contributed to success.

Applicable rules, as mentioned before, govern the capacity of both majority and minority leaders to meet their obligations, the most important of which is to move the Senate forward. On one level it is true that a party leader in the Senate must live under the standing rules, just as other members must. A majority leader, however, is "first among equals." He has the most influence over the application of the rules. He does this

most often through ad hoc rules that are developed and propounded in unanimous consent agreements.

The leader also can selectively use certain standing rules. An example is the rule that prohibits two-speeches from the same member, on the same topic and on the same legislative day. That rule is rarely enforced. However, a majority leader can use it as a weapon to break a filibuster. It allows him, especially when there is only one person engaging in a filibuster, to keep that member on the floor and speaking, if he wants to continue his obstruction. Otherwise, the member must use his second allotted speech. If it has already been used, then the member has effectively been silenced. Speech-making is not the only means of engaging in a filibuster and causing other problems for a leader, as will be shown in this study. Despite that fact, majority leaders can take certain actions to help themselves fulfill obligations. This is the major reason why the position of majority leader ought to be conceptualized within the framework of neo-institutionalism. The institution, along with its rules and precedents, is important to the legislative process. It is what basically constitutes the legislative process. However, the party leaders are just as important, if not more so. They are the ones who give substance and meaning to the rules through their application. In addition, if the standing rules are a problem in a given situation, a majority leader may decide to utilize an ad hoc rule as a means around that problem. By the time the concluding chapter is reached, the point will be made that we need a new conceptualization of party leadership that better accomodates what happens on the Senate floor. Neo-institutionalism is the most likely starting point. This study proposes, as the most appropriate conceptualization, a fourth and new model of Senate

leadership. This new model combines Ripley's centralization, decentralization, and individualist models into a single "situational" model. In a situational model, the leader has some, mostly informal, power. The decision as to whether to use informal, or even more formal "raw" power, is determined by the situation. The situation will also dictate when a leader must act as a servant, a pleader, or in a deferential role. When that approach is taken by a leader it is due to his recognition that a determined member can cause major problems for a leader. A leader wants to preserve the environment so that the Senate runs smoothly in the short run and long-term. In Baker's case, congeniality came naturally. His particular genius is that he was masterfully able to "feel out" a situation and determine the most appropriate course of action for keeping the Senate moving forward and in the desired direction. All majority leaders must attempt this and some are more successful than others. This study will, among other things, make the case that the ability to sort out situations and deal with them effectively should be the basis upon which majority leaders are evaluated.

Hopefully, this study provides a useful starting point for analyzing Senate leaders, perhaps even those who hold no official party position, and finding an answer to the question of what makes an effective leader. Since the culmination of Senate leadership takes place on the floor, it is there that we look to find clues.

Chapter Two

Instruments for Floor Management

From a neo-institutional approach to the study of the Senate, the instruments for floor management play a central role. Whereas the institutional rules provide the framework within which leaders and other members operate, those same rules give to the leader certain devices that, if used adroitly, can make the majority leader's job less difficult. The key is to use them adroitly. To do so, a leader must understand the situation he finds himself in at any given moment. It is only then that he can map out a course of action that will most likely lead the Senate where the leader wants it to go. With the instruments to be discussed in this chapter firmly in hand, the leader can help himself to do just that.

There are numerous instruments with which a majority leader can arm himself for controlling the Senate floor. The instruments are mostly procedural in nature, and this chapter will describe them. Particular use of them by Baker will be outlined in subsequent chapters. Before discussion of these tools, some comment about the Senate workload and the types of legislative matters that constitutes its workload are in order.

There are various types of bills that the Senate may deal with at any given time. Among the most important of these are the money bills. They include budget resolutions and appropriation or revenue bills. Debt ceiling legislation also falls into this category.

Much of the Senate's time, and that of the House as well, is devoted to dealing with measures of this sort. They are considered "must-pass" bills.

Another important part of the Senate's workload is made up of authorization bills. Some previously passed authorization legislation has expiration dates and the Senate must spend time debating renewal. An example is the Voting Rights Act of 1965.

The Senate's workload can be described in a number of other ways. One is the sheer number of bills introduced in a session--several thousand. Another is floor activity. For the Congress preceding Baker's ascension to the Senate Republican leadership, there were 273 contested measures considered by the Senate (Sinclair 1989, 112). The Senate's contested workload is defined "as consisting of all measures that elicited at least one floor roll-call vote" (Sinclair 1989, 111). These include bills, treaties, nominations, constitutional amendments, and Senate resolutions. In the 97th Congress (1981-1982), the first two years of Baker's majority leadership, the number declined to 183 contested measures, and during the 98th Congress (1983-84), the number was 124. The 1983-1984 numbers were similar to the workload of the Senate in the 1960s. This decline should not be interpreted as an absolute decline in the Senate's workload, however. It was considering fewer but much more complex bills (Sinclair 1989, 111-125). In fact, the Senate floor had become a much more active arena than in prior years. Add to this the rampant individualism that has come to characterize the contemporary Senate and one can see the problems faced by the leadership.

The Senate's legislative workload has fluctuated in another sense over the years, the numbers of roll-call votes. In 1970, there were 418 roll-call votes, including votes to

instruct the sergeant-at-arms to request or compel the attendance of absent senators. In 1972, that number had grown to 532. In 1974 there were 544, and 1976 provided 688 roll-call votes. In 1977, when Baker became the Republican leader, the number of roll-calls fell to 635 and then to 516 a year later. In 1981, Baker's first year as majority leader, there were only 483 roll-call votes. Two years later, in 1983, that number fell to 371. Baker's final year in the Senate produced a mere 275 roll-call votes. Thus, on the face of it, Baker seemed to have been successful in managing this aspect of the Senate's workload.

Overview

The numerous tools of floor management available to a majority leader help him to deal with the workload and to facilitate Senate operations. The tools include scheduling, motions to proceed, motions to recommit, holding items at the desk, control over the Senate calendar, a Senate rule that allows a bill to bypass the committee stage and go directly to the floor and, finally, motions to adjourn or recess. Each of the foregoing instruments will be discussed in this chapter.

Scheduling is a vital leadership tool for managing the Senate floor. This chapter focuses on some of the problems of floor management in regard to scheduling. A part of this treats some of the ways that Howard Baker dealt with obstruction through utilizing scheduling prerogatives. The various leadership instruments related to scheduling and

floor management hardly comprise a symphony. Yet, they do exist and have been used at times to eliminate difficulties. Included in the analysis is a discussion of the process Baker used to initially schedule items for consideration. This refers to what took place in his office related to decisions about what would be brought up and when and other items related to setting the Senate's floor agenda. The discussion will include problems faced by Baker and the resources available to combat these problems, as when two freshmen senators forced Baker to readjust the schedule to accommodate their wishes. The chapter will also include discussion about the potential for strategic scheduling, or scheduling items in such a way as to affect the outcome of the legislative process. Other actions related to scheduling to be addressed include how members can prevent bills from being brought up on the floor by simply notifying the majority or minority leader of their desires to not have the item brought up, or the use of holds, and ability of members to get bills brought to the floor before they are referred to committee.

A clearance mechanism is used to provide a smooth and predictable course for legislation on the Senate floor. Since the Senate often operates under unanimous consent, it is necessary for the majority leader to minimize the potential for obstruction. He may do this by notifying his party's members of upcoming bills or unanimous consent requests. He then will inform the minority leader of the same. This way, members who oppose bills can inform either leader of that fact and thus provide the basis for further negotiation. Items for which no member on either side of the aisle has indicated opposition have been "cleared." The Senate, and the majority leader in particular, can then proceed to bring

measures to the floor and make necessary unanimous consent requests on relatively sure ground.

A motion to proceed is rarely necessary for a majority leader. He usually can get unanimous consent necessary to bring a bill up for consideration on the floor without having to formally move to do so. However, on controversial bills where there is a great deal of contention, the leader may have no choice but to use the motion. Other members may use the motion to proceed to a bill's consideration, particularly if they are the sponsor and grow impatient waiting for the majority leader to bring the bill up.

After a bill is reported from committee it is placed on the legislative calendar. The majority leader and the minority leader jointly serve as keepers of the calendar with the majority leader as the senior partner. It is primarily in the majority leader's discretion to decide when to bring bills off the calendar and to the floor for consideration.

There is a means, based in the rules of the Senate, for bypassing the committee stage altogether by objecting to further consideration during second reading of a bill. Second reading occurs when a bill is ready to be referred to committee. Any member may object to consideration at that point and thus place a bill on the calendar. It is still the majority leader's prerogative to bring bills off the calendar and to the floor. A member, however, may object to further consideration of a bill at second reading and then offer a motion to proceed to its consideration on the floor, thus circumventing the majority leader altogether. It is rare for a member to blatantly defy Senate norms in this manner. Still, a majority leader occasionally must guard against this type of encroachment.

In the same way that the leader has responsibility for bringing items to the floor, he also can have items held at the desk. The reason for doing so is that it may be an inopportune time for the consideration of certain bills. If the Senate is working on a must-pass bill and does not wish to be interrupted by bills that other members may wish to move to, he may have the item held at the desk until current business is completed.

A motion to recommit a bill to committee serves a useful purpose for a majority leader. If a logjam occurs on the floor due to opposition to a bill because of controversial amendments having been added to it, a majority leader can move to recommit the bill and have all amendments stripped from it. Baker preferred that unrelated, non-germane, and controversial amendments not be offered or adopted, but understood the temptation to use bills to get rider amendments passed into law. If the amendment created a logjam, Baker felt justified in using the motion to recommit as a means for breaking the logjam. Other members may also use the motion in order to strip amendments adopted but opposed by the member to prevent them from becoming law. However, the motion to recommit is also considered a prerogative of the majority leader, though the leader must occasionally protect the prerogative.

Finally, also to be discussed in this chapter are motions to adjourn and recess and the occasional strategic use of them. Motions to recess or to adjourn also are considered prerogatives of the majority leader. They are rarely offered by others and when they are, they are generally defeated on a bipartisan vote out of respect for Senate norms that make the majority leader responsible for generally scheduling Senate business and the completion of it. The majority leader's right of first recognition, described in the previous

chapter, is another leadership instrument and will also be illustrated in subsequent chapters.

Subsequent chapters also will discuss in more detail other ways to manage the Senate floor, such as unanimous consent agreements and the difficulty in negotiating them for major bills. First, we must deal with specific problems related to scheduling and other instruments of floor management.

The Potential for Obstruction

The potential for obstruction in the Senate is great. However, there are ways, instruments, and resources available to a majority leader to keep obstruction to tolerable levels. This section is devoted to the potential for obstruction, and later sections deal with potential solutions and provisions of Senate rules and precedents that permit a majority leader some semblance of control. The area in which rules and precedents is most applicable is scheduling.

Because of the resources available to rank-and-file members, they have the ability to slow, and even to stop, the Senate from conducting its business. The filibuster is but one, albeit the most famous, illustration of this capacity. However, there are numerous other ways that senators can impede forward movement. If a senator has allies in his effort to block forward movement, then the capacity to obstruct is magnified almost exponentially. To counteract this, the majority leader has a number of instruments that

permit him a greater degree of control over the Senate's affairs than often is recognized in discussions of the position.

It is generally agreed that the majority leader has responsibility for bringing measures to the floor of the Senate for action. He may also pull bills off the floor when progress toward passage has stopped for whatever reason, including a filibuster. In fact, when he is unable to break a filibuster via cloture or negotiation, the majority leader may return a bill to the calendar for possible consideration at a later date or perhaps do so with the intention of never bringing it up again as a face-saving way of conceding defeat. Taking a bill off the floor and placing it back on the calendar and subsequently moving to another bill is called "tracking." The tracking system has been in use since the majority leadership of Mike Mansfield in the 1960s and 1970s. The filibuster, in theory, continues after the bill is back on the calendar and the filibusterers are not required to be on the floor speaking against it. What the leader gets out of this arrangement is that he can move on to other legislation and keep the Senate from grinding to a halt. Thus, the filibustered bill is set aside, thus making it ineligible for action while the Senate moves its other, perhaps more pressing, business along another track, the one that includes actual deliberation and debate on the floor.

Other instruments related to the scheduling of Senate business are available to a Senate majority leader. Moreover, these instruments can be used effectively by the leader to nudge the Senate forward. In sum, they can be used to remove obstacles that inevitably appear in an individualist institution like the U.S. Senate.

Baker and Agenda-Setting

Most of the initial scheduling of Senate business takes place in the majority leader's office. Planning for the consideration of legislation is not a one man operation. When in the majority, Republican committee chairmen, and to an extent committee staff, worked closely with Baker and his staff when the committees had legislation they wanted to bring up. In fact, committees generally did not report bills until Baker was ready to bring them to the floor. For that to occur, there had to be frequent communication, even negotiations, between Baker, the chairmen, and their staffs. In terms of the overall outlines of the schedule, the most important discussions were in the weekly leadership and chairmen's meetings, in discussions between Baker and individual chairmen, and in Baker's daily staff meetings. The staff meetings focused on what was currently on the floor and what could be expected related to unreported legislation awaiting floor action.

A number of Baker staff members played a role in the scheduling of Senate business. For much of the time, the most important of these was probably Jim Range. Range was counsel to Baker and was the individual upon whom Baker relied most when it came to decisions about matters to be taken up by the Senate. The rest of the Senate, staff included, must have been aware of this, because many of them would contact Range for information related to the schedule when Baker was either unavailable or the person did not wish to bother him (Miller 1986, 24).[1]

[1] James A. Miller became special assistant to, and chief speechwriter for, Baker in 1981. He spent just over two years (27 months) in that position.

The usual forum that Baker used to plan and outline Senate business on an immediate basis was a morning staff meeting. In addition to Baker and Range, others present at the meetings generally included, as principals, majority whip Ted Stevens (R-AK), along with one or two of his assistants; Baker's chief of staff James Cannon; Secretary of the Senate William Hildenbrand; Senate Sergeant at Arms Howard Liebengood; Secretary for the Majority Howard Greene; Greene's assistant John Tuck; and Baker's press secretary Tommy Griscom. In all, the gatherings included about fourteen to eighteen people reflecting Baker's desire for compiling as much information as could be obtained. James A. Miller described the function of the daily meetings this way:

> The Baker morning staff meeting establishes direction, sets both short- and long-term agendas, and monitors the concerns and activities of other senators and the White House....Since the various individuals are each contributing selected portions of information, the meeting is usually the first time the entire picture for the day is assembled. For Baker the meeting affords the opportunity to determine, early in the day, what he will be faced with in the next 24 hours-what situations, demands, and considerations, both political and procedural, are likely to arise (Miller 1986, 29).

From Miller's perspective, it is clear that Range was an active staff member and one whom Baker relied upon heavily. Miller described Range's role this way:

> It is...to keep Baker up to date on as many of the over 5,000 Senate staff members as necessary. Baker knows he can't get the full picture just talking to senators; staffers play an enormous role. Range makes it his habit to inform Baker on which staffers are most influential with their chiefs. He is famous, too, for his unrelenting pursuit of information that staffers do not want revealed. Once he pries it out of them-often before they've told their own bosses-he can brief Baker on a member's strategy well before the staffer does. Before a bill comes to the floor, Range will meet privately with the staff director of that committee to ascertain the game plan and make sure it coincides with the leader's (Miller 1986, 32).

Scheduling Senate business often reflects the political considerations of the majority leader and of others as well. An episode which occurred on Monday, April 23, 1983, during one of the morning meetings, illustrates the difficulties faced by a majority leader in trying to maintain control over the Senate schedule. Conventional wisdom asserts that the majority leader's institutional powers, though generally weak, are greatest with respect to scheduling Senate business. Yet, as the episode illustrates, the leader must consistently pay homage to the individualist nature of the Senate.

The morning staff meeting was interrupted by a phone call from minority leader Robert Byrd. The call itself was not unusual, because Baker and Byrd regularly communicated about upcoming business. Byrd informed Baker on this occasion of a request from freshman Senator Christopher Dodd (D-CT) for a secret session of the Senate on Nicaragua. Dodd considered himself an expert on Central American affairs and did not like administration policy in that area. Baker did not want the secret session to occur. One reason was that President Reagan had requested to address a joint session of Congress during prime time to outline his Central American policy in clear terms to the public. Baker also was well aware that Intelligence Committee chairman Barry Goldwater (R-AZ) was opposed to the secret session as were many of his colleagues. Baker inquired if Dodd could be dissuaded, but Byrd was not encouraging. Hildenbrand asked Baker if there was a second to Dodd's motion, a requirement if a secret session was to go forward. Baker was informed that freshman Senator Paul Tsongas (D-MA) had agreed to second Dodd's motion. Baker then had no other alternative and informed Byrd that the session would be scheduled for the following afternoon (Miller 1986, 33).

An additional problem for Baker was that the session required extensive preparations, including clearing the galleries, providing security and sweeping the chamber for "bugging" devices. It would also put the Senate behind on its workload. Further, it would undermine the administration's attempt "to deal a preemptive strike on the Central America issue" during a joint session of Congress (Miller 1986, 33). The House, however, put off a vote on the resolution that would permit the joint session, thus opening the way for Dodd to try to embarrass the president with his own preemptive strike. The moral of this story is that two freshman minority senators dictated a major change in the Senate's schedule and Baker was powerless to prevent it. The only option for Baker was to be "less than cooperative" when Dodd inevitably would request a favor in the future. This, however, was not likely to occur, given Baker's congenial style of leadership. Baker rarely poisoned the waters of future cooperation by doling out negative sanctions.

The delay in Senate business, however, made it less likely that the Senate would be able to take its customary August recess, the next item of business discussed at the morning meeting. The primary reason for the cancellation or postponement, however, was that work on appropriation bills was proceeding slowly and "it would be, in Baker's judgment, political and institutional suicide to recess the Senate without action on the majority of the spending bills" (Miller 1986, 34).

The decision on how to proceed on the matter of the August recess illustrates a majority leader's concern for the work schedule of the House. A majority leader of the president's party, facing the other chamber controlled by the opposing party, must keep an eye toward progress on the other side of the Capitol. When the appropriations process is

not flowing along in a timely manner, then continuing resolutions must be adopted. Continuing resolutions, or CR's as they are often called, are stop-gap measures aimed at keeping the government operating until appropriations legislation is passed. When these bills are not enacted in a timely manner, and if a continuing resolution is not passed, the government runs out of money and must begin shutting down operations. It is the custom that appropriations measures originate in the House of Representatives, and that chamber was not acting expeditiously in Baker's view, especially since the Republicans took over the Senate in 1981.

Reflecting these and other political considerations, Baker decided to put pressure on the House to step up the pace. The plan was to have the Senate make clear to the House that the summer recess would be delayed unless the House started sending over appropriations bills at a faster rate (Miller 1986, 35). Knowing that the House could not adjourn for more than three days without the consent of the Senate, (according to Article I, Section 5 of the Constitution), Baker used that leverage to lean on the other chamber. In essence, Baker's threat related to scheduling recesses, which he often used to cajole his own Senate colleagues as will be demonstrated subsequently, now reached across to the other chamber. To add further pressure, Baker's press secretary, Tom Griscom, plied the press with lamentations that the Senate was again being held up by the slow-moving House (Miller 1986, 35).

Another item discussed at the April 23 morning staff meeting was an immigration bill that Baker had promised Alan Simpson (R-WY), the Immigration Subcommittee chairman, would be taken up that week. Baker was concerned as well about Judiciary

Committee chairman Strom Thurmond's (R-SC) wish to have a bankruptcy reform bill brought to the floor. Baker was informed by Range that they could get both the immigration and the bankruptcy bills done in that week. With respect to the immigration bill, Baker was getting bad reports about "all types of amendments out there" and told Simpson of his concerns (Miller 1986, 37). Apparently, this was a signal to Simpson that, in Miller's words, "he should work out as many of the disagreements as possible behind the scenes before the bill got to the floor and became Baker's burden. To help matters along, Simpson began looking for possible time agreements with other senators which would limit debate on the bill to manageable levels" (Miller 1986, 37-38). In exchange for Simpson's cooperation, Baker decided to try to get the bankruptcy bill out of the way on Wednesday and schedule debate on the immigration measure to begin the following day. The FY 1984 budget resolution, perhaps the most important of the measures discussed at the morning meeting, would be put off until the following Monday.

Senate business for the week thus was mapped out and the strategy session came to an end. Baker's morning meetings generally followed this course. The April 23 meeting illustrates that, although the majority leader is most responsible for scheduling business in the Senate, he is limited by the individualist nature of the institution. It is for this reason that scheduling is necessarily consensual, or if not consensual, subject to what can be complex negotiations. Any member, even a freshman minority member, can force the leader to alter the schedule. Yet, it should not be concluded that the leader is powerless in matters of scheduling. He may use his scheduling resources to threaten, and perhaps even punish, the other chamber as well as members of his own chamber should

they become too obstructionist. Thus, scheduling is very much a double-edged sword that can wound a majority leader but also a senator who tries to intrude too deeply into what has become the majority leader's most important prerogative. Baker used scheduling power sparingly, but to great effect, as the next two chapters will show. Before that point is reached, however, other instruments for floor management must be discussed.

Bringing Items up on the Senate Floor: The Clearance Mechanism

Initial scheduling is just the first step in a measure's journey to the Senate floor. Plans made in the majority leader's office may not be the way things will eventually work out, as the previous section illustrated. An effective majority leader must and will adjust and keep the Senate moving forward if not on his preferred timetable, then at least in some measured fashion. The primary responsibility of a Senate leader is to make sure that legislative work in the Senate progresses, or at least does not get bogged down and grind to a complete halt. This responsibility involves more than just mapping out the date and time when a matter will be brought up for consideration, or initial scheduling. It also includes actually getting matters up and available for floor action. The two activities are separate and distinct.

Most non-controversial items, such as minor bills that, for example, create special days to honor America's nurses, or the date of Alaskan statehood, are brought up on the floor through the clearance process and passed into law without a roll-call vote of any

kind and often on the basis of a unanimous consent request. Minor appropriations and extensions of various deadlines also may be approved by the Senate in this way (Tiefer 1989, 570). The majority leader often will use the process to clear nominations made by the president to various executive and military positions. If the nominations have been "cleared" by the minority leader, then the majority leader will ask unanimous consent that the Senate proceed to an executive session in which all presidential appointments are considered and approved.

Passage of legislation by the clearance mechanism requires unanimous consent, or more precisely, the absence of an objection. Minority Leader Byrd characterized the process this way:

> Bills and resolutions not subjected to objection are taken up in their order [on the calendar]. Locomotive velocity may develop at this point, as bills come up and pass through with no objection. Thus, something of a record was established on December 30, 1924, when the Senate considered and passed in one afternoon 136 "unobjected to measures" involving appropriation of $14 million, a princely sum in those days. However, at any stage, objection may be raised to any measure....[M]ore than once, this tool has been used as an instrument of mild retaliation by Senators who were irked by the prior actions of one or more of their colleagues (quoted in Tiefer 1989, 571).

Customarily, on the floor the majority leader will inquire of the minority leader whether certain items have been cleared on his side. An example of this occurred on the Senate floor on June 19, 1981:

> Mr. Baker: Mr. President, there are a number of items on the Legislative and Executive Calendars, and I invite the minority leader's attention to three items on the Calendar of General Orders. I am speaking of Calendar Order No. 172, Senate Resolution 152, a resolution regarding Bulgaria; Calendar Order No. 173, Senate Concurrent Resolution 18, a resolution relating to the Ukraine; and Calendar Order No. 175, Senate Concurrent Resolution 5, dealing with Dr. Brailovsky. Mr. President I would like to do these matters today if it is possible to do so, and I wonder if the minority leader can give me some view of the status of these items on his calendar.
>
> The Acting President Pro Tempore: The Senator from West Virginia.

> Mr. Byrd: Mr. President, the three items are cleared on this side of the aisle, and we are ready to proceed.
>
> Mr. Baker: Mr. President, I thank the minority leader. I then ask the Chair to lay before the Senate the three calendar items in the order I have just identified them (*Congressional Record* 1981, 13066).

The particular items being cleared in this case were resolutions to recognize the anniversary of Bulgarian statehood, call for the restoration of the free exercise of religion in the Ukraine, and disapprove the imprisonment and treatment of a Soviet dissident. These are the types of items that usually pass without a roll-call vote.

It is not uncommon for a majority leader to seek clearance on the Senate floor rather than beforehand. This was especially true in Baker's case when he was seeking clearance of a unanimous consent request. However, the clearance process generally operates off the floor, meaning that related discussions occur in cloakrooms, lobbies, leaders' offices and corners of the chamber during quorum calls or otherwise. Generally, however, the party leaders will utilize what they call the communication "hotlines" to inform each other, as well as other senators, of items on the calendar for which the clearance mechanism might be used. "Hotlines" refer to the special Senate phone system linking the Republican and Democratic cloakrooms to senators' offices that allows recordings to be left relating to items on the calendar, the process by which they may be considered, or pending unanimous consent requests.

It is usually the staffs of the two leaders who are assigned the task of determining whether any senators have problems with specific items being considered for the clearance process. Objection to the consideration of items through the clearance mechanism usually comes in the form of a "hold," to be discussed later. Each senator has a staff member whose job it is to monitor the telephone hotlines, alert the senator to items moving toward clearance, and, if necessary, alert the majority or minority leader that one of his senators has concerns about a measure that appears to be moving to the floor through the clearance

process. Typically, senators do not object to minor bills being handled in this way. There may occur the type of dialog between the two leaders, like that quoted above, where the majority leader seeks from the minority leader information as to whether there are any objections on the minority side to a pending request. It also is not uncommon for the majority leader to request, on the floor, that items be laid before the Senate with an accompanying qualifier to the effect that discussions had taken place with the minority leader and that the items were cleared on that side through consultation of the minority leader with colleagues on his side of the aisle.

The clearance process is a resource that can assist a majority leader in getting many routine and non-controversial items out of the way, thus conserving valuable floor time for major items. Baker described the way that he and Byrd used the system and its effectiveness in this way:

> [The staff] handle hundreds of items, carefully collating and noting the desires and wishes of Senators on both sides of the aisle. The two staffs working together forthrightly and directly confer constantly in the course of the day on the floor and off the floor. We have set up a system here, the minority leader and I, that works, and the system is [that] I never clear anything until I go to my calendar staff and say, "Senator so and so wants to do so and so. Is it cleared on our side?" If I get past that I say "Would you please see if the Democrats have cleared it." If it is [cleared] I go to Senator Byrd and I say, "This is a matter I want to take up." Sometimes he says, "No," but more often he says "Yes," because the calendar people have already gone through it and worked out the details (quoted in Tiefer 1989, 573).

The clearance process, however, is another double-edged sword in that a single member can object and force items, even minor ones, to go through the regular and time-consuming process, thus crowding the calendar. Getting unanimous consent is a hurdle that must constantly be overcome by the leader in order to make the Senate move forward.

No "Holds" Barred?

When reading the *Congressional Record,* one may come across a situation in which a leader mentions that another senator had "expressed an interest" in a matter. This generally means that a "hold" was placed by a member, a request that the majority leader not bring a specific bill up for consideration. The norm in the Senate is for the leader to honor such requests. When the majority leader asks the minority leader on the Senate floor if certain items were "cleared," the minority leader assumes so if no holds were placed. Holds represent an obstacle to the clearance process, one that Baker all but eliminated. Baker did this and enlarged his capacities related to scheduling by removing an obstacle when, in 1983, he decided, surely in frustration, that he would no longer honor holds to the extent that he had done so previously.

It is customary for a majority leader to consult, not just with the minority leader, but also with other interested members about their views on proceeding to consideration of legislation. A hold is a notification to the majority or minority leader stating that a member opposes proceeding to consideration of a particular measure. That is, it is a request of the leader to hold the measure on the calendar until further notice, or at least until the member is able to come to the floor to assert a position (Tiefer 1989, 561).

Baker came to realize that holds did not indicate a member's true intensity of feeling about a measure and that they were being placed in an increasingly casual manner. He decided that informal communication, such as a phone call, would no longer suffice and insisted that all holds be filed in written form (Ainsworth and Flathman 1995, 191). An example of a hold is provided in Appendix A. In addition to insisting upon written holds, Baker threatened to make information on holds open and available to other members. "By doing so he sought to make the senators who placed holds vulnerable to pressure (and perhaps sanctions) from other senators. Of course, those senators with

serious concerns and credible holds would hardly be affected; but those senators with non-credible holds would suffer the embarrassment of publicly backing down" (Ainsworth and Flathman 1995, 191). In this way, Baker could better distinguish between credible and non-credible opposition.

Another way that Baker altered the meaning of a hold was by limiting its effect. Baker announced, again in 1983, that a hold would no longer be considered "a sacrosanct order not to bring the bill to the floor," as was the case since he became majority leader. As Ted Stevens, the majority whip explained, a hold now "just means a senator needs to be notified that the bill will come up and he may come and object" (Granat 1983, 1429-30). In fact, Baker required the senator to make an appearance on the floor to raise an objection. This was, indeed, the original meaning of a hold, but somewhere along the way senators had either misinterpreted or reinterpreted a hold to mean a type of veto over a bill. Part of the blame must rest with Baker for this, because he often considered them as such for the first two years of his majority leadership (Granat 1983, 1429).

The hold has a long history in the Senate. In all cases, no matter who the majority leader was, a hold that remained in place for two or more weeks was likely to be disregarded by the leadership. During Baker's tenure, if he suspected that it was a tactic in a general attempt to filibuster, he often moved to proceed to consideration anyway. That only would occur after notifying the senator of his intention, thus forcing the member to oppose the motion to proceed personally, filibuster the motion to proceed, simply oppose the objectionable measure, or abandon obstruction altogether. If Baker had the votes, no senator could prevent him from putting before the Senate any item for consideration, such as when Baker successfully moved to invoke cloture on his motion to proceed to the consideration of the *Surface Transportation and Uniform Relocation Assistance Act* in 1984. Cloture was invoked by a 70-12 vote. However, he generally

held off consideration of a measure until the senator who placed the hold could get to the floor to at least defend his position. That is, Baker never "sandbagged" an opponent.

Floor Procedures for Bringing up Measures

Given the individualist nature of the Senate, any member may cause problems not only in the initial scheduling phase, when the time is first set for bringing a matter to the floor as Dodd did during Baker's April 23, 1983, morning meeting, but, also when the leader is on the floor and ready to proceed. Obstruction at this point may take the form of an objection to a unanimous consent request to bring a measure before the Senate or by opposing a formal motion to proceed should that motion be necessary. Motions to proceed are rarely necessary, but if they are, a majority leader can utilize this means to keep the Senate moving as long as he has the votes to support the motion.

Although technically any member may offer a motion to proceed to the consideration of any measure, the motion to proceed is now considered to be the prerogative of the majority leader.[2] However, the motion to proceed is rarely necessary. Instead the majority leader generally arranges, via unanimous consent, for certain measures to be before the Senate at specified times such as when the Senate reconvenes the following day. This saves time and helps the majority leader to move the Senate

[2] It has only been since the majority leadership of Mike Mansfield in the 1960s that offering a motion to proceed has become a prerogative of the majority leader. Upon occasion, however, one sees the motion offered by others for strategic reasons. (Tiefer 1989, 558).

along. The Senate calendar, officially called the Calendar of General Orders, does not list the order or times for consideration but merely represents a list of items ready for the Senate's consideration.

Whether the majority leader uses a motion to proceed or a unanimous consent request, bringing a matter to the floor is generally cleared with the other side of the aisle. If the action has been cleared by the minority leader, then there usually is no objection to the motion to proceed or to a unanimous consent request, whichever is used. A majority leader often asks on the floor if the other leader has cleared an item for consideration. If so, then the Senate moves forward on the bill.

The norm of getting the minority leader's agreement implies little discretion on the part of the majority leader. It is a norm, because the majority leader can move to proceed to consideration without the other leader's consent although, as the reader should already be aware, a single objection can disallow a UCA and require a vote on the motion to proceed if it is offered. If the majority leader has the votes to pass the motion to proceed then all is well. If not, then the Senate must move on to consider other business.

Members generally are unable to subvert a majority leader's scheduling prerogatives. For the period in which Baker was the majority leader, he had to resort to the motion to proceed to consideration only seven times, and each time his motion was agreed to by the Senate, generally by large margins.[3] On occasion members attempted to

[3] These are motions to proceed to consideration that required a roll-call vote only. In 1981, Baker never had to resort to a formal motion to proceed that required a roll-call vote. If motions to proceed were necessary, it meant that at least one member was unwilling to consent to a unanimous consent request that would have put the bill before the Senate for consideration, given unanimous consent was generally how it was done. The obstructing senator likely would insist on a roll-call vote on a motion to proceed, despite

filibuster at this stage in the legislative process. Baker had to move to invoke cloture on six of his motions to proceed, and it was imposed in all six instances, even though a super-majority of sixty votes was needed. In another case, Baker had to move to table fellow Republican Don Nickles' (R-OK) motion to postpone the vote on the leader's motion to proceed on a bill to authorize highway funding and an increase in the federal gas tax (HR 6211). Baker's tabling motion was agreed to 79-10.

In sum, Baker rarely had to resort to a motion to proceed to consideration and was successful when he did. One possible exception was when Goldwater successfully moved in 1984 to table a Baker motion to proceed, one of the seven such motions by Baker, to the consideration of a bill that would delay imposition of an access charge on residential telephone users as well as establish a fund to subsidize low-income and rural users (S. 1660). This may not have represented much of a loss to Baker, because he was one of the members voting in favor of Goldwater's motion. However, it may be important to note that a "yea" vote on the Goldwater motion was a vote supporting the president's position.

The Majority Leader and the Senate Calendar

A majority leader is inclined to accommodate other members, not so much because he must in order to prevent them from obstructing, but because each time he does he obtains an informal (and sometimes formal) obligation that he may call upon at a later

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the probable outcome, because roll-calls took up time. Thus, given likely insistence on a roll-call vote by an opponent, the seven instances alluded to in the text were probably the only times Baker was forced to resort to an official motion to proceed.

date. Scheduling favors done on behalf of members who may have to give a speech out of town or fulfill some other responsibility, are referred to as "chits."[4]

Leaders, for their own reasons, may leave items on the calendar and off the floor as a means of leverage in negotiation. Alternatively, bills can be left on the calendar until they die of old age at the end of the session.[5] Thus, a majority leader has control over when and if specific items get considered by the Senate, the discharge petition notwithstanding. This control can be exercised strategically by a majority leader as will become clear in subsequent discussion related to the legislation creating the Martin Luther King federal holiday.

It is rare for a majority leader to attempt to kill bills by not calling them up due to personal opposition. Howard Baker rarely, if ever, attempted to kill bills in such a manner. The Senate might run out of time and be unable to consider everything that was on the calendar. However, the more important bills were called up in a timely manner and usually were disposed of ultimately one way or the other. Not all major bills are reported at the beginning of a legislative session and so, in reality, one finds an alteration between major and minor bills being called up. At times, major items are held until late in the year. When bills die on the Senate calendar, generally it is either because substantial numbers of members object to their consideration, their passage in the House is unlikely, or the Senate just simply runs out of time. It is rare for a majority leader in an individualistic Senate to use the power to leave items on the calendar in a strategic manner, either to force a

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[4] Chit is a term that in congressional usage refers to favors exchanged between any members of the House or Senate. It is rumored that Senator Byrd kept a written account of all the favors he performed for others as Democratic leader, presumably so he could remind them of those favors when he wanted their vote.

[5] The rules state that a bill that has not been passed by the end of the Congress in which it was introduced must be re-introduced in the next Congress. The rationale behind this is to give new members elected between the two Congress' the opportunity to thoroughly consider bills, in committee and otherwise, before they are brought to the floor for potential passage. The members of the 101st Congress, for example, will not be identical to that of the 102nd Congress. Thus, the legislative process must begin anew for bills left on the calendar when the prior Congress adjourned.

particular outcome or to merely get to some outcome. Strategic scheduling by a majority leader does occur upon occasion, however. Baker himself was not completely immune to the temptation.

Strategic Scheduling

Decisions of a majority leader related to the scheduling of legislation can reflect strategic considerations. In the next section, a story will be recounted in which Baker appeared to use the schedule in a strategic way to foreclose a filibuster launched by Helms to a bill that would make Martin Luther King's birthday a federal holiday.

Many strategic considerations are involved in scheduling. One concerns structuring the schedule in such a way as to result in a particular outcome for a bill. It may also mean making decisions related to the schedule that will more likely get the bill to a final up-or-down vote without regard for any particular outcome, that is creating the circumstances that make it difficult for obstruction to occur.

There is a plethora of formal theory literature that illustrates the possibilities of agenda-setting that permit a leader to have influence over the final outcome (Austin-Smith 1987; Bach 1983; Bach and Smith 1988; Banks 1989; Calvert and Fenno 1994; Denzau, Riker, and Shepsle 1985; Enelow 1980 1981; Fleisher and Bond 1983; Froman 1967; Gilligan and Krehbiel 1988; Kadane 1972; Krehbiel 1986 1988; McKelvey and Ordeshook 1984; Mouw and Mackuen 1992; Ordeshook and Schwartz 1987; Ordeshook and Palfrey 1988; Riker 1958 1980 1982 1986 1990; Shepsle and Weingast 1984; Sinclair 1985; Strom 1990; Wilson 1986). There is little current literature, however, that illustrates strategic attempts to remove opposition, especially opposition to consideration of bills in Congress. Most of the literature is devoted to illustrating strategic manipulation geared

toward forcing a particular substantive legislative outcome, often referred to as an "equilibrium point." There is no doubt that institutional constraints and rules can influence outcome. The disagreement among scholars, however, generally comes over whether that which is written from a formal perspective is realistic or relevant to the real world of legislative institutions. That is, are the assumptions upon which the theories are built strong enough to withstand empirical scrutiny? It is one thing to prove that strategic manipulation can occur in theory. It is quite another to prove that it occurs as hypothesized. A prerequisite to answering that question is a basic understanding of the legislative process.

The majority leader is not necessarily involved in all aspects of floor management. This limits his ability to use his power of scheduling in a strategic way. Members other than the majority leader perform some of the duties associated with scheduling. For example, the chores of arranging the sequence in which senators give speeches, offer amendments, and vote on those amendments are generally delegated to bill managers. The bill managers are usually the chairman of the committee or subcommittee with jurisdiction and the ranking member of the opposing party on that same committee or subcommittee. There is not much formal power inherent in managing a bill, since the rules do not allow for *a priori* sequencing without unanimous consent. Sequencing basically refers to arranging some order in which amendments or bills will be considered. The role of the majority leader is to apply pressure in some form for the members to agree to whatever unanimous consent requests are required and to get members to the floor to offer their amendments in a timely fashion. Much of his time on the floor, in fact, is devoted to these purposes, particularly when an important bill has many amendments pending.

There is a tradition in the Senate that amendments are offered alternatively by the majority and minority parties. That is, a member of the majority party will offer an amendment, and the next one will come from a member of the minority party. This is not

always the case, especially when members intend to offer strategic (for example, "killer") amendments. When partisan suspicion arises, one may expect a breakdown in sequencing arrangements. At times, however, partisan suspicion will lead to a formal agreement providing for alternation (sometimes called "rotation") in amendments, as when Minority Leader Byrd inquired of Baker on May 18, 1982, if there could be an understanding "that there will be an alternation between the two sides on calling up amendments, as we have previously done on budget resolutions?" (*Congressional Record* 1982, 5409). In that instance, Baker responded "Yes, Mr. President...,I give the minority leader my assurance that we shall do that without exception...absent extraordinary circumstances such as the absence of Senators from the floor" (*Ibid.*). Both parties and all interested members usually want as neutral a sequencing of amendments as possible to prevent being strategically outmaneuvered on the floor.

Basically, a majority leader's realm of possible strategic action related to scheduling is limited to when bills will be brought up, unless he wishes to use his right of first recognition to offer an amendment, especially a strategic amendment. In current practice, bills are usually reported by committees when the majority leader is ready to bring them up (Tiefer 1989, 559). However, strategic use of the schedule by a majority leader to influence outcome is possible if the circumstances are ripe.

Martin Luther King and Agricultural Subsidies

In 1983 Baker used scheduling strategically to get to a particular outcome: passage of the bill establishing Martin Luther King's birthday as a federal holiday (HR 3706). The episode has already received some scholarly attention (Krehbiel 1986). The bill passed with overwhelming support in the House of Representatives on August 2, 1983. In the Senate and to no one's surprise, Jesse Helms launched a filibuster when the

bill came to the Senate floor. Of course, filibusters are more effective when they press the Senate up against a deadline such as a scheduled recess. In this case, the Senate was preparing for the Columbus Day recess. In an illustration of the two party leaders working together, both Baker and Byrd filed petitions for cloture after Helms began his filibuster. Even if cloture was invoked, however, there were enough amendments filed that the Senate could be tied up beyond the scheduled recess. Baker was in favor of passage and attempted to get around the difficulty by offering a unanimous consent request to govern consideration of the bill. Baker was pessimistic when he offered the request, because it would, among other things, set the vote on final passage on or before 2 p.m. Wednesday, October 19, thereby precluding a filibuster (Krehbiel 1986, 558). Other provisions of the request vitiated the pending cloture vote, provided for the recognition of Helms to offer a motion to recommit the bill to the Judiciary Committee, limited debate to four hours, and allowed for amendments, though only one hour of debate for each amendment. Furthermore, debate on second-degree amendments and points of order was limited to thirty minutes. Perhaps most importantly, it was specified that "the agreement be in the normal form" (Krehbiel 1986, 558). The phrase "in the normal form" in this case meant that only amendments germane to the bill would be in order. Rule XXII states that dilatory actions are out of order. This may have been an attempt to signal to Helms and other opponents that another "Black Monday" was on the horizon.[6] Senator Gordon Humphrey (R-NH) reserved the right to object to Baker's request and sought clarification as to what amendments would be permitted. He had amendments he wished to offer, though not to delay final passage (Krehbiel 1986, 558). Baker refused to make any guarantees to Humphrey and declined an opportunity to modify the request, asserting that

[6] "Black Monday" refers to an incident in 1977 in which the two party leaders used raw power to have ruled out-of-order numerous dilatory amendments that were being used to filibuster a bill. An in-depth description of the incident is included in chapter five.

it came as a package. The Senate then proceeded to a quorum call to allow for off-the-floor negotiations. A deal apparently was worked out, because when the Senate returned to the issue Helms advised Humphrey ***not*** to object to the request. In fact, when the bill was before the Senate no filibuster was carried forward by Helms or anyone else, and Helms' motion to recommit the bill was defeated along with four amendments that he offered. Humphrey offered his amendments, though they too failed. In fact, all amendments offered to the bill were rejected.

The reason for Helms' retreat on the Martin Luther King Holiday had to do primarily with the way Baker used his control over scheduling. The casual observer might not have noticed the piece of legislation that was scheduled by Baker for consideration after the King holiday bill. It was the Dairy and Tobacco Adjustment Act of 1983. The UCR for the King bill preceded the UCR for the agriculture bill. This was not a coincidence but reflected strategic considerations by Baker. The agriculture bill changed policy in pro-dairy and pro-tobacco directions (Krehbiel 1986, 555). The UCR for the agriculture bill provided that no amendments other than those related to dairy and tobacco would be in order, thus precluding amendments that were planned that would reduce target prices for wheat and other commodities. These amendments, if offered and adopted, would have endangered passage of the underlying measure, although that was probably not their intent. That is, they were not intended as killer amendments.

Helms was chairman of the Agriculture Committee and represented a state where agriculture, and especially tobacco, was important. He did not object to the UCR on the King holiday, because he knew it would cause him trouble on the agriculture bill and the UCR pertaining to it. Specifically, if he objected to the UCR on the King holiday bill, others would object to the UCR on the bill coming from his committee, presumably in retaliation. Apparently Helms' preference for the agriculture bill outweighed his preference against the King holiday. Baker used his scheduling authority to alter the

calculations taken into consideration by Helms in deciding whether to fight all out against the King holiday. Baker effectively induced the cooperation of Helms (Krehbiel 1986, 561). If Helms filibustered, he was in effect filibustering a bill he was bringing to the floor.[7]

Control over scheduling is given to the majority leader for a reason. One person needs the final authority to govern the schedule on a day-to-day basis. A majority leader is thus provided a useful institutional resource that, if used properly, can assist him in getting what he wants. This means more than just moving the Senate along. As the debate on the King holiday bill illustrates, at times scheduling can be used to get a particular outcome that conforms to the preferences of the leader. Important to the outcome in this case was the cooperation of the other party's leader. It did not hurt that both Baker and Byrd were in favor of the King holiday bill. Otherwise, a minority leader can cause difficulties. A minority leader cannot prevent a motion to proceed to consideration absent a successful filibuster, and if the motion has majority support he cannot prevent consideration. The motion to proceed, however, is subject to filibuster. This is one of the reasons why the majority leader must and will consult with the minority leader before moving to proceed and generally will not proceed on a matter if the minority leader has not cleared the item or items on his side of the aisle.

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[7] For a superior discussion of a majority leader's ability to change others evaluations of the future and capacity to manipulate the costs associated with delay using reward and punishment, see Ainsworth and Flathman, "Unanimous Consent Agreements As Leadership Tools," [Manuscript], University of Georgia; and Ainsworth and Flathman, "Leadership in a Sparse Environment: A Formal Model of UCA's in the US Senate," Paper Presented at the Annual Meeting of the *Midwest Political Science Association,* Chicago, 1990.

Items Held at the Desk

A bill sent over from the House or introduced in the Senate can receive as many as three "readings." The first reading comes when the bill arrives or is introduced and the clerk "reads" the bill for the first time. Generally, the clerk will not actually read the bill in its entirety but simply state it by title. Bills often are introduced during morning business, and first-reading is the first time the full Senate is formally and publicly made aware of a bill's existence. A bill is read a second time, referred to as "second-reading," when it is ready for referral to the committee that has jurisdiction over the topic covered by the bill. Committees, after holding hearings and possibly rewriting the legislation, may then report the bill to the floor for full Senate action. Committee referral is the course most bills follow after second-reading. Third-reading occurs after the bill has reached the floor and the amendment process has come to an end. After third-reading, no further amendments are in order. In that sense, third-reading marks the end of the amending process. From that point forward, the Senate is concerned only with final passage. The process related to various readings has important consequences for how a bill is dealt with in the Senate.

When a bill is ripe for second or third reading, a majority leader has an additional scheduling resource available to him, the ability to have items held at the desk and thus unavailable to the relevant committee or to the Senate for consideration. The specific provisions are contained in Rule XIV. Having items literally held at the desk requires unanimous consent and is thus limited as a tactical resource. This may be done prior to referral to committee of either a bill introduced in the Senate or a House-passed bill, or to keep a bill reported by a Senate committee off the calendar. Another provision of the rule, though, permits a member, including the majority leader, to get an item immediately from the desk to the floor for consideration, thereby bypassing the committee stage.

Unanimous consent is not required, and that provision will be discussed in the next section.

Since the majority leader has primary control over matters of schedule, he usually is able to obtain the necessary consent to have items held at the desk. Care must be taken, nonetheless, to insure that having items held at the desk is not an overt attempt by the leader to circumvent the prerogatives of individual members or committees. The ability to have items held at the desk helps a leader to prioritize and deal with matters according to his own timetable. A leader may have an item held at the desk so that momentum is not lost on a matter currently under consideration by the Senate. Simply put, the power to have items held at the desk enhances the leader's control over the calendar.

Having items held at the desk can be useful to a leader in carrying out his function related to scheduling and, in particular, moving the Senate forward. Baker, as a general rule, did not like to have items held at the desk. The practice ran counter to his disposition and his general views about the importance of the democratic process as a whole as well as the committee system in particular.

Baker was more interested in the process than in getting any particular outcome, although exceptions existed. This is why he opposed, as a general rule, having items held at the desk or placed directly on the calendar via Rule XIV. In those cases in which they were, he would still defer to the wishes of the committee. Generally, however, bills held at the desk are relatively minor, such as one in 1984 that designated September 30 through October 6, 1984, as "National High Tech Week" (*Congressional Record* 1984, 22512).

Occasionally, the majority leader will request unanimous consent that a message (or bill) from the House of Representatives be held at the desk. The most frequent items sent over from the House and held at the desk are resolutions of adjournment *sine die*, or without a date certain to return. This occurs at the end of a session of Congress. Baker

had them held at the desk when there was still Senate business he wanted to finish before adjourning for the session. Legislation, in addition to adjournment resolutions, coming from the House and other items of business also can be held at the desk rather than being referred immediately to a committee.

In all cases, Baker jealously guarded the control over having items held at the desk as a leadership prerogative, given that they were matters related to scheduling. On September of 1981, Baker made an exception in the case of a request by Senator Wendell Ford (D-KY) to have the *Budget and Oversight Improvement Amendments of 1981* held at the desk for three days so that other senators could add their names as cosponsors. Baker made the exception to provide for time so that a problem with the bill could be resolved, but in the process restated his general views related to having items held at the desk:

> Baker: Madam President, reserving the right to object, and I will not object, we have a problem with that. I do not like to cultivate the habit of having a bill lie at the desk for a long period of time for cosponsors. This is a special circumstance and I will not object to it. The Senator and I have had discussions about the matter of referral of this bill and these matters have not yet been resolved, I do not believe, on either side of the aisle. This period will give us additional time to try to resolve that issue as well. In this case, I will not object to the bill lying at the desk for 3 days for further cosponsors (*Congressional Record* 1981, 22507).

Baker was signalling that this was not an invitation to other members to have items held at the desk. Baker agreed to hold the bill in this case because there was unresolved conflict as to where it should be referred. His remarks probably related to a joint-referral issue. The point is that his predisposition was against having bills held at the desk.

Having items held at the desk is not a technique that is generally used in strategic ways by a leader. It is a means the leader may use to make the schedule more convenient for himself or for the Senate generally. However, having an adjournment resolution sent over from the House held at the desk may be an attempt by the leader to signal the other

chamber, or even his own, that an adjournment is in jeopardy unless certain conditions are met or certain practices are changed. In this sense, it can be a strategic action. In other words, having particular items held at the desk, should he be able to get unanimous consent to do so, allows a majority leader to use threats more credibly, although it is rarely used, if ever, to affect the substantive content of legislation.

Bypassing the Committee Stage

Senators can use provisions of rule XIV to have items held at the desk by objecting to further consideration when the time for second reading arrives. The effect of an objection is to move an item onto the calendar, and thus make it available for floor consideration after it has been introduced or messaged over from the House and *before* it is referred to committee (Tiefer 1989, 594). Time can be saved by bypassing the committee stage, and an objection of this sort is one way in which the Senate can be made to move more quickly when necessary. Unlimited debate on the floor can slow things back down, however. The rule also can be used to enhance the leader's control in selected instances.

Because of his regard for the committee system, Baker did not like to invoke Rule XIV, or to have it done by others, in order to bypass the committee stage. Baker's basic approach was revealed in the following colloquy with Byrd:

> Byrd: I think it is bad to allow more and more items to be held at the desk for further action without their going to committee.
>
> Baker: I agree....If we are not careful, we are going to destroy the committee system by holding matters at the desk....I have tried to convince a number of Senators who have come to me to propose a bill for the calendar under rule XIV that they should think about that and [not] attempt to do it routinely, because not only does it deprive the committee of jurisdiction, but it also does something that perhaps I should not say, but I am going to say; it delivers that matter into the tender mercy of the keeper of the

> calendar, and the minority leader and I, really, as a practical matter, are the keepers of the calendar. In many cases, or in most cases, perhaps, Members will do better to have it in committee and have the reinforcing approval of the committee reporting that measure than they will just by putting it on the calendar and then the leadership put to the test of deciding whether they are going to take it up or not. I freely confess that I am not going to take up matters unless I am convinced they should be taken up because of a great national importance or that I am convinced that the committee would like to have them taken up. So rule XIV is not a panacea (quoted in Tiefer 1989, 597-98).[8]

He resorted to the rule, however, on May 11, 1982, when he asked if the chair had a measure to lay before the Senate. The presiding officer ordered the clerk to report any bill that remained at the desk for second reading (i.e. awaiting referral to committee). The clerk reported S. 2372, a bill introduced by Helms "to affirm the intrinsic value of all human life, to recognize the humanity of unborn children, and to insure that the Federal Government not participate in or support abortions" (*Congressional Record* 1982, 9246). Baker responded: "Pursuant to the provisions of rule XIV of the Standing Rules of the Senate, and at the request of another Senator, I object to further consideration of this measure at this time" (*Ibid.*). The item was then placed on the calendar for consideration by the full Senate.[9] Baker, who controlled the calendar, subsequently brought the measure up, but it attracted so much opposition that it was taken down. Thus, Baker kept an earlier promise to Helms to allow him to bring up bills dealing with social issues once the economic issues, such as the 1981 tax bill, were out of the way. Specifically, Baker had promised Helms to take up social issues such as abortion when convenient and was fulfilling his promise by bypassing the committee and subsequently bringing the measure up on the floor. That, however, did not mean that Baker would put all of his leadership resources behind those bills in order to get them passed, especially if defeat was imminent.

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[8] It is the custom for those in Congress, and elsewhere in government, to capitalize the word 'Member' when referring to members of Congress but few others follow this practice (Dickson and Clancy 1993, 215).

[9] Items are referred to committee by the chair after consultations with the parliamentarian to determine which committee has jurisdiction, unless some type of multiple referral is worked out.

Baker often had made his opposition to abortion clear. The fact that S. 2372 was a free-standing measure, rather than offered as an amendment to another bill, probably eliminated Baker's personal opposition to consideration of such a controversial measure. He did not like for unrelated amendments, especially controversial ones, to be attached to other bills. Controversial amendments endangered passage and made compromise difficult.

Though rarely invoked, Rule XIV may be used to get a measure to the floor when a committee is likely to bottle it up and for which a discharge petition may fail. The discharge petition has a disadvantage in that it takes several legislative days before the discharged bill would be available to the full chamber, and even then the motion to proceed could be filibustered. Given its committee-weakening effect, Rule XIV was a popular means for moving civil rights bills when the Judiciary Committee was dominated by southerners reluctant to report civil rights measures to the floor and filibustered motions to proceed when they did reach the floor.

Rule XIV was used to bypass the Judiciary Committee, again in 1982, related to an extension of the Voting Rights Act passed by the House, because supporters feared that committee chairman Thurmond would delay action on the measure. Thurmond's committee, however, did report out its own bill, which represented a compromise drafted by Robert Dole, on May 25. When it reached the floor, a filibuster led by Helms was launched and lasted for a week. Baker broke the filibuster when he announced that the Senate would take up no other measure until the voting rights bill was acted on. The Senate eventually passed the Judiciary Committee version by a vote of 85-8 after rejecting all amendments except for a few that made technical changes.

Use of Rule XIV by other senators does not dilute the influence exercised by the majority leader, in consultation with the minority leader, in their joint role as "keepers of the calendar." Even though the tactic gives a single member the ability to place items on

the calendar, the majority leader still has control over bringing items off the calendar for the Senate's consideration. The effect of the tactic, then, is to get the bill to the calendar without having to wait upon committee action. However, majority leaders usually do not fear the substance of legislation coming out of committee. In fact, some scholars have shown that party leaders exert an independent effect on what happens in committee (Ward 1993). Baker worked diligently to protect committees and to try to pass bills in the form in which they were reported. The norm of reciprocity prevents widespread use of Rule XIV to bypass committees. Those who regularly resort to the tactic could expect retribution on bills for which their committees have jurisdiction. Thus, Baker did not have to work too hard to protect the committees from encroachment.

Motion to Recommit

Other motions unrelated to scheduling can also be used by the majority leader to lead the Senate. This is particularly true if one defines leading the Senate as influencing the character of the legislative process. At the same time, these motions, when offered by others, can represent threats to a majority leader's prerogatives.

Baker, as majority leader, tried to protect bills reported from committees so that they eventually passed in the form reported without excessive or damaging changes. He also did not like non-germane amendments, particularly extreme or controversial ones, to be offered, much less passed. One way to attain these ends was to fend off unfriendly amendments through tabling motions or outright defeat. Baker, however, usually left handling such matters to the floor managers of the bill, only becoming personally involved when he felt his influence as leader would be of assistance to them.

The motion to recommit, with or without instructions, is considered to be a prerogative of the majority leader, but sometimes it may be used by others. The effect of a

motion to recommit, if adopted, is that the bill is returned from the floor to the committee of jurisdiction. Instructions, if they are included in the motion, usually charge the committee with reporting the bill immediately back to the floor in a particular form, for example with certain amendments adopted or stripped of amendments added on the floor. The bill, however, is rarely physically sent back to committee and the committee rarely meets in order to carry out the instructions. The exchange of jurisdiction is usually on paper only. The important point, however, is that the bill is brought back to the floor in altered form which becomes the basis for further Senate action.

A frequent purpose in offering the motion to recommit is to strip offensive amendments from a bill. Other amendments may be retained when a bill is recommitted so that the Senate does not have to vote on them again when it returns to the floor. Baker only availed himself of the motion to recommit twice during his tenure as majority leader. Both instances concerned Finance Committee bills. He was successful in 1982 and unsuccessful in 1983.

Baker's goal in September of 1982 was to end a floor fight over an important "must pass" bill when he offered a motion to recommit a Finance Committee bill (H. J. Res. 520) which included, among other things, a temporary debt limit increase, with instructions to send it back to the Senate floor stripped of *all* amendments. The motion passed 79-16 and eliminated from the bill two amendments that passed via roll-calls, one of which was a relatively minor Baker amendment to block further spending on a planned gymnasium in the new Hart Senate Office Building and to close an existing gym in the Dirksen Senate Office Building that had passed unanimously on a 98-0 vote. The other amendment was a Dole amendment on capital gains taxation. The Baker and Dole amendments were not all that controversial. The problem was that Baker had promised the bill as a vehicle for debate on social issues, a debate that had gone on for five weeks and precipitated the filing of 1,400 amendments. There had been seven unsuccessful

attempts to invoke cloture on Helms amendments on school busing, prayer and abortion. Unable to get cloture on his amendments, Helms attempted another strategic move. He offered a motion to recommit the bill to the Finance Committee with instructions for the committee to report it back incorporating his amendment to bar federal courts, including the Supreme Court, from handling "voluntary school prayer" cases. Fellow Republican Barry Goldwater immediately moved successfully to table the Helms motion to recommit.

At this point, the debt ceiling authorization was near expiration. To avert a debt crisis, it was imperative that the Senate pass the House measure with no amendments. Time was a factor as was the fear that the House would not accept the bill with Senate amendments. Baker's motion to recommit was aimed at these conditions. That it was agreed to suggests that the motion to recommit is a resource available to a majority leader, provided he has lined up the votes, for managing the Senate floor and perhaps even for influencing the substantive content of legislation.[10] The point is this: although the motion to recommit does not require unanimous consent, the resource is effective only if the majority leader has the votes, and Baker usually had the votes.

The situation in 1983, when Baker again offered a motion to recommit a debt limit increase bill (H. J. Res. 308) to the Finance Committee, was that two amendments were adopted which Baker opposed. The first was by William Armstrong (R-CO) that reduced the increase of the public debt limit from $1.61 trillion to $1.45 trillion. Baker consistently voted against amendments to lower the proposed increase in the debt limit, although he missed this particular vote. The second amendment was offered by Max Baucus (D-MT). It expressed the sense of the Senate that the United States should insist that Japan dismantle all non-tariff barriers to the importation of American beef. Baker voted against

[10] The subject of chapters three and four, the 1981 tax cut bill, was subject to a motion to recommit when on August 3rd Senator Kennedy moved to recommit the conference report to the conference committee with the instructions that the conferees reduce the revenue loss from the Windfall Profits Tax provisions. The motion failed 20-55.

this amendment. The Armstrong amendment was adopted 70-15 and the Baucus amendment was adopted 92-6. In response to their passage, Baker offered a motion to recommit the bill to the Finance Committee which, if adopted, would eliminate the two amendments from the bill. Baker's motion failed on a 27-68 bipartisan vote. The debt limit bill was subsequently rejected 39-56. Two weeks later, on November 16, Baker successfully moved, on a 67-31 vote, to reconsider the vote by which the Senate rejected the debt limit bill. The Senate then passed the bill 58-40 without changes in the proposed new debt limit of $1.45 trillion.

On the other hand, during this same period Baker successfully tabled five motions to recommit that were offered by other members.[11] Thus, Baker was very effective at lining up the votes to fend off motions he opposed that sought to have bills recommitted. Interestingly, in 1982 Baker allowed a vote on, instead of moving to table, a Byrd motion to recommit a Finance Committee bill (HR 4961) with instructions to report the bill back to the Senate with Title IV deleted. The motion was rejected on a straight party line vote of 43-54. Baker had the votes to defeat the motion, much like he had the votes to table the other attempts. He probably allowed the vote to occur, rather than to table it, out of deference or goodwill toward the minority leader. Baker successfully tabled other

[11] Motions to recommit that were tabled included a 1981 Chiles motion to recommit a joint resolution to the Appropriations Committee with instructions to report back within five hours specific cuts to achieve a four percent reduction; a 1982 Chiles motion to recommit a bill to the Budget Committee with instructions to permit alternative spending cut or tax packages to be offered as amendments to reconciliation savings legislation, provided such amendments are not predominantly non-budgetary in nature; a 1983 Gorton motion to recommit an Omnibus Defense Authorizations bill to the Armed Services Committee with instructions to disregard reduced estimates of inflation in the Pentagon budget that was authorized by the Office of Management and Budget the effect of which would have been to require the Committee to drop some programs from the bill but not reduce the total authorized; a 1983 Heflin motion to recommit a resolution to waive the 1974 Budget Act to the Agriculture, Nutrition and Forestry Committee; a 1984 Dixon motion to recommit an Omnibus Defense Authorizations bill to the Armed Services Committee with instructions to report back to the Senate a $293.7 billion defense authorizations bill so as to have five percent inflation-adjusted defense growth in fiscal year 1985 compared to the previous year.

amendments offered by Byrd, however, so it is difficult to determine from remarks in the *Congressional Record* why this particular vote was allowed.

Thus, Baker had a 50 percent record on his own motions to recommit, a 100 percent record on tabling others' motions to recommit, and his position won against Byrd's motion to recommit. No other motions to recommit aside from Byrd's and a Kennedy motion in 1981 were allowed a vote during 1981 through 1984.[12] Both Kennedy's and Byrd's motions to recommit failed. This is perhaps powerful testimony to the fact that the motion to recommit largely has become a prerogative of the majority leader.

Adjournment and Recess

Any member may propose that the Senate recess until a later time. The same is true with respect to a motion to adjourn or to adjourn to a time certain. There are some distinctions among these motions that have implications for floor action. Each of them, however, in practice is considered to be the prerogative of the majority leader. The motion to recess simply means that the Senate will recess until a later time, usually the next day, and it saves valuable time when it reconvenes. If the Senate officially adjourns, there is a rather lengthy procedure that must be followed when it reconvenes that generally takes about two hours to complete. When the Senate reconvenes after an adjournment, a prayer is recited, followed by approval of the *Journal*, "routine morning business," and a call of the *Calendar of Bills and Resolutions* which is generally used for the consideration of minor bills. The Senate rarely follows the procedure as outlined in the rules, but any member may call for the "regular order" and force the Senate to adhere to formalities. If

[12] Kennedy offered a motion to recommit the 1981 tax bill because of provisions related to the windfall profits tax. The episode is discussed in detail at the end of chapter four.

the member is part of a filibuster effort, the call for regular order may be a useful time-consuming process. If the Senate merely recesses, there is an abbreviated procedure that is followed upon reconvening. The motion to recess eliminates the requirement providing time for routine morning business, which is a time for introducing bills and receipt of committee reports (Tiefer 1989, 549). Senators also may take the floor to speak on any topic during the time set aside for morning business.

A motion to adjourn *sine die* means that the Senate is adjourning for the session or without a day certain. Neither the House nor the Senate may adjourn for more than three days without the consent of the other body. This is set forth in Article I, Section 5, Clause 4 of the U.S. Constitution and will become important in subsequent discussion.

Generally, provisions for ending the day's business are contained in unanimous consent requests negotiated at the end of the previous day. Frequently included in the provisions of the agreement to govern the next day are limitations on the time for routine morning business and occasionally a provision that the *Journal* be considered as being approved. Majority leaders often place limits on leader time, the discretionary time assigned to the two party leaders to make statements about the impending schedule or any topic they wish to address. Leader time, of course, is negotiated with the minority leader. The Senate then begins its formal legislative business for the day. Unanimous consent related to the sequence of events upon resuming business, or the time involved, is not always possible to secure.

Like many other actions, the motion to recess or to adjourn can be used strategically. For example, in 1983 Baker adjourned the Senate to give opponents more time the next day to organize opposition to a Robert Kasten (R-WI) amendment that would repeal the portion of the 1982 tax bill requiring withholding of ten percent of earnings from interest and dividends (Annis 1985, 808-9). Baker, siding with the

president against the Kasten amendment, failed to get enough votes to end debate on the underlying bill when the Senate reconvened.

In 1981 Minority Leader Byrd moved that the Senate adjourn for one minute, which would have the effect of changing the legislative day. Only successful motions to adjourn have the effect of changing the legislative day, and so, since the Senate often recesses, it is common that the legislative day does not match the calendar day. The motivation behind Byrd's effort to adjourn momentarily was that just prior to this point, Senator Daniel Moynihan (D-NY) offered a motion to proceed to the consideration of a bill to amend the *Omnibus Budget Reconciliation Act of 1981* (HR 3982) that would restore minimum Social Security benefits. The chair ruled Moynihan's motion out of order because of a rule requirement that asserted an intervening "day" must occur before items reported from committee could be considered on the floor, unless otherwise provided for by unanimous consent. A "day," in this case, meant "legislative" day instead of a calendar day. The bill Moynihan wanted considered had not met that particular requirement, and the chair so ruled. Moynihan's appeal of the ruling failed by a 30-57 vote (*Congressional Record* 1981, 19148). Byrd's solution to the problem was to adjourn just long enough so that the legislative day would change and permit consideration of the bill. However, his motion was rejected by the Senate by a 37-49 vote (*Congressional Record* 1981, 19149). The legislative majority that previously passed the reconciliation measure (HR 3982) did not want it to be subjected to further amendment. Baker stayed out of this fight, but at times he used the motion to adjourn for strategic reasons.

On one occasion, Baker used it to counter a strategic maneuver by Helms who, along with fellow Republican and North Carolinian John East, filibustered the 1982 gas tax bill (HR 6211). Helms continued his filibuster of the bill even when it reached third reading. Third reading is relatively late in the game and marks the end of the amending

process. The rules require that a bill having reached third reading lay over one legislative day before third reading actually occurs. This requirement is routinely waived by unanimous consent. In this case, Helms objected to third reading on the basis that the one-day delay had not taken place. Baker, in response, simply moved that the Senate stand in adjournment for one minute. Baker had the votes to pass the motion, the effect of which was to start a new legislative day, and allowing the bill to immediately go to third reading, engrossment, and final passage. Yet, Baker did not want Helms to feel that he had "played hardball with him" and went so far as to request unanimous consent to vitiate the order for third reading which was earlier agreed to (*Congressional Record* 1982, S15736 {Daily ed. Dec. 20, 1982}; quoted in Tiefer 1989, 761-762 and ff. 174).[13] Helms did not offer an amendment, though he could have once the order for third reading was vitiated. He knew by then that he did not have the support to get one adopted. He only wanted to delay as much as possible as part of his filibuster attempt, even though insisting on the day's delay was futile in terms of a filibuster and only elicited the wrath of his colleagues.

Not offering motions to adjourn can also be the result of strategic calculation. Since the motion to adjourn is the prerogative of the majority leader, it can be used or not in an attempt to break a filibuster. Rule XIX (1)(a) provides that no member may address the Senate more than twice on any one question on the same legislative day (as opposed to calendar day) without the permission of the Senate (Tiefer 1989, 708). The permission of the Senate requires unanimous consent. Whenever a senator loses the floor, that ends the

[13] Third reading, or threats related to it, can also be used strategically by a majority leader. For example, Baker reached the point where he was willing to abandon his congenial style of leadership when, on a 1983 supplemental appropriation bill, he became so frustrated that senators were not offering their amendments, that he called for a "live" quorum and informed the membership that he was going to try to take the bill to third reading "regardless of whether there are amendments that we know of that are still outstanding....I am not a very good slave driver...But I am telling you that we are going to go to third reading on this bill if Senators do not come to the Chamber and offer their amendments" (*Congressional Record* 1983, S8404 {Daily ed. June 15, 1983}; quoted in Tiefer 1989, 645, ff. 52).

first address. A senator loses the floor whenever he or she leaves the chamber, offers an amendment, or yields to another senator for any reason other than for a question. The second address begins when the senator regains the floor if it is on the same topic and on the same legislative day. The two-speech rule is not generally enforced except in rare cases involving filibusters. By using the motion to recess in the place of a motion to adjourn, a majority leader can make a legislative day last several calendar days. Then he can see to it that the two-speech rule is enforced, thus strengthening his ability to put pressure on members engaged in a filibuster (Tiefer 1989, 709). There were no instances of Baker using the two-speech rule to break a filibuster, but he could have done so on the 1982 gas tax measure discussed above. Baker, instead, used a motion to temporarily adjourn just long enough to change the legislative day and satisfy the requirements for third reading.

Filibusterers, however, have learned to be on guard for potential attempts to use the two-speech rule and take care to plan filibusters in advance. One way around the rule is to obtain allies in executing the filibuster. That way, different amendments can be offered, thus changing the subject giving filibusterers an additional two speeches per amendment. Additionally, to prevent losing the floor and using up a speech, allies in a filibuster may yield to each other for the purpose of long and drawn out questions that permit the previous speaker an opportunity to eat, drink, and relieve himself. For example, a filibustering senator who needs a break may yield to an ally for a "question" that begins something like, "Will not the distinguished senator agree with me that this bill deserves defeat because of a, b, c, and so on," while the original filibusterer will take a break and return to the floor to reclaim his time before his ally gets to reasons x, y, and z and then...thank the ally for his 'thoughtful question'" (Tiefer 1989, 711). This way, the yielding for a "question" does not count as losing the floor for the purposes of the two-speech rule. Nevertheless, the two-speech rule is one weapon in the arsenal of a majority

leader that forces filibusterers to remain alert to parliamentary situations lest all their efforts come to nought.

The two speech rule is a difficult rule to use to break a filibuster, particularly when a senator wanting to kill a bill or amendment has allies. Thus, the year 1908 may have been the last time it was used. Tiefer (1989, 762) described that event:

> In 1908, Senator Robert La Follette (R-WI) attempted to filibuster the conference report on a currency bill. The filibuster "was aimed at an unamendable conference report. When Senators had spoken twice, under strict enforcement of the [two-speech] rule, and with the Senate technically held (through recesses) in one legislative day, the filibusterer could be throttled with relative ease...." (Burdette 86). To avoid using up his ration of speeches, La Follette had to deliver his record-setting oration...but the filibuster could not be sustained indefinitely by a small crew limited to two speeches apiece, and it soon died (Tiefer 1989, 762; ff. 176).[14]

Also, the avoidance of a motion to adjourn can reflect a strategic decision by a majority leader. The mechanics include, because of the two speech rule, a majority leader choosing to recess, rather than to adjourn, so that once a filibusterer loses the floor (which may be done by sending an amendment to the desk or calling one up, requesting a quorum call, and other actions), he or she has used up one of the two speeches. He or she, once the floor is regained, must continue to speak, without losing or yielding the floor other than for a question, or remain silent on the topic until the Senate adjourns to a new legislative day or moves on to another topic. It is in those situations in which it is good, from a filibusterer's point of view, to have allies. In these situations it is wise for a majority leader to avoid adjournment.

Postponement of adjournment *sine die* has also been used to press senators to get to the floor to offer amendments on bills pending late in the session, usually December, as

[14] The author could find no instances in which Baker or Byrd resorted to enforcement of the two-speech rule to break a filibuster. Yet, the resource is available should they choose to do so. The fact that they did not do so probably reflected knowledge that it is an easily circumvented rule (if one has allies) and the fact that it has become easier to end a filibuster by other means since 1908 (i.e. cloture).

illustrated when Baker remarked on October 26, 1981, that the ability of the Senate to go out by "some decent period before Christmas" was in jeopardy unless senators got their amendments out of the way so that the necessary appropriations bills could be dealt with before adjournment (*Congressional Record* 1981, 25295). In this way and others, motions to adjourn, as well as the threat not to adjourn, can result from a strategic decision to put pressure on others. Each can be effective tools for a leader in exercising floor management responsibilities.

The Politics of Recess

The motion to recess can be used for reasons other than simply to conclude the day's business. When used to conclude the day, the majority leader generally has the support of the chamber. Generally, however, a motion to recess is not necessary. It is usually provided for by unanimous consent. Baker found it necessary, in May 1982, to move that the Senate recess until the next day. The fact that a motion was needed that required a roll-call vote, when such arrangements are generally made via unanimous consent, is particularly noteworthy. In fact, Baker attempted to secure a unanimous consent agreement that when the Senate recessed, it would return at 9:00 in the morning. The time was already past midnight. Senator Don Riegle (D-MI) reserved the right to object and asked Baker for some idea of what would follow the agreement to recess. He wanted to protect his right to amend the James Sasser (D-TN) amendment which was then pending to the First Budget Resolution, (S. Con. Res. 92). Notwithstanding Riegle's reservation, Baker got his agreement for a 9 a.m. resumption without objection. Baker

wanted this agreement first before indicating what the remainder of the night's business would be. He then made a parliamentary inquiry of the chair and intended to satisfy Riegle and others as to whether the Sasser amendment would be subject to further amendment once it was adopted. Baker was informed by the vice president, who was in this instance performing his constitutional duty as president of the Senate, that it would be subject to further amendment.[15] This is a unique feature of the 1974 Budget Act. Amendments to measures other than budget resolutions are not subject to further amendment once they are adopted. In the case of budget resolutions, they are. With this business out of the way, Baker requested unanimous consent that the Senate recess. The agreement negotiated moments earlier had established the time for the Senate to come back in, but Baker was now trying to bring business to an end for the day. Senator Edward Kennedy (D-MA) objected, and Byrd suggested that Baker could move to recess and get a vote on it, but that he and others would like to vote on the Sasser amendment before leaving. However, there was opposition to the Sasser amendment which would increase outlays by $1.7 billion, mostly for cost-of-living allowances for railroad retirees. The Sasser amendment had enough opposition that Baker felt that trying to get a vote at that time would be futile since "there is such a total failure of consensus on how we should proceed....I think the best thing is to get started in the morning" (*Congressional Record* 1982, 11037). Baker was unable at this point to get a UCA to set a time for additional

[15] The Constitution names the vice president of the United States as the president of the Senate although generally the vice president performs those duties only on rare occasions. In his absence the president pro tempore, another constitutional officer presides over the Senate. The president pro tempore, usually the most senior member of the majority party, also rarely performs this duty and appoints another member, also usually of the majority party, to preside.

votes that evening. He also must have come to the conclusion that threats to keep the Senate in session would not forge consensus. Characteristically, Baker felt time might heal enough wounds and calm enough emotions to arrive at some consensus the next day. Baker's motion to recess was agreed to by a 55-44 vote with no Republican defectors.

Having to resort to a motion to recess is unusual for a majority leader. A leader can, and usually does, get unanimous consent to recess without having to resort to a motion. In this case, Baker was successful. He was able to do this, however, only because he had the votes. A majority leader can use none of the procedural resources available to him unless he has the votes, and that includes tabling motions, motions to reconsider, motions to recommit, strategic amending, as well as fending off those actions by others. Still, the majority leader generally has the necessary votes when it comes to managing the Senate floor.

Lessons Learned

A majority leader does not need a majority of the votes to command the attention of the Senate. The right of first recognition assures him of that. At the same time, numerous actions related to scheduling and more formal motions on the Senate floor have become the prerogative of the majority leader and can be used to battle filibusters and other actions that threaten to bring the Senate to a halt. Baker rarely used them to force a political agenda through the Senate. That is probably due to the fact that he would lose

much of his presupposed support if he did attempt it. On rare occasions, to be discussed in subsequent chapters, Baker did take that risk and resort to the use of "raw power" to break filibusters. Yet, as this chapter has demonstrated, raw power is not always necessary. Sometimes very subtle power, such as the control over the schedule, affords the majority leader sufficient means to keep the Senate moving forward, if not to a particular outcome, then to an outcome acceptable to a majority of the Senate. Other resources, just as subtle but sometimes obvious, can be used to move the Senate forward. These include the leader's personal powers of persuasion. Persuasion often served Baker well, although it also failed him upon occasion. Strategies of persuasion, nonetheless, occupied a central part of Baker's floor-management repertoire. When strategies of persuasion are coupled with the procedural instruments of floor management, a majority leader can find his task a little less difficult.

Rules and precedents are an additional resource that can be used by a majority leader to lead the Senate. The down side of rules and precedents is that they can also be used by other members, thus constituting a double-edged sword. When the majority leader is not following the rules or precedents in the mind of one or more senators, he can find himself in a floor fight with those members over the interpretation of rules and precedents that consumes much valuable debate time. The floor debate on the 1981 tax bill, discussed in the next two chapters, includes a few such spats. In those situations Baker had to accomplish two goals. The first was to make a strong case that the rules and precedents were followed or that there was a good reason to establish new precedent. Second, he had to smooth the ruffled feathers of the member or members involved in the

disputes. If he could not, then the debate might get testy. When that happens, the Senate is more likely to get bogged down into stalemate and the leader must call upon all of his resources to get the Senate moving again.

An additional, and no less important, part of leadership in the Senate is knowing when to call upon the minority leader for assistance. The minority leader also plays an important part relative to institutional context. Often, the minority leader will volunteer his services to help get the Senate moving. Upon occasion a minority leader will even side with the majority leader against members of his own party. From a neo-institutionalist perspective, this can be important, sometimes decisive as an episode recounted in chapter five will show. It does not happen often because a minority leader, like the majority leader, knows who he represents in the Senate and who gave him his job. However, at times, the minority leader will assist the majority leader to move the Senate because he, too, is partly responsible for making sure that the Senate works. If the Senate does not work, the electorate may punish all members and not just those in the majority party. It is, therefore, in the majority leader's interest to make sure the Senate works. How Baker fared in that regard, and with the institutional resources outlined in this chapter available to him, is the subject of the following chapters.

Chapter Three

The First Phase of Floor Activity

Possession of basic knowledge about the legislative process, along with the rules that govern it, only goes so far toward the development of a thorough understanding of what actually occurs on the floors of either chamber of Congress. Knowledge of the procedures and rules must be related to actual legislative battles in order to fully understand their meaning to the process as a whole. This is where neo-institutionalism has much to offer. As noted before, the institutional rules provide the framework within which members operate. Those rules, however, must be applied. In this sense, a majority leader is very much a part of the institutional context. He has the responsibility to see to it that the Senate moves forward and does not get bogged down. With the instruments discussed in the last chapter, and his own powers of persuasion, Baker will try to accomplish this objective. In addition, he will consistently develop ad hoc rules that, if approved, will help him to keep the Senate moving in a timely manner. His abilities to persuade must be used effectively to get the agreements needed to put ad hoc rules in place that will govern the debate and amendment process. The situational context will determine what strategy Baker will use to get the agreements and to keep the Senate moving.

This chapter focuses on the early phase in the management of a major tax bill in the Senate in 1981. This phase essentially constituted a period in which Baker engaged in

probing and "feeling out" the situation and the major players as the Senate began to focus on the legislation. As the floor situation developed, other members, including the Finance Committee chairman and bill manager Robert Dole (R-KS), as well as Minority Leader Byrd would exercise floor management responsibilities. The chapter's purpose is to illustrate how the context within which a bill is considered in the Senate emerges and is defined, and the role of the majority leader in the process.

The Economic Recovery Tax Act of 1981 tested Baker's mettle as majority leader. This was due to a number of factors, not the least of which were numerous amendments proffered to the bill. Baker needed to call on all of his persuasive prowess to move the Senate toward completion of action on the measure. He stayed out of some of the floor fights, and in others he was deeply engaged. A main goal of the chapter is to demonstrate Baker's use of persuasion by various means in the context of a complex and difficult undertaking.

Another goal is to illustrate the importance of creating and maintaining a climate for cooperative behavior. It is important for a member of the Senate, and even more so for a party leader, to avoid making enemies. The reason is that your opponent today may be your potential ally tomorrow. The rules of the Senate, and the House for that matter, provide for some of this cooperation by requiring formal address when referring to other members. For example, "Mr. President, the Senator from Kentucky has offered a useful proposal." Members also are required to address the chair rather than other members. An exception is when two or more members have agreed to engage in a colloquy. This, like most things in the Senate, requires unanimous consent.

However, it is important and has become a function of party leaders to maintain a cooperative atmosphere. It was especially important to Howard Baker because of his leadership style. Baker became known as a "conciliator," one who went great distances to encourage others to work out their differences. Baker often would participate in these negotiations, other times he would not. For negotiation to work in either case, he would have to maintain the proper environment. Thus, this chapter will deal with Baker's attempts to maintain this cooperative atmosphere and how he dealt with situations and individuals threatening to sour the climate on the Senate floor.

During the course of the debate over the tax bill, Baker managed a number of disputes and situations that threatened Senate action on the bill. One was a contest between Robert Dole, chairman of the Finance Committee and the bill manager, and Robert Packwood (R-OR), also a member of the Finance Committee, and both Republicans, over the sequencing of amendments. Dole and a member of the other party, Lloyd Bentsen (D-TX) also wrestled over sequencing related to an amendment to exempt independent oil producers from the windfall profits tax on the first thousand barrels of daily production. It would be Dole, not Baker, who would deal with the situation by tabling the Bentsen amendment. Baker also faced a dispute between senators David Boren (D-OK) and Riegle over Boren's "killer" second-degree amendment to Riegle's amendment. Riegle's amendment was to reduce the corporate income tax. Boren's was a "sense-of-the-Senate" amendment that the US would take action to lower interest rates to assure our allies that we considered the problem a serious one. The squabble threatened to consume valuable time and put the Senate behind schedule. Baker did not intervene

strongly in the dispute between the two Democrats. Instead, he merely tried to get them to work something out.

By far the most difficult situations for the majority leader were when "extended debate" threatened to evolve into a filibuster or when a filibuster erupted. The problem faced by Baker on the tax bill was obstruction from Metzenbaum (D-OH) to an amendment by Stevens related to closely-held corporations. This obstruction took the form of "extended debate" and, due to Baker's actions, did not escalate into a full-blown filibuster. Metzenbaum, however, would launch a filibuster against a Dole amendment to phase out the windfall profits tax on oil and gasoline. It would again be Dole who attempted to settle the dispute by offering a motion to table his own amendment in the hope that his motion would be defeated. Minority Leader Byrd also weighed in by attempting to convince Dole to take the amendment down.

At times, the reader will encounter situations in which the bill manager and the majority leader had to take steps to protect their prerogatives, such as a bill manager's right to control the sequence of amendments and the majority leader's right to negotiate major time-limitation agreements. Moreover, Baker also had to take steps to prevent progress from becoming unraveled. For example, he faced times during debate on the tax bill when he thought he had an agreement, but senator after senator voiced objections and proferred demands that had to be met before they would agree to the request.

A perpetual problem faced by the majority leader was procrastination by members in coming to the floor to offer their amendments. It was in these situations in which Baker most often resorted to strategies of persuasion, particularly rewards and threats. He

eventually dealt with the problem by raising the specter of an agreement that made only amendments listed in it in order and set a time for a final vote. If he could get this parent agreement, many of his problems would become the problems of others. For example, if a time for a final vote was established, then members with amendments would feel the pressure to get to the floor to offer and debate them before time ran out. Yet, despite this, Baker still took on the responsibility of urging them to come to the floor and offer their amendments. Despite these hurdles, which Baker eventually overcame, the Senate slowly ground forward.

The difficulties that a major bill is likely to face in moving to passage suggest why party leadership is necessary in the first place. The individualistic nature of the Senate suggests why persuasion is of vital importance to party leaders. They necessarily rely on it because of the potential for obstruction that exists in the Senate. Howard Baker was an effective user of persuasion. With it, he made the Senate move forward. When it failed him, the Senate did not work. Baker only rarely attempted to thrust the body forward in a forceful manner. Most of the time, he was content to simply nudge the Senate on in whatever way he could. The Economic Recovery Tax Act of 1981 is a particularly well-suited bill to illustrate why strategies of persuasion are necessary in the modern Senate and the ways in which they can be used effectively.

Strategies of persuasion differ from strategies of procedure in that persuasion, at root, depends on the skills and personality of the leader, whereas procedure, though not without subtleties, depends more on the application of established and tested rules. For persuasion to be effective, the leader must be able to manipulate members successfully

through rewards, threats, ego-stroking, and shame. He must do this, however, without it being perceived by the targets as overt attempts to manipulate. Otherwise, the strategy usually will fail. At times, when no other alternative seems to be working, the leader must put his cards on the table and reveal to all what he has in mind and specifically how he intends to deal with a problem. When a leader feels he has no other recourse, the situation generally leads to a threat of some type.

Since the typology developed by R. Douglas Arnold (1990) referred to these means, persuasion and procedure, as strategies, his descriptions of them were accepted as the basis for this analysis. However, the various tactics *within* each type (i.e. shame, ego-stroking, praise, reward, and threats) were developed for the purpose of this study.

Evolution of Tax Reform

The tax reform that President Reagan had in mind when he addressed a joint session of Congress on February 18, 1981 and announced a proposal to cut $53.9 billion in individual and business taxes was not entirely his idea. The reform dated back to the late 1970s. Republicans in Congress tried then, mostly unsuccessfully, to change the direction and focus of the tax code. They wanted to change the emphasis away from demand-side Keynesian economics, dominant since the end of World War II, to an emphasis on the supply side. If the economy was freed from what supply-siders argued was an oppressive tax system, jobs would be created and the economy would improve.

Reagan's 1981 proposal mirrored one introduced in both houses of Congress in

1977 by Senator William Roth (R-DE) and Representative Jack Kemp (R-NY), subsequently termed "Kemp-Roth". The proposal called for a reduction of thirty-three percent in marginal income tax rates over a three year period. Kemp-Roth also included a provision that would index the tax rates to the level of inflation so that people would not be pushed into higher tax brackets by "inflation creep," while their incomes, though perhaps increasing in absolute terms, were being devalued by inflation. Business taxes were also the target of cuts. The proposal was never given any serious attention until candidate Reagan made it a theme of his campaign (*Congressional Quarterly Almanac* 1981, 91).

The plan went through some modification by June 25, 1980, when Republicans from both chambers unanimously pledged their support to a one-year, 10 percent, across-the-board tax reduction for individuals and a proposal to allow businesses quicker write-offs of investment in plant and equipment. Reagan endorsed the plan and also proposed extending the ten percent reduction in taxes for an additional two years, a thirty percent reduction by 1984. This was much closer to the original 1977 Kemp-Roth plan. On August 21, 1980, the Senate Finance Committee, which was still dominated by Democrats, approved a $39 billion tax cut that combined individual income tax relief with incentives for business investment. The tax cuts were designed to offset increased Social Security taxes and inflation. Despite Reagan's endorsement, and perhaps due to President Carter's opposition, the plan never reached the Senate floor (*Ibid.*).

On February 18, 1981, Reagan announced his own plan. Specifically, he requested $53.9 billion in tax cuts in 1982, representing a ten percent cut in individual rates starting

on July 1, 1981, and additional ten percent cuts for the two succeeding years. The provision to index the rates to the level of inflation was dropped. Reagan drew the line on this latest proposal and vowed not to compromise. On June 4, 1981, however, Reagan did so. "Bowing to the pressures of a tight budget and a Congress less than enthusiastic about the original tax cut package," Reagan offered a modified $37.4 billion in tax cuts for 1982, a reduction in the level of cuts from his earlier $53.9 billion (*Ibid.)*. To achieve the 1982 tax cut of $37.4 billion, Reagan proposed to reduce the first year reduction from ten percent to five percent. He delayed the effective date until October 1, 1981, and added some "sweeteners," such as savings incentives and "marriage-penalty" relief to attract support (*Ibid.*).[1] Between June 9 and June 24, 1981, business groups had not rallied around the plan and so Reagan added even more tax advantages for them (*Ibid.*). The basic outline, however, remained the same: across-the-board cuts and investment incentives.

The administration's strategy finally paid off when the Senate passed its version on July 29. The House passed its version of tax reform on July 31, 1981. A conference committee was appointed to work out the differences between the two versions, which was done in an all-night session. On August 1, Treasury Secretary Donald Regan asserted to reporters, after an agreement was reached in conference, that the administration got "ninety-five percent" of what it had sought, despite the changes that Reagan was required to make (*Ibid.*). The conference report passed the Senate on August 3, 1981. The House passed it the following day. President Reagan signed the bill on August 13 while

[1] The marriage-penalty is the additional amount owed by couples filing jointly that they would have saved if they filed single tax returns.

vacationing in California. Provisions of the bill signed by Reagan are outlined in Appendix B.

The Finance Committee and Reagan's Proposals

Before the bill ended up in California for the president's signature, it faced a difficult time on the Senate floor. Before the floor debate can be addressed directly, however, some further background is necessary. The bill reported to the Senate floor by the Finance Committee on July 6 differed from Reagan's original proposal in a number of ways, mostly in additions to the administration's bill related to business tax incentives. The core of Reagan's individual income tax proposals, a twenty-five percent across-the-board cut for individuals, was approved by the Finance Committee by a vote of 15-4.

The Finance Committee's additions to the bill included an "all-savers" plan geared toward putting an end to dwindling deposits in financial institutions. The addition was advanced by savings-and-loan interests and allowed them, banks, and credit unions to issue one-year certificates that would earn seventy percent of the yield of a one-year Treasury bill (*Congressional Quarterly Almanac* 1981, 98). Moreover, individuals were permitted to exclude up to $1,000 of the interest earned from the certificates from taxable income. The exclusion for couples was double that amount. The certificates, however, would be issued for only one year, from October 1, 1981 through September 30, 1982. To make up for the expected revenue loss from this provision, the committee allowed the current $200 exclusion, $400 for a joint return, for dividend and interest income to revert

to $100 as provided under prior law (*Ibid.*). The committee also accepted an amendment by Armstrong (R-CO) to adjust individual income, capital gains, and estate taxes to reflect increases in the Consumer Price Index, beginning in 1985.[2] This was the "indexing" provision.

Other changes to the administration's original proposal included a new annual 32 percent tax on commodity futures contracts that was expected to save the government $1.3 billion, because investors were converting ordinary income into long-term capital gain through the contracts, and capital gains were taxed at a lower rate. In addition, the committee voted to decrease gradually the windfall profits tax on newly discovered oil from 30 percent, the current rate, to 15 percent in 1986. The committee version also allowed firms to write off the first $5,000 of the value of machinery and equipment in the year of purchase. The write-off amount would gradually increase to $10,000 by 1986. The administration's plan was a new "accelerated cost recovery system" which was based on the current 10-5-3 accelerated depreciation plan. The plan accelerated the rate at which investments in equipment and machinery could be written off (*Congressional Quarterly Almanac* 1981, 96). The committee also parted with the administration by removing the current $10,000 cap on the investment tax credit that businesses could claim for investment in used equipment. Further, the committee liberalized the tax on stock options given employees as part of their work benefits and increased the tax credits for company contributions to employee stock ownership plans. Finally, the committee created

[2] An agreement was reached, however, that would have the indexing provision offered as an amendment to the Finance Committee bill on the floor. This was done becasue of administration opposition to including the provision in the bill. Reagan wanted indexation at a later time (*Congressional Quarterly Almanac* 1981, 98).

a deduction for the loss in value of trucker's licenses that resulted from the 1980 trucking deregulation bill (*Congressinal Quarterly Almanac* 1981, 98).

One can readily see the complexity of the legislation. Should the bill pass it would make extensive and fundamental changes in the nation's tax system. This naturally made it controversial. Controversial measures are inherently doomed to a difficult and arduous process toward a final vote. Getting to a vote is difficult enough for controversial legislation, not to mention passage. When you add to this the fact that Baker was not very enthusiastic about some of the bill's provisions, particularly provisions that called for indexing the tax rates to the inflation level, even calling the whole attempt at one point "a river-boat gamble," one could expect a difficult time for this bill when it came to the floor (Annis 1995, 172). However, Baker promised President Reagan that although there were "things on what you and I may disagree and...if I must take a separate position, I will try to let you know in advance. But you should also know that on every...close call, I'm going to resolve the issue in your favor" (Annis 1995, 167). The Economic Recovery Tax Act of 1981 represented just such a situation. Baker kept his promise and ultimately resolved the tax issue in Reagan's favor.

The reasons as to why Baker adopted the role of the president's front man in the Senate have been the subject of much discussion. Baker could have taken the course adopted by Robert Byrd when Jimmy Carter became president and considered himself a party spokesman on a level equal to that of the president. Baker chose an alternate route and became Ronald Reagan's spear carrier in the Senate. As to why he chose that path, Baker himself answered the question when he stated, "It's their turn." He was referring to

the conservative wing of the Republican party, led by Reagan, that was credited with winning the election. Reagan won by a large margin and brought the Senate into Republican hands in an election that was interpreted as a landslide. Hence, Republicans in Congress, Baker included, and some Democrats, were willing to give the various initiatives of what to some was "voodoo" economics a chance.[3]

The Tax Bill on the Senate Floor

The Economic Recovery Tax Act of 1981 (House Joint Resolution 266 or H. J. Res. 266), as the tax measure was officially known, illustrates the various ways that Howard Baker used available resources, particularly strategies of persuasion, in fulfilling his responsibilities as majority leader. The task was made especially difficult by the sheer magnitude of the bill. Not only did it represent a major overhaul of the tax structure, but because of that fact, the bill attracted many amendments. There were 118 amendments to the bill that were disposed of in some way on the Senate floor, including ones offered but later withdrawn. If amendments that were filed with the clerk but never offered are included, then there were even more amendments that could have distracted the Senate, the bill manager, and the majority leader. Table 1 presents the number of amendments that

[3] "Voodoo economics" was a term given to supply-side economic theories by Reagan's rival for the 1980 Republican nomination, George Bush. The thrust of supply-side economics is to stimulate supply, leaving demand to take care of itself. It called for providing incentives for businesses and corporations to invest in their companies, expand their businesses, build new businesses and consequently providing jobs for millions of Americans who would in turn spend their wages and salaries in the private sector. This increase in demand would, it was argued, fuel further economic growth. Critics have also assigned the theories the pejorative term "trickle-down" economics.

were dealt with on the floor broken down by the degree of the amendment, the partisan affiliation of the sponsor, and membership on the Finance Committee, the committee with jurisdiction over tax matters.

As the table illustrates, Republicans offered about as many amendments on the floor as did the Democrats, 54 and 51, respectively. However, Democratic non-committee members offered the most amendments, which is expectated in that they are members of the minority party who did not have an opportunity to affect the substance of the bill until it came to the floor. Interestingly, the Republican members of the Finance Committee offered the next highest number of floor amendments. One might expect this if their amendments were second-degree amendments intended to weaken first-degree amendments offered by minority members. However, there were relatively few second-degree amendments, mostly because of a provision that Baker got into a unanimous consent agreement later in the process intended to govern debate on the bill that prohibited second-degree amendments (*Congressional Record* 1981, 16909). The negotiation of and provisions of that particular agreement are discussed in the next chapter. The next largest group offering floor amendments was Republicans who were not members of the Finance Committee. They are followed by Democratic members of the committee who offered only 18 amendments. One can see that most of the amendments were agreed to without a roll-call vote (i.e. by a voice vote). Each amendment, however, was entitled to debate and a time-consuming roll-call vote if someone insisted upon it and could get a sufficient second for the yeas and nays.

Table 1. Acted upon Amendments to the Economic Recovery Tax Act of 1981 by Degree, Party, and Finance Committee Membership.

	Republican Committee Members	Republican Non-Comm. Members	Democratic Committee Members	Democratic Non-Comm. Members	Total
Passed					
1st Degree	5	2	2	6	15
2nd Degree	1	1	0	0	2
Failed					
1st Degree	2	0	3	7	12
2nd Degree	0	2	0	0	2
Agreed To					
1st Degree	16	15	4	10	45
2nd Degree	0	0	0	2	2
Tabled					
1st Degree	0	1	1	3	5
2nd Degree	0	0	4	1	5
Withdrawn					
1st Degree	3	4	4	4	15
2nd Degree	1	1	0	0	2
Total	28	26	18	33	105

Note: Not including technical amendments, which were all agreed to without a roll-call vote, and two committee amendments. One of the committee amendments was agreed to without a roll-call vote and the other passed on a roll-call vote. Harry F. Byrd, an independent from Virginia, and member of the Finance Committee, offered one of the technical amendments.

This fact, and the sheer number of amendments, threatened to clog the Senate and prevent passage of the bill in a timely manner and opening the way for the Senate to get on to other matters. That is, unless Baker could get agreements placing limits on debate. Once the bill was on the floor, Baker had to begin dealing with the amendments, the procrastination of members getting to the floor to offer them, floor fights over scheduling prerogatives and other issues, and, of course, filibusters threats.

Bill Management

Before getting to the floor activities related to the tax bill, some discussion about bill management, as distinguished from floor management, would be useful. Floor management is a broad concept related to getting bills through the Senate, arranging for appropriate recesses and adjournments, and exercizing general responsibility for keeping the Senate moving. Keeping the Senate moving is primarily accomplished through unanimous consent agreements, at times complex, or with several component elements, that include time-limit provisions. It is a prerogative of the majority leader to negotiate these types of agreements.

Bill management, on the other hand, relates to the specifics of handling a bill during its consideration on the floor. A major element is protecting the committee's bill from unfriendly amendments. Another, more benign, responsibility of bill managers is arranging the sequence of amendments to be offered, if there is to be a sequence. If strategic amending is attempted, however, this responsibility becomes less benign. Negotiating the withdrawal of amendments is an additional bill management function. The bill manager, who is generally the chairman of the reporting committe, often works with the minority bill manager, who is often the ranking member of the committee. Any amendments that do not represent a major threat to the substance of the bill often will be accepted without a roll-call vote. These amendments generally go through the clearance process where all members are made aware of their substance and consequences, and if the managers agree and no one else objects, the amendment is usually accepted without a

time-consuming roll-call vote. Whenever this can be done, it helps the bill manager inch closer toward final passage, and it helps the majority leader who has primary floor management responsibility to make sure the Senate keeps moving. The responsibility for tabling amendments, which effectively kills them, also belongs to the bill manager. It is a quasi-prerogative of the bill manager, and the motion to table an amendment is not often offered by others. Robert Dole, the manager of the tax bill, offered most of the motions to table amendments to the tax bill. Howard Baker, the majority leader, only offered one motion to table an amendment, one by Daniel Patrick Moynihan (D-NY) directed at the Social Security Trust Fund. Sometimes, Baker would get involved in negotiations to have amendments withdrawn, which is a bill management function, though only when he felt he could be useful to such negotiations. Since many rewards are dispensed at his discretion, he could be useful quite often.

Dole never exercised floor management responsibility during debate on the tax bill. That is, he did not arrange for recesses, adjournments, or to lay the tax bill aside temporarily so that another, more pressing, issue could be dealt with. Baker exercised that responsibility exlusively. However, at times, Baker would perform some of the functions of bill manager, such as the tabling of Moynihan's amendment, when he felt it was necessary. It was often his motion to either reconsider a vote that just occured on an amendment or the subsequent motion to table the motion to reconsider, thus making the vote on the amendment permanent. Moreover, he frequently consulted with Dole on issues related to floor management, asking if Dole was prepared to lay the bill aside or if he would want to take it up again in the morning, if and when Baker felt nothing more

could be accomplished that day. Table 2 presents Baker's activities related to bill management and floor management.

The table shows that Baker had a great deal of success in obtaining unanimous consent for time-limitation agreements that governed debate on the tax bill, failing only on four occasions. Further, Baker infrequently admonished the Senate to pick up the pace or to get amendments disposed of and out of the way. More often he would inform the Senate as to where it stood in terms of amendments and what the schedule was likely to be for the rest of the day, the week, or for the remainder of debate on the bill. Baker also got

Table 2. Baker's Activities Related to 1981 Tax Bill.
(Up until Third Reading of the Bill).

Inform Senate	Admonish Senate	Sought UCA Successfully	Sought UCA Unsuccessfully
27	16	54	4
Tabling Motion Successful	**Tabling Motion Unsuccessful**	**Requests for Negotiation**	**Shorten Time for Votes**
1	0	6	4

Note: Attempts to gain unanimous consent does not include requests to rescind quorum calls or to proceed with remarks for two minutes. Only time-limitation agreements and requests related to basic floor management were included. The instances in which Baker successfully sought UCAs includes the four times he acted to shorten the time for votes.

agreement a few times to shorten the time necessary for a vote, in one case an agreement that all votes for the remainder of the day would be ten-minute votes. In no instance did Baker fail to get that type of agreement when he sought it. Finally, a responsibility that Baker took upon himself was to request that senators involved in a dispute negotiate, off-

the-floor, some resolution to the problem that was holding up the Senate. On occasion, he even offered his own services as broker to help the combatants find some accommodation. As noted previously, he generally left bill management responsibilities to the bill manager. Once, though, he asked the bill manager, Robert Dole, and the minority manager, Russell Long (D-LA), if they could indicate to the Senate whether they could accept a pending amendment, meaning without a roll-call vote (*Congressional Record* 1981, 16160). However, such intrusions were rare.

With a large and complex tax bill ready for consideration by the Senate, and all of the majority leader's resources available, we move to the floor stage. Baker found it necessary to use all of his resources to push the bill through the Senate and avoid the pitfalls awaiting any complex bill that attempts to change the direction of the tax code. The remainder of this chapter and the next will not discuss every single amendment that was offered to the bill, but some of the amendments were the focus of activities that illustrated Baker's leadership style and use of available resources. Events unrelated to amendments will also be discussed as warranted.

Debate Begins

The bill was brought up on the Senate floor on Wednesday, July 15, 1981, and Baker opened debate on the measure. He basically outlined its major features and began to create an environment of good will, surely needed any time the tax code is being modified, by offering praise to Senator Robert Dole the chairman of the Finance

Committee and Senator Russell Long (D-LA), the ranking member, minority manager, and former chairman. Baker asserted:

> I firmly believe that the comprehensive tax legislation which the Senate begins considering today, will be a...watershed in fiscal legislation. I would once again like to express my appreciation and admiration to my good friend and colleague, the chairman of the Finance Committee, Senator Dole, for his exhaustive efforts in delivering the tax relief proposals. These proposals coincide with the President's guidelines, and will release the citizens of this Nation from the deleterious burden which the present tax structure imposes. Senator Dole and the most distinguished ranking member of the Finance Committee, Senator Long, have guided their committee in a most expeditious and deliberate manner....It is imperative that we remember that without our swift action on this measure taxes will worsen automatically (*Congressional Record* 1981; 15753).

Baker continued his remarks on the substance of the legislation and went on to comment on his stance toward obstruction efforts, which he anticipated:

> These are taxes that are higher than ever for most Americans; these are taxes that impede productivity and personal savings. A cursory examination of the Economic Recovery Act of 1981 illustrates the prodigious scope of the historical economic measure....It is my sincere hope that the floor action which commences today on the tax bill, will be conducted in a proficient and swift fashion. *It is my intention not to condone counterproductive obstructions which could besiege these proceedings.* Furthermore, I trust that our friends in the House will also heed the public's expectations for action on this bill, and move forward on their tax legislation (*Ibid.*; emphasis added).

Notice that Baker acknowledged his responsibility to move the Senate in a timely fashion and stated emphatically that he would not condone "counterproductive" obstruction. It should be noted also that he directed some of his remarks to the other body. The reason was that Baker was bothered by the fact that the House had yet to act. Baker felt that delay in the House might harm the chances of passage and was willing to work around the constitutional requirement that tax measures originate in the House of Representatives. This was accomplished when Dole, in the Finance Committee, offered

the Senate version of the tax bill as an amendment to a debt limit measure that had already passed the House, thus protecting Senate action from constitutional challenge. The way the Senate got this bill before the chamber illustrated how important it was to Dole and Baker to get the legislation before the Senate and the necessity for quick action. They succeeded in getting the bill up on the floor, but quick action is a different matter and would not be as easy to secure.

By 10:40 a.m. the Senate was debating the first amendment to the bill, a Finance Committee amendment with Dole now in the role of bill manager and manager of the amendment. The amendment proposed to insure that inflation would not result in tax increases. That is, it proposed to index the tax rates to inflation. It is customary in the Senate that committee amendments be dealt with first. Allowing committees to offer the opening amendments is a courtesy extended by the Senate out of respect for the committee's expertise. After committee amendments are disposed of, other amendments are in order. It is also customary in the Senate for the presiding officer to recognize a member of the committee after a senator offers a first-degree amendment so that members of the committee might oppose or amend in the second-degree amendments that are "unfriendly" in the eyes of the committee. Such amendments were rare on the tax bill, but the practice is a means by which committees can exercise power in the Senate.

After recessing the Senate at noon so that party caucuses could meet, presumably to develop strategy on H. J. Res. 266, the Senate returned to the bill and considered a second-degree amendment by Senator Moynihan, a member of the committee, to Dole's amendment that would permit the Old Age and Survivors Insurance Trust Fund to borrow

from the Disability Insurance Trust Fund or the Hospital Insurance Trust Fund, if necessary, to maintain the solvency of the social security system. Finance Committee Republicans unanimously opposed Moynihan's amendment when they were presented with an opportunity to table it.[4] Committee Democrats unanimously supported it.

Two points should be emphasized at this juncture. One relates to Baker's style in managing the floor. Baker tried to protect bills reported by committees from non-germane and other amendments that would change significantly the substantive content of the bill in ways that the relevant committee did not wish, in ways that the president did not wish, or in ways that would endanger passage. The other is that Baker preferred free-standing votes as opposed to bills attached as riders to other legislation. The reason is that riders distort the preferences of a democratic majority, and Baker had strong feelings about democratic principles and allowing the majority to have its say, even if it meant he had to accept defeat upon occasion. Two or more major policy questions in one bill open the possibility of strategic behavior and attempts to gain agenda control. For example, if an amendment is attached to a tax bill that would prohibit abortion, then the true majority's position on either measure cannot be determined. Does passage of the overall bill, an abortion amendment included, mean a majority favors the tax bill? Or, on the other hand, does it mean a minority favors the tax bill, but adoption of the abortion amendment changed the votes of those predisposed against the tax bill because they favor more the elimination of the practice of abortion? The point is that clean bills, those that deal with

[4] A motion to table an amendment is generally an attempt to see where the votes are and how much support the amendment has. If a motion to table is defeated, the amendment generally passes by the same vote that the motion to table was defeated, though that is not always the case.

one basic issue at a time, allow for a proper interpretation of the outcome. Messy bills, those combining distinct and unrelated issues, make it difficult, if not impossible, to interpret what passage or defeat really mean.

Moreover, Baker resisted attempts by others to gain agenda control. That was his prerogative as majority leader. The literature on congressional decisionmaking that uses a formal deductive approach is agreed on the point that under one dimension, if equilibria exist and voters are fully informed about other's preferences, they can prevent most attempts at manipulation and agenda control (Riker 1990, 53).[5] Not all amendments are attempts to gain agenda control and not all amendments are non-germane. Baker had to face strategic maneuvers in latter stages of floor activity, but, in this case, the Moynihan amendment did not deal with extraneous matters per se, which the rules would not prohibit anyway except under certain conditions, nor did it likely represent a killer amendment that endangered passsage. That the committee split on a subsequent motion to table the amendment, however, suggests that the amendment, if adopted, might scare away Republican votes on final passage. The amendment proposed to alter significantly the substantive content of the bill that Republicans on the committee wanted, which is probably what got Baker involved, given his propensity to protect committee versions of bills from major change.

One of Baker's options was to use the majority leader's right of first recognition to offer a motion to table the amendment which, if adopted, would kill it. It is the custom in

[5] Duncan Black's (1958) *A Theory of Committees and Elections* illustrates what he called the median voter theorem. That is, the median voter's position wins in a one-dimensional voting sequence and it is difficult, if not impossible, to be manipulated by strategic voting.

the Senate, however, that debate be completed before a tabling motion is offered. The primary reason for this is that a motion to table is not debatable. Given the tradition of debate in the Senate, to offer a tabling motion prematurely is considered a violation, not of the rules, but rather the norm of full and complete deliberation. In fact, by the time that Baker offered his motion to table the Moynihan amendment, the debate on the bill had spilled over into the next day, July 16.

Stroking Moynihan's Ego

During morning debate on Thursday, July 16, Baker used his right of first recognition to offer a motion to table the Moynihan second-degree amendment only after debate on the amendment was completed and no other member wished to speak on it. Of interest here, however, is not only the fact that Baker took the responsibility for offering the motion to table, usually the responsibility of the bill managers who are members of the relevant committee and perfectly capable of defending their legislation, but also the manner in which he offered the motion. He said:

> Mr. President, I thank the Senator from New York and I thank the Senator from Kansas. Mr. President, I would like to take this moment to address the pending amendment by the distinguished Senator from New York (Mr. Moynihan). *He is not only a very distinguished representative of his State, but a good friend and a good colleague.* Therefore, it is with great personal regret that I announce that I oppose this amendment and ask for the yeas and nays (*Congressional Record* 1981; 16119; emphasis added).

By offering the motion himself Baker was signalling his interest in the bill. He then went on to explain the reasons for his action:

> First, I believe that this amendment is not the solution to the grave problems facing the social security system. The Commission on Social Security has recently confirmed the Reagan administration's previous warnings--the social security system will be broke as early as next year. While Senator Moynihan's amendment may postpone that event for several months, it will in no way prevent the inevitable.... Moreover, the amendment intrinsically jeopardizes the present solvency of the other system funds.... *Second, I firmly suggest that this is neither the time nor the posture to be addressing this issue.* We are presently in the process of formulating a badly needed tax reduction package to help revitalize our beleaguered economy. Such is not the forum for a debate on social security....Mr. President, in that connection, *I seek a bipartisan solution to this issue.* I now express my appreciation to the distinguished Senator from New York, the Senator from Colorado (Mr. Armstrong), and the distinguished chairman of the Finance Committee for agreeing to explore the possibility of a *bipartisan* solution to the social security dilemma and I look forward to their future deliberations. At this point, Mr. President, I must express my opposition to this amendment. The time now having expired for debate on this amendment, I move to table the amendment, and I ask for the yeas and nays (*Ibid.*; emphasis added).

One can readily glean a number of things from the preceding remarks. First, Baker felt the need to keep the debate on this measure (or any other for that matter) from getting too heated or personal. This can even be characterized as a responsibility of the majority leader, especially Baker, for he relied on the "ego-stroking" strategy often to accomplish the goal of maintaining a proper legislative environment, one conducive to future compromise. Thus, we see the ego-stroking by Baker directed at Moynihan prior to his critical remarks and his motion to table the Moynihan amendment. We also see Baker attempting to keep the bill "clean" (in line with what was reported by the committee with jurisdiction or in line with the president's program) by not letting it get bogged down with amendments having little to do with tax reduction by asserting that this "is not the time nor the posture to be addressing this issue." In essence, Baker was revealing his preference for amendments such as Moynihan's to be voted on as separate bills, or, at the very least, have them offered to bills more relevant to the subject of the amendment. Additionally, Baker appealed to bipartisanship by saying that he sought "a bipartisan

solution to this issue." Thus, related to this amendment, Baker used a tripartite approach to accomplish his goal, including ego-stroking, appeals to bipartisanship, and the right of first recognition to gain the floor, proffer his remarks, and offer his motion. Baker's motion to table the Moynihan amendment was agreed to (barely) by a party vote of 51-45.[6] It was the first recorded vote on the tax bill and the only motion offered by Baker to table an amendment to this bill, although he threatened to do so later.

Preventing Backward Movement

At this point, motions to reconsider should be addressed. The rules of the Senate permit a motion to be offered by any member on the losing side, within three days, to reconsider a vote. However, if a motion to table the motion to reconsider passes, the vote on passage of the amendment (or the bill) may not be revisited, and the vote is permanent. It is, therefore, customary after an amendment or bill is passed for a member to offer a motion to reconsider, not in an attempt to actually have a repeat vote, but rather in the expectation that a colleague will move immediately to table the motion to reconsider. One can tell if a motion to reconsider is a serious attempt to obtain another vote if the one offering it asks for the yeas and nays, which means that a recorded vote is ordered if a sufficient second exists, one-fifth of the Senate. If this does not happen, then the motion to table usually is disposed of with the presiding officer stating, "Without objection the motion to table [the motion to reconsider] is agreed to." With respect to the vote to table

[6] A party vote is a vote in which a majority of Republicans vote differently than a majority of the Democrats.

the Moynihan amendment, Baker moved to reconsider, and Dole moved to lay that motion on the table, thus making the vote on the motion to table the Moynihan amendment permanent.

Often, activities on the Senate floor can get confusing when there are numerous amendments to a complex bill. At times, it can even seem like controlled chaos, or perhaps uncontrolled chaos, as a leader attempts to straighten things out and provide a smooth course toward passage. Baker's role at this stage was to nudge the Senate along, leaving the particulars to the bill managers, Dole and Long. When the Senate moved to a technical amendment to Dole's by Armstrong, however, Baker took the floor and indicated that the Senate was not yet prepared to vote on it and debate on the amendment continued.[7] Baker, though, did take the opportunity to look ahead and make a unanimous consent request that following disposition of the Armstrong amendment, Bentsen would be recognized to call up his amendment dealing with savings (*Congressional Record* 1981, 16137).[8] The Bentsen amendment was a first-degree amendment that proposed to require institutions issuing tax-exempt savings certificates to put at least 75 percent of the face amount into home or farm loans. A savings certificate provision was not in the administration's plan but was added by the Finance Committee. The Bentsen amendment proposed also that the institutions be permitted to issue tax-exempt certificates over a two-year period, extending the one-year period provided by the committee. The

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[7] A technical amendment is one that merely proposes to change some technical portion of the bill or amendment. They are usually offered to another amendment. An example would be a technical amendment to change the effective date of implementation. A technical amendment, if adopted, does not foreclose additional second-degree amendments.

[8] This amendment is separate from his amendment to exempt oil producers from the windfall profits tax on the first thousand barrels of daily production.

amendment also included a fifteen percent exclusion from tax liability for interest income up to $3,000 for individuals and $6,000 for a joint return starting in 1984. The committee-reported bill allowed exclusions up to $1,000 for individuals and $2,000 for couples. Baker was unable to get the agreement at this point due to problems raised by Packwood. Bentsen's amendment, as it turned out, would not be taken up until the Dole amendment on inflation indexing passed.

Strategic Amending or Protecting Prerogatives?

There are many opportunities to engage in strategic amending in the Senate. Opportunities arise, or are created, that allow members to manipulate the process in order to influence, or even determine, outcomes. Bill managers must remain alert to attempts to engage in strategic amending, just as alert as a majority leader. Strategic amending simply refers to attempts to offer killer or saving amendments.[9] Other variations include offering a second-degree amendment to one's own first-degree amendment so that others will be precluded from amending the first-degree amendment. This is so because third-degree amendments are not in order except by unanimous consent, which is rarely gained. Examples of this type of strategic amending are discussed in chapter five.

Sometimes, however, activity that looks like an attempt to manipulate the process is merely a challenge to a bill manager's prerogatives. His major prerogative is to control the sequencing of amendments when he can. Although an amendment can be sent to the

[9] A saving amendment is one that, if adopted, increases the likelihood of passage of the underlying bill.

desk and considered at any time, if there is to be any sequencing, it the prerogative of the bill manager to provide for it.

With Dole's committee amendment still the pending business, and others, including Bentsen's, still at the desk waiting for debate and a vote, Baker again tried to provide an arrangement for getting the Bentsen amendment before the Senate following the vote on the committee amendment (*Congressional Record* 1981, 16137). Baker, looking ahead, wanted to provide a smooth course for the Bentsen amendment and related second-degree amendments. Packwood, another committee member, at this point in the debate reserved the right to object to Baker's renewal of his request. He asked Baker to amend the request to allow him to offer a first-degree amendment following the Bentsen amendment. Packwood's allowed the deduction of charitable contibutions by individuals who did not itemize deductions. Dole objected to Packwood's request, because he wanted to discuss it with him beforehand. As the floor manager of the bill, Dole wanted an orderly scheduling of amendments so that he would not be surprised, especially by one that might be unfriendly to the committee bill. In this case, he was concerned with the possible strategic implications, if any, of Packwood's amendment. The amendment, however, only had the effect of encouraging charitable contributions. Baker asked Packwood and Dole to let him get agreement on the Bentsen amendment, and then they would all sit down and try to work something out.

This action points out a common practice in the Senate related to floor management. At any given stage in the proceedings, the leader and bill manager are looking ahead and planning subsequent stages, such as the attempt to gain unanimous

consent on the Bentsen amendment before action on Dole's was completed. Dole's amendment was still awaiting action while Baker was trying to provide for Bentsen's. Packwood, however, was in no mood to compromise and officially objected to the Baker request saying:

> I have 48 co-sponsors on this amendment, and I am being squeezed out of an opportunity to offer it when I want to. All I want is a time limit, and I am willing to let the senator from Texas go first. I do not want the amendment to be put off and put off, as I see it will happen (*Congressional Record* 1981; 16137).

Baker could not end the logjam. Packwood was trying to use leverage, via his objection, to put pressure on Baker to include his amendment in the agreement. Baker responded by stating that it was clear that this could not be negotiated on the floor at that point and rather than have an "official" objection lodged to the request, he withdrew it and expressed the hope that he would be in a position to make the request later. He then, in order to provide time for negotiations, suggested the absence of a quorum.[10] Perhaps a deal could be worked out.

Shortly afterward, Packwood addressed the chair and asked unanimous consent that the quorum call be rescinded and sent his amendment to the desk. Dole objected, and the first serious floor fight over H. J. Res. 266 began. The presiding officer asserted that objection was heard and the quorum call would continue. Evidently, the negotiations broke down during the quorum call, or there was miscommunication among the interested parties. After the call went on for a time, Dole took the floor and asked unanimous consent that it be rescinded (*Congressional Record* 1981, 16137). Dole's committee

[10] If no business is before the Senate or none is being conducted, the rules provide that the Senate adjourn. To prevent this, members will suggest the absence of a quorum and the clerk will proceed to call the roll until a member seeks recognition and asks unanimous consent that the quorum call be rescinded.

amendment was still pending and Bentsen's awaited consideration. Dole, trying to put pressure on fellow-Republican Packwood, indicated that the bill managers were ready to proceed to vote on the committee amendment and, "Following the vote on the amendment, it is my hope that the distinguished Senator from Texas (Mr. Bentsen) will be recognized. I ask unanimous consent to that effect" (*Congressional Record* 1981; 16137). There was no objection, indicating that the differences between Dole and Packwood had been settled.

The disagreement between Dole and Packwood was not basically over the substance of Packwood's amendment. Dole had no problems with charitable deductions. The fact that Dole wanted Bentsen's amendment to immediately follow the committee amendment suggested that strategic considerations may have played a role, but such was not the case. This is supported by the fact that Packwood's amendment eventually passed 97-1 with both Dole and Baker voting in favor, so they did not oppose Packwood's amendment because of its content. The disagreement was a procedural one related to sequencing. Dole was guarding his prerogatives as bill manager to determine the sequence of votes. In any event, there were seven roll-calls on amendments related to the tax bill before Packwood's got a vote.

After Dole's unanimous consent request, Armstrong's amendment was agreed to by voice vote leaving Bentsen's amendment awaiting action along with a second-degree amendment to it by Harrison Schmitt (R-NM), and two by Jake Garn (R-UT). The Dole amendment also awaited a vote. The question was which amendment would be considered when. Schmitt's amendment extended the period during which the tax-exempt

savings certificates could be issued to fifteen months, thus striking a compromise between the bill's one year provision and Bentsen's two-year plan. It would eventually be adopted. Garn's first amendment permitted the targeting of funds from tax-exempt savings certificates to automobile purchases, small business loans, student loans as well as home or farm loans. His second amendment reduced from 75 percent to 50 percent the amount of funds from tax-exempt savings certificates required to be targeted to home or farm loans. Both of his amendments eventually would fail.

Baker's actions during the initial amending phase were limited mostly to facilitation of the process. Even his facilitation, however, did not occur without problems along the way, problems for which Baker would call upon his persuasive skills to overcome.

Gently Nudging the Senate

After a few hours of debate and with numerous amendments pending, including the committee amendment offered by Dole and several to Bentsen's amendment, Baker decided to take stronger action to ensure that the Senate proceeded at an appropriate pace.

> Mr. President, I wish to inquire about amendments that we know of that remain to be disposed of to the Bentsen amendment, and I wish to explore the possibility of time agreements on any remaining amendments and the Bentsen amendment. It is my hope that the Senate can complete action tonight on the Bentsen amendment and the amendments thereto. First, I have been advised there are two amendments perhaps to be offered by the distinguished Senator from Utah (Mr. Garn), and I believe I am correct in saying that he is agreeable to a time limitation of 20 minutes on each of those amendments, in both cases to be equally divided. I inquire of the Senator from Utah if that is correct?" (*Congressional Record* 1981; 16160).

Garn informed Baker that he would be agreeable to the twenty minute time limit equally divided between the proponents and the opponents. The leader stated that if the managers and other members were agreeable, he was prepared to make the request. No one seemed to oppose the move and Baker made the request for twenty minutes equally divided on the two amendments to be offered by Garn and no objection was heard (*Congressional Record* 1981, 16160). Baker might have taken the opportunity to request unanimous consent that all further amendments, in addition to Garn's, be limited to twenty minutes. Baker's leadership style, at this point anyway, was to proceed piecemeal, preserving the rights of senators for full debate until the body was faced with a deadline. The Senate had not reached the point where time was a major concern, and thus Baker declined the opportunity to make a request that covered all future amendments. He had not yet gotten agreement on his request related to Bentsen's amendment. Bentsen's amendment would have to wait, and the committee amendment remained the pending business.

Baker, still looking ahead, then inquired as to whether there were other amendments to the Bentsen amendment that senators intended to offer. Metzenbaum responded that he had a second-degree amendment to the Bentsen amendment that would make savings certificates available in denominations of $500 so young families could afford them. He thought it would be accepted by the bill managers, vitiating the need for a roll-call vote. Should the Bentsen amendment not be adopted, Metzenbaum indicated that he would offer his to the bill itself.[11] Baker then asked the majority and minority managers

[11] If a second-degree amendment is adopted to a first-degree amendment, should the first-degree amendment then be rejected by the Senate, it takes the second-degree amendment down with it.

of the bill, in a rare moment of intrusion into bill management, if they could indicate whether the Metzenbaum amendment was acceptable. Dole indicated that he saw no problem with it, but there was no response from Long. Baker considered making another UCR for a time-limitation on the Metzenbaum amendment. Assured by Dole and Bentsen that it would not take long to dispose of it, Baker decided not to make the request. The Metzenbaum amendment later would be offered to the bill and was adopted via a voice vote.

At this point, Baker again asked Bentsen if he would be agreeable to a twenty minute time limitation, equally divided, to govern debate on his amendment. Baker asked the same question of Dole. Neither had any objection, and Baker officially made the request, and there was no objection. Noteworthy, however, was the level of cooperation, even deference, accorded Baker when playing his leadership role on the floor.

Eventually, Dole's amendment passed 57-40 and Bentsen's amendment became the pending business. Bentsen's amendment, after being successfully amended by Schmitt and two failed votes on Garn's, went on to pass 86-10 (*Congressional Record* 1981, 16138). Baker then began in the late afternoon to prod the Senate further along its course utilizing unanimous consent requests that governed one or two amendments at a time. Baker also asked that the remaining roll-call votes from that point until the Senate recessed for the day be 10 minutes each rather than the usual 15 minutes. There was no objection, and Baker thanked all senators for agreeing, saying that "this will materially expedite the business of the Senate, and I yield the floor" (*Congressional Record* 1981; 16161). Shortening the votes from 15 minutes to 10 minutes may not be a major action

by Baker to push the Senate but, at this stage in the process, Baker was exercising considerable restraint.

The Daily Grind of Senate Business

The next day, Friday, July 17, 1981, the Senate took up an amendment by Boren that proposed to amend an amendment offered by Riegle. It added language expressing "the sense of the Senate" that President Reagan should assure allies at the July 21 Ottowa economic summit that the US "will take immediate, direct, and affirmative steps to lower our domestic interest rates." Riegle's amendment proposed to reduce the corporate income tax on small businesses. Baker took the floor to say he was prepared to table the Boren amendment but was willing to withhold if other senators wished to make remarks. Again, Baker paid great deference to the norm of full and complete debate. Senator Riegle indicated he had something to say about the amendment, and Baker announced that it was clear that debate was not yet concluded. Baker, however, took the opportunity to try again to push forward, arguing that

> we have to get on with this matter, and I hope that in the space of 20 or 30 minutes we will be in a position to entertain a tabling motion to the [Riegle] first degree amendment and, of course, the parliamentary situation is that if the first degree amendment is tabled, it will take the second degree [Boren] amendment with it. I am not saying that is the way I will do it, but that is the way I contemplate at this moment, but I will not make that motion at this time...So a little later we will examine that again. In the meantime I urge Senators to be as brief as they possibly can" (*Congressional Record* 1981, 16237).

The leader was then faced with an interesting parliamentary situation when Senator Riegle told him that he thought that the two issues, his first-degree amendment and Boren's second-degree amendment,which had now been debated, were two separate issues and should require two tabling motions to dispose of them. Riegle, sensing that Boren's amendment offended many who thought it unwise to counsel the president in that way, clearly was trying to save his own amendment from a potentially "killer" second-degree Boren amendment. Baker informed Riegle that he understood his concern and was not trying to put him in an unfavorable parliamentary position, but that if the amendments were two first-degree amendments he would use two tabling motions or vote separately on the two amendments. Baker further indicated that it was not his idea, but those of the amendment's sponsors, that there be a first and second-degree amendment instead of two first-degree amendments. The decision for him was whether to dispose of Riegle's first-degree amendment through a tabling motion, which would take the Boren amendment down with it should the tabling motion be adopted, or whether to have two separate votes on adoption, one for the second-degree amendment and one for the first-degree amendment. Baker could have simply tabled both amendments separately but was trying to save time and eliminate as many amendments as feasible. The amendments had already been debated in any case. Further, he did not want either to get an up-or-down vote. Baker did, however, suggest a way for Riegle to possibly salvage his first-degree amendment. Baker offered to have two votes if Boren wished to withdraw his amendment to Riegle's and reoffer it as a first-degree amendment to the bill. But if the two stayed together, Baker asserted that it was his intention to try to table the first-degree amendment

taking the second-degree amendment with it (*Congressional Record* 1981, 16238). Boren said he wished to study the matter further and that he would take Baker's suggestion under consideration. Eventually, Dole tabled the Boren second-degree amendment by a partisan vote of 53-40 (*Congressional Record* 1981, 16238). Riegle's first-degree amendment was then tabled by Senator David Durenberger (R-MN) on a 51-41 party vote. Riegle got his separate vote, but his amendment suffered the same fate as that of Boren's. The point is that Baker threatened to table both amendments at once, which seemed to be enough motivation for the bill manager, who also voted to table both amendments, to do his job and work out some agreement and dispose of the amendments. In this manner, Baker intervened upon occasion to spur action by the managers.

Debate had proceeded into the afternoon when Byrd inquired of Baker what the schedule was likely to be for the rest of the day. Baker responded by informing the Senate of the amendments awaiting consideration, as best he knew: a Specter-Boren amendment and a Grassley-Baucus amendment that Baker expected to take no more than ten minutes together; then a Lowell Weicker (R-CT) amendment with a second-degree amendment to that amendment forthcoming from Durenberger; a Bill Bradley (D-NJ) amendment which might follow Durenberger's; and several other amendments, including a marriage penalty amendment from Senator Nunn (D-GA); a Heinz-Dodd amendment; and another John Heinz (R-PA) amendment. Baker then suggested that he did not expect that the Senate would be in late that night and thus relinquished, for the moment, an opportunity to threaten a late session to cut further into the stack of legislative business and to prompt members to get to the floor to offer their amendments.

At that time, Baker expected the Senate to go out at six o'clock in the evening. He did inform his colleagues, however, that he thought it would be necessary for the chamber to be in the next day until about 3:00 in the afternoon, and hoped that members would use that time to make statements and offer amendments "that may be disposed of promptly perhaps without roll call votes" (*Congressional Record* 1981, 16248). Baker further expressed the hope that they could finish the bill by early the following week and indicated interest in establishing a time certain to finish deliberations on the bill and move to final passage. He did not proceed to seek a unanimous consent request to that effect at that point.

With no particular amendment the pending business, Baker then began to "poke and prod" as to the intentions of senators who planned to offer amendments by asking them if they would want a roll-call vote or if a voice vote would suffice.[12] Senator Bradley indicated that his amendment to limit the personal income tax cut to one year and target the relief to persons with incomes of $50,000 or less would require a roll-call vote; and Kennedy said his amendment to increase by five percent the existing energy conservation tax credit for commercial and industrial users would require a roll-call vote as well, although he was willing to enter into a time agreement. Baker inquired if there were other amendments that could be offered and taken up that afternoon and, when no response was forthcoming, announced that the Senate would complete the Bradley and the

[12] Normally, a roll-call vote requires in excess of 15 minutes unless a unanimous consent agreement provides otherwise. A voice vote is rather brief consisting of the presiding officer asking for those in favor to vote aye and those opposed vote nay and then the presiding officer makes a determination as to which side had the most votes.

Kennedy amendments and perhaps a Byrd amendment before recessing. As it turned out, only the Weicker and Bradley amendments were disposed of that day.

Generating Momentum While Preventing Backward Movement

After Weicker's amendment to reduce the lowest corporate tax rates for small businesses was adopted 92-0 and the Bradley amendment failed on a 24-61 party vote, Baker continued to play a role in floor management by moving to table a Dole motion to reconsider the vote on the Bradley amendment thus sealing the fate of the amendment permanently. The use of a motion to table a motion to reconsider is important in floor management, because the last thing a majority leader needs when faced with a deadline, in this case the normal August recess, and numerous amendments was to have motions to reconsider voted on, and possibly adopted, thus unraveling already completed work.

After the vote on the Bradley amendment, Baker retreated from his earlier assertion on the amendments that he expected to be disposed of and announced that there would be no more votes that evening. In these remarks, Baker also announced, "I do not expect that tomorrow will be a late day, but I do hope that we shall be able to dispose of some matters tomorrow that will assist in the final disposition of this measure," (*Congressional Record* 1981, 16265).

Announcing that there would be no more votes that evening, as Baker did, does not mean that the Senate's business was completed for the day. Other amendments may be debated, although not voted on until the following day, or the Senate may go into

routine "morning" business. However, at this point in the debate on H. J. Res. 266, Baker demonstrated how he characteristically conducted business on the Senate floor, seeking consensus, by asking if the bill manager was "prepared to go forward with another amendment, another statement, or is he willing to lay [the pending business] aside" (*Congressional Record* 1981, 16265). Dole replied that he was "prepared to go forward to my office and lay this aside," to which Baker responded "I thought I recognized that look in his eye. Is the minority manager willing as well?" Senator Russell Long (D-LA) responded in the affirmative, at which point Baker asked unanimous consent that there be a brief period for morning business not to extend beyond 6 p.m. (*Ibid.*).[13] Baker still was not pushing the Senate very hard at this point, a decision that he perhaps regretted later as the recess period began to approach with numerous amendments still awaiting action.

The next day, Saturday, July 18, the Senate began further debate on the tax bill and took up an amendment by Charles Mathias (R-MD) that provided an opportunity for individuals to make contributions in connection with the payment of their federal income tax for the advancement of the arts and the humanities. Mathias laid his amendment aside so that the Senate could move to other matters. He later withdrew the amendment at Dole's urging. Particularly noteworthy is the fact that no roll-call votes occurred on this day related to the tax bill, probably because it was a Saturday. Baker, understanding that many of the amendments would require recorded votes, later in the day announced that it did not appear that any other amendments could be dealt with and indicated his intention

[13] A period set aside for morning business is a time that senators can introduce bills, amendments (to lie at the desk until called up during debate), and make remarks or insert statements into the record on any topic. This time need not necessarily be set aside in the morning but is referred to as morning business no matter when it occurs.

to ask for a recess until Monday, July 20. Before Baker did that, he inserted into the *Congressional Record* for Senator Paula Hawkins (R-FL) a statement about the importance of moving rapidly on the tax bill.

At the Precipice

On Monday, July 20, the Senate again began taking up amendments. The day began in an atmosphere of amiability. Baker took the floor to discuss the substance of a measure, which he rarely did, in this case the Packwood charitable deductions amendment which had passed on an overwhelming 97-1 vote.[14] Baker not only praised the substance of the measure but also praised the managers of the amendment:

> Mr. President, I would like to take this opportunity to thank the distinguished Senators from Oregon (Mr. Packwood) and New York (Mr. Moynihan), for their efforts in procuring an amendment which will enhance and facilitate charitable disbursing in America. Charitable contributions have been steadily declining, largely due to existing tax laws. These laws provide favorable tax treatment to only those tax payers who itemize their deduction; they fail to reward contributions those who elect the standard deduction, thereby providing no incentives for further donations. Private and voluntary contributions are essential to the countless organizations and activities that rely on private sector support. I believe that this change in the Tax Code will induce increased support for charitable institutions and personal donations. Specifically, this amendment provides for the abatement of 25 percent of all deductions in the first 3 years with a $100 Limitation for the first 2 years, and increases up to a 100-percent deduction in 1986. At that time, the provision is scheduled to expire. I am not alone in my praise of this amendment, Mr. President. This body's near unanimous vote today is indicative of the broad support that exists for charitable contributions in America (*Congressional Record* 1981, 16475-76).

Considering the number of amendments that would be offered to this bill, the fact that

[14] This was the amendment that started the earlier disruption on the floor between Dole and Packwood. It did not get its vote until this point in the debate.

Baker only spoke on the substance of a few of them with which he agreed, such as the Packwood amendment, or disagreed with, such as the initial Moynihan amendment tabled by Baker, is suggestive of his leadership style. In all cases Baker had praise to offer for the sponsors.

But a change was in the wings. What began to happen on the Senate floor at this stage in the debate was that which a majority leader who takes seriously his responsibility for moving the Senate along fears most. Baker inquired of Dole as to which amendment was next and was informed that the Senate was prepared to take up a Stevens amendment that would allow closely held corporations to take tax breaks for initiating employee stock ownership plans even if they did not give their workers voting shares.[15] Dole said he was not sure how long the amendment would take and that Metzenbaum had indicated that it might take some time. Baker then asked Stevens if he was willing to enter into a time agreement, or if he had an estimate of how long it should take. Stevens replied that 20 to 30 minutes per side would be sufficient as far as he was concerned. Baker then inquired if he understood correctly that Metzenbaum had an "interest" in this amendment.[16] Metzenbaum made his intentions clear:

> I am indeed interested in this amendment, but I am certain that it could not be concluded in any limited amount of time. I would not be agreeable to a time limitation. I have indicated to the distinguished Senator from Alaska [Stevens] that I am interested in trying to work out some accommodation with him in connection with this matter. I believe it is a very substantive amendment. It has to do with changing the law, not really having to do with the Finance Committee tax bill measure. If we are going to get

[15] Closely-held corporations are those that are family enterprises where there are only a few stockholders and most of them are members of a family.

[16] From research and pouring over thousands of pages of the *Congressional Record,* the author has discovered that when a member "expressed an interest" in a matter it usually meant opposition. Often, when Baker requested unanimous consent for an agreement, if he got a message or a call from a member in his office, Baker would withhold the request until the member "expressing an interest" had arrived on the floor to speak.

into it, I believe there will be some extended debate (*Congressional Record* 1981, 16476).

Baker now faced the possibility of the first major obstructive move against the bill. The threat of "extended debate" came from one of the most obstinate and tenacious members of the Senate.

It should be noted at this point that one of the ways in which Baker approached his job was to allow "extended debate." However, he tried to determine whether a situation actually involved simply extended debate or a filibuster intended to delay Senate business to the point that the measure in question dies. Generally, once Baker became convinced that a filibuster was in progress he took strong measures, up to and including efforts at cloture, to bring debate to an end and get to a vote.[17] Recall at the beginning of the debate on the tax bill that Baker promised that he would not condone obstruction. The task for Baker was now to determine what Metzenbaum truly had in mind, extended debate or a filibuster. Baker retreated temporarily, giving Metzenbaum the benefit of the doubt as to whether his intentions were to prevent a vote altogether. Baker, however, expressed the hope that senators would "explore further the possibility of a time limitation or an accommodation" (*Congressional Record* 1981, 16476). Baker then yielded the floor so that Stevens could call up his amendment.

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[17] Cloture is part of Rule XXII of the Standing Rules of the Senate. It allows any member, though often the majority leader who has prime responsibility for moving the Senate along, to file a cloture petition with the clerk of the Senate, which requires the signatures of sixteen senators. It is read aloud by the clerk and then there occurs an intervening day of session. On the following day of session, a quorum call occurs one hour after the Senate has convened to ensure enough members are present for the Senate to conduct business legally. Once a quorum is established the cloture vote occurs. Rule XXII has been modified over the years since its inception in 1917. In 1981, when the tax bill was being debated, a successful cloture vote required 60 votes, and if cloture was invoked debate was then limited to at most one hundred hours (each senator with one hour) and only germane amendments were in order during that time. See Tiefer (1989, 691-766) for a thorough discussion of cloture and filibusters.

The usual custom was for a member to call up his or her amendment if it was already at the desk, otherwise the sponsor was required to send it to the desk from the floor at which point the clerk read it into the *Congressional Record.* A member, usually the amendment's sponsor, might ask, however, unanimous consent that further reading of the amendment be dispensed with, at which point the text of the amendment would be inserted into the *Congressional Record.* Stevens asked unanimous consent that further reading of his amendment be dispensed with, and Metzenbaum objected signaling a possible filibuster (*Congressional Record* 1981, 16475). If Metzenbaum's intentions were merely to engage in extended debate, that could occur without requiring that the clerk read the amendment in its entirety. However, the clerk, because of Metzenbaum's objection to Steven's request, had to read the amendment into the *Record* rather than insert the text. After that was done, and during Stevens' remarks on his amendment, Metzenbaum sought to pose for a question and asked if Stevens would be willing to lay the amendment aside temporarily until they determined if their differences could be worked out. The senator from Ohio was concerned that the amendment, if adopted, could take away the corporate voting rights of certain people, primarily those who owned stock in a closely-held corporation through an employee stock ownership plan. Metzenbaum had sought, off the floor, a private relief bill to take the place of this amendment, but apparently not a private relief bill in the usual sense. Private relief bills are generally targeted toward a person, such as a measure to grant citizenship to someone, or a particular firm. Metzenbaum seemed from his remarks to want a private relief bill that

applied to no particular person but the provisions of which would be narrowly tailored (*Congressional Record* 1981, 16476).[18] This, however, was unacceptable to Stevens.

The debate on the amendment generally was congenial despite Metzenbaum's reference to Stevens as "one of the most able spokespersons for the Reagan administration," perhaps in an attempt to use an ego-stroking strategy, or, more likely, a subtle partisan slam (*Congressional Record* 1981, 16480). The congenial environment would not last. Stevens was perturbed that he had cleared the amendment with Metzenbaum and his office beforehand and there was no objection, but now there was obstruction coming from Metzenbaum on the floor. He responded to Metzenbaum's "compliment" with an admonition for Metzenbaum to "look at the facts" (*Ibid.*). The facts, according to Stevens, were that Metzenbaum had quoted some statistics dealing with all employee stock ownership plans and their employees. At issue in this case were closely-held corporations only. Their debate then began to get truly testy when Stevens refused to yield for a question from Metzenbaum saying, "I will treat the Senator the same way he treated me: When I finish, I shall yield" (*Ibid.*).[19] Various members rose to speak on the amendment before Metzenbaum was again recognized, and after his remarks he suggested the absence of a quorum.

Before proceeding further with the progression of the tax bill, it would be useful to cover some basic points regarding quorum calls in the Senate. The US Constitution

[18] There is no record of the private relief bill that Metzenbaum was seeking and so its specific provisions remain a mystery.

[19] When a senator has been recognized by the presiding officer, he has control of the floor and need not yield to any other member until he has concluded his remarks. However, if the member obtaining recognition makes a motion or offers an amendment, he technically loses the floor (Tiefer 1989, 501).

permits the Senate to do only a limited number of things without a quorum present. A quorum call constitutes business for the purposes of that constitutional provision. However, there is no time limit on establishing a quorum. When the presence of a quorum is questioned, the clerk begins to call the roll to which members may register their presence. The quorum call exists for three basic purposes: 1) to obtain a time-out period to negotiate without taking up floor time and/or to keep discussion off the record, a common use; 2) to bring a majority of senators to the floor; and 3) to delay (Tiefer 1989, 521). A quorum call is also used to fill gaps in time when no senator is speaking and no business is being conducted on the floor. When no business is being conducted, the Senate is required to adjourn. The call of the roll is a time consuming process and continues until a majority appears or until a member requests unanimous consent that the quorum call end and no objection is raised.

There is a means to determine the intent of a quorum call. If it has as its purpose a majority leader's desire to summon members to the floor for an important vote, or a member's desire to delay proceedings, then it may go "live." During a live quorum call, the clerk only goes through the list of names one time. If a quorum is not present, the clerk announces that fact. A "live" quorum call is announced to the Senate by three bells rung through the signal system. A quorum call that has not gone live is indicated by only two rings and can be safely ignored by members (Tiefer 1989, 521-26). Two bells signal that the quorum call is being used to fill gaps between speeches or to provide time for off-the-floor and off-the-record negotiations.

During the quorum call precipitated by Metzenbaum, both Stevens, then Baker requested unanimous consent that it be rescinded and Metzenbaum objected in both instances, sending a clear signal that his intent was to delay (*Congressional Record* 1981, 16483). Baker sensed that extended debate quickly was becoming a filibuster. Moreover, only sixteen senators responded to their name during the intial call of the roll. Baker needed to get a quorum to the floor so that the Senate would not have to adjourn. When the clerk had gone through the roll once and announced that a quorum was not present, the leader decided to deal with the threat by moving to instruct the sergeant-at-arms to request the attendance of absent senators (passed 92-5).[20] The motion to instruct the sergeant-at-arms is one of the few things that is permitted in the absence of a quorum. A quorum was established when a majority appeared to vote on the motion to instruct.

Baker then resorted to stronger measures and used another persuasive device to try to head off delay. That is, Baker threatened to keep the children after school:

> Mr. President, earlier today, I announced that the Senate would be in session until about 7 o'clock this evening. It appears that there is some possibility, at least, that I shall have to change my mind and ask the Senate to agree to stay later. There is an amendment pending now by the Senator from Alaska on which apparently there is considerable controversy and on which there already has been a great deal of debate. Mr. President, at this point, it is absolutely essential that we move these amendments on this measure on a reasonable and prompt basis. I do not intend to ask the Senate to lay aside this amendment in order to proceed to another, but, rather, to continue with it as long as it is necessary to resolve this issue. I have not spoken for or against the amendment, and I will not do so now. But I do urge that if we have any expectation of finishing this measure, we simply cannot get bogged down on amendments such as this. So I inquire now of the author of the amendment and the principal opponent of the amendment whether or not it is possible to dispose of this amendment in a reasonably short time. Otherwise, it will be necessary for me to change my prediction as to the time the Senate will conclude its business this evening (*Congressional Record* 1981, 16484).

[20] This motion is considered by the majority leader to be his prerogative. He can even move to have the sergeant-at-arms compel the attendance of absent senators. As most roll-call votes, the vote on this motion has a fifteen minute limit. Members who care about their attendance for roll-call votes generally appear on the floor relatively quickly. The arrival of a majority to vote on this motion satisfies the quorum requirement, vitiates the quorum call, and the Senate may proceed with business (Tiefer 1989, 525-26).

Note that Baker threatened to do more than just ask the Senate to stay late. He emphasized his intention to stay on the Stevens amendment, thus informing Metzenbaum that if he wanted to delay, he and any allies would have to stay on the floor and continue speaking, otherwise they would lose their right to the floor and when no one is on the floor to speak for or against an amendment, the Senate could vote or go to third reading, which closes off the amending process.[21] Moving to other business, on the other hand, would allow those engaged in a filibuster opportunity to simply regroup for the next battle on the amendment in question.

Also of importance regarding the approach taken by Baker to managing the floor was that he did not take sides on the amendment. He merely stated his position on obstruction, keeping his promise made at the start of debate on the bill that he would not condone obstruction, and provided an opportunity for participants to dispose of the amendment before things got nasty. Should this fail, however, Baker signaled that he would weigh in with the various resources at his disposal, including his power over scheduling Senate sessions, to achieve a resolution of the issue. In this instance, the process was clearly more important to Baker than any particular outcome, such as passage of the Stevens amendment.

Metzenbaum did not want the majority leader to intervene more forcefully and indicated that it was not his intention to filibuster, saying:

> I am prepared to let this matter go to a vote very shortly, because I just want the Members of the Senate to know what is involved, and then go ahead and vote on it. If

[21] If a member listening in his office contacts the majority leader and "expresses an interest," the majority leader will generally hold off third reading. This is often called a "hold."

> the majority leader has no objection to my doing so, I should like to proceed at this moment to discuss this amendment, and at the conclusion of my remarks, if the Senator from Alaska wishes to refute or rebut my arguments, assuming that I have no counter rebuttal-although I might have, and it would not be at length-I would be willing to let the matter go to a vote (*Congressional Record* 1981, 16484).

Baker's threat apparently worked. Metzenbaum dropped his demand for negotiations and indicated that he would not filibuster the Stevens amendment. It may have been that Metzenbaum did not want the wrath of his colleagues for causing a late session. If this was so, Baker successfully altered Metzenbaum's calculations as to the cost of delay and made the reward from delay a negative one or, at the very least, made Metzenbaum aware of those costs.

Baker then asked Stevens and Metzenbaum if they were willing to agree to a thirty minute time limitation equally divided, or fifteen minutes of time controlled by each. Metzenbaum said that it was agreeable to him if it was agreeable to the minority leader. This appeared to be an attempt to get some assistance from Byrd or any of his other Democratic colleagues. Byrd did not indicate any problems with the Baker request, and once he got his agreement to limit debate on the amendment to thirty minutes, Baker thereupon withdrew his threat and asserted that it was probable that the Senate could get out at approximately 7 p.m that evening. Byrd, who had just helped Baker get this agreement by not siding with Metzenbaum, took the floor and expressed gratitude to

Metzenbaum for the "reasonableness with which he has agreed to this request," demonstrating his own use of praise (*Congressional Record* 1981, 16484).[22]

Metzenbaum, after the apparent demonstration of lack of support, stated that he would only use about five or six of the fifteen minutes under his control. The Stevens amendment went on to pass 94-3, thus confirming the weak position of Metzenbaum in opposition to the amendment, although this did not always deter him from filibustering (*Congressional Record* 1981, 16484).[23] Baker had cleared his first major obstacle. There would be others.

Baker and a Floor Fight Over Scheduling

Characteristic of Baker's leadership style was that he usually did not get involved in a floor fight until a situation threatened to get at least a little out of control. Once, when a particularly contentious debate was occurring on the Senate floor, Baker was asked by a colleague why he wasn't doing something about it. Baker replied with one of his oft quoted colloquialisms for which he has become famous: "I ain't got no dog in this fight." It is his responsibility, as he saw it, to ensure the proper working environment, one conducive to compromise. Thus, when a debate started to get out of hand, especially

[22] However, if Byrd had any indication from any of his party colleagues that the agreement would be a problem he would have no doubt weighed in on the side of Metzenbaum and let him off the hook by preventing the agreement.

[23] Metzenbaum acquired during his Senate career the nickname "Senator No." This was because of his reputation for delaying or filibustering. In fact, Metzenbaum had his own checkbox, usually reserved for party leaders, on the sheet used by party leaders to clear legislation for consideration by the full Senate. This was a way to determine if Metzenbaum was going to cause problems and represented an interesting twist on the concept of a hold.

between two Republicans, Baker could be expected to weigh in and attempt to settle the matter, usually with the suggestion that something be worked out off the floor. He did not like Republican divisions to be displayed in public.

Early the next day, Tuesday, July 21, Republican Dole and Democrat Bentsen began squabbling over scheduling just after the Senate tabled 52-46, on a motion by Dole, an amendment offered by Riegle to retain minimum social security benefits for those currently receiving benefits and those who would receive them through the end of 1981. The Senate was now ready to take up another amendment. The issue was whether another Bentsen amendment would be called up and voted on that day. Bentsen wanted an up-or-down vote on his amendment to exempt independent oil producers from the windfall profits tax on the first thousand barrels of daily production. Dole said that he could have some disposition of the amendment, including possibly a vote tabling it, but could not guarantee that it would occur that day. Dole was again having to defend his prerogative as bill manager to sequence amendments and provide for votes on them. He did not take a position against the substance of the amendment, mainly because he was unsure of the substance, but was only trying to exercise his responsibility as bill manager. Wanting not to be surprised, he also wanted Bentsen to give more information on what the amendment was about. This, of course, suggested that Dole was staying alert to possible strategic amending. However, Bentsen had no such motives. Minority Leader Byrd entered the fray and said that he was not holding anything up and that he hoped Bentsen could offer his amendment and have his up-or-down vote on it that day. Byrd, too, exercised his responsibilities as minority leader.

At this point Baker decided to intervene, again only to encourage the participants to work something out, not to achieve any particular resolution. He already had done his part by trying to arrive at an understanding with Bentsen off the floor the previous day. Baker addressed the chamber:

> Madam President, I can assure the minority leader and the Senator from Texas that I intend to see, as I am sure the Senator from Kansas is prepared to see, that this issue is addressed. I hope the Senator from Kansas [Dole] and the Senator from Texas [Bentsen] can sit down and consider agreeing to a schedule as to when this amendment will come up and a time limitation on it. As the Senator from Texas is aware-he and I discussed this yesterday-it did not quite work out. Maybe we can do that today. Shortly Senators, a significant number of Senators, are going to have to attend conferences. Prior to that time I hope the Senator from Kansas and the Senator from Texas can sit down and see if we can agree on a time to present this amendment and for its consideration on a limited basis (*Congressional Record* 1981, 16565).

Baker had delegated most of the responsibility for scheduling amendments to the floor managers and was unwilling to impose a settlement. Actually, he could not have done so without resort to a threat of some type with the costs that would entail. However, his remarks revealed a desire to schedule the amendment *on a limited basis,* meaning under the provisions of a time agreement which would put the Senate on a more stable course and preclude "extended debate." In fact, Baker was deferential to the bill managers. At one point Bentsen said, "I am trying to accommodate the will of the Senate in an expeditious manner, as long as they have a full, clear shot at voting on my amendment" (*Congressional Record* 1981, 16566). Baker responded with a little flattery directed at Dole and Long, none of which was directed in Bentsen's direction:

> Madam President, if the Senator will yield further to me on the same basis for one more remark, I must say that both the Senator from Kansas and the distinguished ranking minority member, the former chairman of the Committee, have done such an extremely good job that I yielded to them as to what sequence and what time we consider these amendments. So yesterday I spoke in advance of what I should have because I had not at that point consulted with the distinguished chairman of the committee. But I remain

> convinced we can find a time to take this up and to do so promptly and to do so on a basis that is favorable to the wishes of both Senators, and I urge that we explore that possibility at the earliest possible moment" (*Congressional Record* 1981, 16566).

Interestingly enough, the Bentsen amendment would have exempted independent producers of oil and certain royalty owners from the windfall profits tax on the first 1,000 barrels of daily production, something that Dole ordinarily would favor. However, Dole's own plan to be set forth in later amendments included a complete phase out of the windfall profits tax and so Bentsen's amendment could have been a problem.[24] The issue of Bentsen's amendment was set aside temporarily. Bentsen failed to get his amendment imediately before the Senate. Dole's amendments, however, would provide difficulties for Baker and Dole as they would again involve Metzenbaum.

The Senate Settles Back into Its Grind

The Senate began to settle back into its routine, without interruption or threat of obstruction. A Kennedy amendment to increase the existing energy conservation tax credit for commercial and industrial energy users by five percent was tabled on a party line vote of 54-46. Dole did not oppose a tax credit on its face. He, again, had his own plan and was trying to protect it. It was Dole who offered the motion to table and the motion to reconsider Kennedy's amendment, but Baker backed him up on bill management duties and moved to table the motion to reconsider.

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[24] Bills are subject to the same rules as amendments. Once a provision of a bill has been successfully amended, further amendments to that provision are no longer in order and cannot be considered. That is, only unamended portions of bills are subject to amendment. If Bentsen's amendment passed, it would have thrown a wrench into Dole's plans.

Bentsen's amendment to exempt the first thousand barrels of daily production was then brought up, later than he wished. After having his amendment delayed until after Kennedy's was disposed of, Bentsen nonetheless thanked Dole for working in his amendment. Dole then tried to get a time limit of an hour for each side. Baker interjected, in apparent defense of his floor prerogative of negotiating time agreements, and said "Mr. President, if the parties will agree to that, I think that will materially assist the Senate. I ask unanimous consent that there be a 2-hour limitation on the Bentsen amendment to be equally divided and controlled in the usual form" (*Congressional Record* 1981, 16579).[25]

Minority Leader Byrd interjected to perform his responsibility to protect members of his party and asserted that surely one of them would object to the agreement. Specifically, Byrd stated: "Mr. President, reserving the right to object, I will have to object, not on my part, but for my side of the aisle until I clear it with my side of the aisle" (*Congressional Record* 1981, 16579). Byrd suspected that Metzenbaum would continue resistance to any efforts to weaken or eliminate the windfall profits tax. The clearance mechanism, however, had not been utilized related to the request. Byrd simply did not want members of his party who opposed the amendment to lose their opportunity to speak or take other action. Baker withdrew the request in order to prevent an official objection by Byrd and recommended that the Senate proceed with debate on the amendment hoping that the request would be agreed to later. Bentsen, being the sponsor of the amendment,

[25] "In the usual form" refers to the format in which time is controlled by the proponent (sponsor) of the amendment and an opponent. These two individuals decide who they will yield to, respectively, to speak on the amendment. In this case Bentsen and Dole would control the time.

and a second-degree amendment to it, said he would be happy to work with the leaders to arrive at a time agreement. The situation resolved itself when Dole finally moved to table the second-degree Bentsen amendment, which was agreed to 61-38. Bentsen then withdrew the underlying first-degree amendment.

Senator Pete Domenici (R-NM) then sent a second-degree amendment to a Dole windfall profits tax amendment and asked for its immediate consideration. Domenici's amendment appeared to be strategic in character. Were it adopted, any further amendments to the Dole amendment would be foreclosed. Domenici's amendment was very similar to Dole's original language phasing out the windfall profits tax. For this reason, Domenici described the amendment as a "substitute" to Dole's in that it incorporated Dole's language into his own amendment. However, since Domenici's amendment did not substitute entirely new language for Dole's, and in that sense was not competing with it, it was not a "substitute" amendment in the usual sense, but rather a second-degree amendment.

With Domenici's amendment now pending, Metzenbaum was still resisting any relaxation of the windfall profits tax and was promoting extended debate on the amendment when Baker took the floor to again try to push the Senate along at a quicker pace. First, he renewed a now familiar threat to allow debate to continue until opponents tired or until there was some resolution one way or the other:

> Mr. President, I very much hope we can dispose of at least this [second-degree Domenici] amendment tonight. We have been on it now for a long time. It is clear that there is no possibility, it seems to me clear there is no possibility, that we can agree on a time certain to vote tomorrow. I would be willing to do that. But if we cannot agree to a time certain to vote on this second-degree amendment, then I know of no alternative except to continue the debate tonight and try to reach a time when we can vote. Mr. President, may I inquire of Senators if they are in a position to agree to a time certain tomorrow to vote on this amendment?" (*Congressional Record* 1981, 16611).

Metzenbaum would not bite and responded that he was not in such a position. He would continue his fight against any attempts to relax the windfall profits tax. Baker responded by asserting, "If that is the case, then I am not prepared to ask the Senate to recess over at this point and I would propose then that they continue." Metzenbaum, not wanting to again appear intimidated, countered with, "I think that is an excellent idea" (*Ibid.*). Metzenbaum then asked for the yeas and nays on the Domenici amendment insuring that when and if a vote occurred it would be a time-consuming recorded vote.

Reasonableness as a Senate Virtue

After a couple of more hours of debate on Domenici's amendment, Baker hoped that his threat of a late session would sink in and again inquired if "there is a willingness to submit this amendment to the Senate for its determination." Metzenbaum responded in an attempt to demonstrate support and get Baker to retreat from his earlier threat:

> I must advise the majority leader that a number of Senators have indicated that they thought the Senate was going to adjourn somewhere around 8:30 or 9 o'clock. They want to address themselves to the issue further-Senator Kennedy, Senator Bumpers, Senator Bradley, Senator Tsongas, Senator Sarbanes, Senator Riegle, and a number of other Senators. I do not believe there is much chance that we can conclude the subject this evening. I had understood that the other side had indicated at an earlier point that they did not expect to go much beyond 8 or 9 o'clock, and I said I would be on the floor until that time. So that at this point, I am in no position to agree to bring this issue to a conclusion (*Congressional Record* 1981, 16615).

Baker countered:

> Mr. President, I hear and I understand the Senator from Ohio, but I think he will agree with me that there was no representation by me that we would quit at 8 or 9 o'clock. I was not consulted on any such arrangement with respect to a recess of the Senate (*Ibid.*).

Metzenbaum responded:

> I am not making that suggestion. I just say that I think word was going around the Senate that we expect to stay in session until 8 or 9 o'clock, and a number of other Members asked whether I expected to be on the floor that late, and I said I did (*Ibid.*).

Baker and Metzenbaum then each postured in clear attempts to appear to be the more reasonable member. Baker went first:

> Mr. President, I really do not want to appear to be unreasonable, but we have been at this amendment or some variation of this amendment for a number of hours, and it is one that has to be disposed of at some point. I wonder if the Senator will agree or will consider some sort of agreement on a length of time for the consideration of this amendment, either for the remainder of this evening or for a time in the morning (*Ibid.*).

Metzenbaum replied:

> I always try to be accommodating to my friend from Tennessee, but in this instance I cannot be (*Ibid.*).

Baker continued:

> Mr. President, that leaves me in a very difficult position. I respectfully submit to my friend from Ohio that we simply have to continue with the debate on the issue, unless we can try to find some way to do that. I am not trying to force the issue by sheer brute strength. I am simply saying it is a matter that has to be dealt with. I did not initiate the idea that it would be a day's long debate, which seemed to be the idea running around the Senate. I do not wish to invoke cloture against the amendment. I would wish for a time to vote tonight or tomorrow. If we cannot do that, we have no reasonable alternative except to continue the debate or to suggest the absence of a quorum. I do not intend to suggest the absence of a quorum. If we do that, we run the real risk that we may, in fact, have a quorum; and I do not know what quorum we have here at this hour. I must tell my friend from Ohio that I am not prepared at this time to ask the Senate to recess (*Ibid.*).

The possibility of a filibuster by Metzenbaum had not been eliminated completely. Note that Baker declined the opportunity to attempt to invoke cloture. He usually reserved that option for situations in which he became convinced that a filibuster was taking place instead of extended debate. Nor did he apply pressure on the sponsors to take the amendment down. Baker also did not want to suggest the absence of a quorum, because he was not sure that there was an absence of a quorum and, if there was a quorum, it might be a quorum that would vote the wrong way on the amendment as far as Baker was concerned. Thus he implicitly took a position in favor of the amendment and suggested a preferred outcome. He did not, however, want to force a particular outcome at this point. He just wanted some disposition of the amendment one way or the other. Baker then renewed his threat to force Metzenbaum to continue the debate. The threat did not seem to faze Metzenbaum who began the following exchange:

> Metzenbaum: I say to my friend from Tennessee that I have never been one who thought that in order to discuss a subject, we had to keep talking; but I thought the opportunity for meditation and for thought processes to work sometimes has a lot of value for the Senate. I never like the idea of wearing out my throat trying to persuade those who I do not think are very persuadable. So that when the Senator from Tennessee indicated that we might have to be here for a while, I, in the past, have found it to be a privilege to be on the floor of the Senate during the wee hours of the night and would not be unwilling to have that occur. But, I think, under those circumstances, it is entirely likely we might have a number of roll-calls. If the majority leader feels that that is his wish, I certainly have no objection, and since I am here, I do not mind having roll calls. But I am willing to accommodate the Senator from Tennessee in any way he wishes.
>
> Baker: The way I wish is to get a vote.
>
> Metzenbaum: With that one exception.
>
> Baker: With that exception?
>
> Metzenbaum: With that one exception.
>
> Baker: Mr. President, could I inquire of the distinguished Senator from Ohio, is it his intention to prevent or attempt to prevent the Senate from ever voting on this issue?

> Metzenbaum: If I could achieve that objective I would consider it a great success.

It was now clear to all that Metzenbaum had a filibuster in mind but did not want it characterized in that manner. Baker continued the exchange:

> Baker: I have no alternative except to assume, then, that the Senator from Ohio intends to filibuster this amendment.
>
> Metzenbaum: I do not believe it necessarily need be described in that manner, but I think that the country is entitled to understand what is happening in the Chamber, and I think one of the best ways of doing that is by extensive debate.
>
> Baker: Then I recommend that the Senator continue with that debate.
>
> Metzenbaum: Mr. President, I suggest the absence of a quorum.
>
> Baker: Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.
>
> Metzenbaum: Objection. (*Congressional Record* 1981, 16615).

Since there was an objection, the clerk began to call the roll.

When "Extended Debate" Becomes a Filibuster

Of interest here, at this point in the debate, was Baker's attempt to determine whether what was occurring was a true filibuster or merely extended debate. Metzenbaum wanted to downplay the filibuster description for fear of what Baker's response to that would be.

When it appeared likely that a quorum was about to be established, Metzenbaum requested unanimous consent that the quorum call be rescinded but then immediately again suggested the absence of a quorum, starting the whole roll-call process over

(*Congressional Record* 1981, 16615). Dole then asked unanimous consent that the quorum call be rescinded and asked Metzenbaum if he was prepared to vote, to which Metzenbaum replied "Not at this time" (*Ibid.*). Then the following exchange took place between Dole and Metzenbaum:

> Dole: Maybe later this evening?
>
> Metzenbaum: I do not think today. Not today. There are some others who I know want to be heard and I would not want to deprive them of that opportunity. I am certain that I am not prepared to vote tonight because I want to protect their positions.
>
> Dole: I think you could probably find out their positions.
>
> Metzenbaum: I do not think we should count on voting quite this early. I sent word to some of them to come back to the floor if they want to be heard later tonight. But, I am not too optimistic about the probability of bringing this to a vote this evening.
>
> Dole: Would the Senator from Ohio think that we have covered the amendment after being with it for a couple of hours?
>
> Metzenbaum: I would feel particularly hopeful if the Senator would agree to take it down.
>
> Dole: Then they would reoffer the [nearly identical] Bentsen amendment.
>
> Metzenbaum: Maybe we can prevail on Senator Bentsen not to do that. Would the Senator from Kansas be willing to take this amendment down if the Senator from Texas were not to reoffer this amendment? I am in no position, I might say, to give any assurance of that.
>
> Dole: That thought had not occurred to the Senator from Kansas.
>
> Metzenbaum: It is a good thought.
>
> Dole: I did not want to bring it down this early, and, in fact, not at all. I have no intention of doing that at all. It is based, as the Senator from Kansas indicated, on production response. We believe it would be particularly helpful to the State of Ohio which has about 2 percent of all new production. They would really benefit from having this.
>
> Metzenbaum: Are those not stripper wells in my State? I think 70 percent of those wells are strippers, and they would not be affected unless we had the $30 billion adjustment which had earlier been proposed. That is what I am advised.[26]
>
> Dole: This would apply to stripper oil.

[26] Stripper wells are those that produce an average of less that ten barrels of oil a day.

> Metzenbaum: This would apply to stripper, too? According to Senator Johnston, it does not. I thought this only applied to secondary and tertiary oil.
>
> Dole: It applies to all newly discovered oil whether it is stripper or whatever.
>
> Metzenbaum: Yes, but it does not apply to stripper sells *(sic)*, as such (*Congressional Record* 1981, 16615-16).

Dole and Metzenbaum continued their debate with Metzenbaum attempting to convince Dole to withdraw his amendment which, if he did so, would take Domenici's down with it. Baker notably stayed out of the quarrel. Dole did not wish to withdraw the amendment and once more suggested the absence of a quorum so that he could plan how to deal with the situation.

Dole interrupted the quorum call and proposed an interesting strategy. He wanted to show Metzenbaum the level of support for the amendment. He said:

> Mr. President, I should like to get some movement on this proposal. We have been on it since, I think about 2:30. It seems to me the best way to do that is to move to lay my own amendment on the table and, obviously, vote against it and urge everyone else to do the same. I think we can indicate to the distinguished Senator from Ohio just how much support there is for this outstanding amendment. I now have the floor and I shall make that motion to table, Mr. President. I am prepared to either vote now or tomorrow morning. Mr. President, I move to lay this amendment-I guess it is now the Domenici substitute. Would that encompass both the new oil and the tertiary and heavy oil? That is a parliamentary inquiry, Mr. President.
>
> Presiding Officer: It has been so modified. That would not carry with it the basic amendment of the Senator from Kansas, however.
>
> Dole: Mr. President, I move to lay the first-degree amendment on the table.
>
> Byrd: Mr. President, I ask for the yeas and nays.
>
> Presiding Officer: Is there a sufficient second? There is a sufficient second. [The yeas and nays were ordered] (*Congressional Record* 1981, 16616).[27]

[27] In order to have a recorded vote, a member must request it and one-fifth of Senators present must second the motion for it to be agreed to.

The strategy was for Dole to move to table his amendment and hope a large margin of defeat for the tabling motion would convince Metzenbaum that resistance was futile.

Baker decided to reenter the fight at this point and asked unanimous consent to proceed for two minutes. First, he observed:

> Mr. President, in negotiations with the distinguished minority leader and the Senator from Ohio as well as the distinguished Senator from Kansas and others, it appears that the best way to proceed is to vote on the tabling motion which has now been ordered and the yeas and nays obtained (*Ibid.*).

Baker, still trying to stay one or two steps ahead of the game, then asked unanimous consent for recognition of the two leaders when the Senate convened the next day and that afterwards Thurmond be recognized to speak for not to exceed 15 minutes, and then for Byrd to be recognized for 15 minutes (*Ibid.*). Baker next asked unanimous consent that there be a brief period for the transaction of routine morning business solely for the purpose of statements to be offered by senators to extend to 11:00 a.m.. Allowing only statements would prevent the filing of amendments with the clerk, usually done during morning business.[28] Baker, sensing trouble, was attempting to prevent Metzenbaum and his allies from introducing, during morning business anyway, hundreds of amendments that

[28] Amendments can be brought up in one of two ways. One is to file the amendment with the clerk so that when the sponsor is ready to have it considered, all he or she has to do is to be recognized on the floor and "call" the amendment up. The other way is to be recognized and "send" the amendment to the desk and ask for its immediate consideration. Amendments could still be sent to the desk during regular debate. The agreement in question here, should it be agreed to, would only prevent amendments from being filed with the clerk so that they had to sent to the desk during debate on the bill. Amendments are usually filed with the clerk when some type of germaneness restrictions are, or are about to be, put in place. An example include when cloture has been invoked. Rule XXII allows only amendments that have been filed with the clerk to be considered absent unanimous consent. Thus, Baker was engaging in a strategic action to rob opponents of the opportunity to arm themselves for a filibuster with hundreds or thousands of amendments.

could be used as a basis for a post-cloture filibuster, should cloture be moved and adopted, since any amendments filed with the clerk were entitled to receive a vote even if cloture was invoked. Once the time arrived for a final vote after cloture was invoked, any remaining amendments were not entitled to debate, only a vote. Each vote on an amendment would consume in excess of 15 minutes. The value of this for delaying the Senate was enormous, and Baker wished to foreclose that opportunity.

Consideration of Sterner Measures to Break a Logjam

Baker now was beginning to consider cloture as an alternative resolution to the logjam. He requested unanimous consent that at 11:00 a.m. the following day the vote would occur, without further intervening debate or other action, on the motion to table which Dole had just made. Baker then started to run into trouble:

> Metzenbaum: Reserving the right to object, and I do not intend to object, Mr. President, will the distinguished Senator from Tennessee yield for a question? [Baker does].
>
> Metzenbaum: Am I correct in assuming that those of us concerned with this matter need not be on the floor until the time for the vote on the tabling motion and that our interests will be protected in matters pertaining to the amendment? (Congressional Record 1981, 16616).

With the Domenici second-degree amendment still pending, Baker assured Metzenbaum that under the frame of the order just requested that no business would be transacted prior to the vote on tabling the Dole first-degree amendment. This meant that Metzenbaum would not lose his right to the floor, nor would he have to remain on the floor speaking or

instituting quorum calls. Baker further protected his opponent's parliamentary rights by explicitly adding to the request the proviso "that no transaction take place beyond the recognition of the two leaders, special orders, morning business for statements only, until after the vote on the tabling motion which is contemplated" (*Congressional Record* 1981, 16616).

When the presiding officer asked for objections to Baker's revised request, Metzenbaum still would not consent, even though Baker had gone a great distance toward protecting his rights. Dole, with Baker's request still alive, interjected again:

> Mr. President, reserving the right to object-and I shall not object-I address a question to the majority leader. Will there be an opportunity tomorrow for the Senator from Kansas to tell everybody to vote "no" on my tabling motion?
>
> Baker: Mr. President, knowing the Senator from Kansas and his resourcefulness as I do, I expect that he will find an opportunity.
>
> Dole: Just in case those present now are here, it would be much appreciated if you vote "no." [Laughter.] (*Congressional Record* 1981, 16616).

Baker had not gotten agreement, yet, to a request for a vote on the Domenici or Dole amendments, nor possible tabling motions related to them. They still remained a problem for the leader.

The Potential For a Time-Limitation Agreement

Around this time in the debate, Baker started the process, via informal off-the-floor discussions, of trying to get a major agreement that would assist the Senate in proceeding along a sure course to final action on the bill. If he could get an agreement

specifying the amendments that would be in order, or eligible for consideration, before the vote on final passage and a time limit to go with each amendment, he would have made great progress in precluding further obstruction. As Baker would learn, however, this would be a most difficult task, because he was asking members to give up some of their rights. He still had the Dole and Domenici amendments, and their opposition, to deal with. Baker hinted at what, specifically, he had in mind:

> Mr. President, I thank all Senators. I know this has been a long evening. I see an opportunity to resolve this matter on some basis tomorrow. Let me reiterate that I believe there is a chance we can finish this measure this week. I hope that on tomorrow, the distinguished minority leader and others will be agreeable to sitting down-I believe he has; they have had some preliminary and informal discussions on this subject-to compare our lists on the amendments we know of yet to be disposed of, and try to arrange those amendments in some sequence, perhaps with some time limitations, and gain some insight as to when we might have final passage on this measure (*Congressional Record* 1981, 16616).

After a brief period of routine morning business, Baker recessed the Senate at 10:13 p.m. until the next day, Wednesday, July 22, 1981 at 10:00 a.m. Only three amendments were dealt with on the July 21, each tabled by Dole. Business was beginning to slow considerably.

When the Senate convened the next day, Baker took the floor and gave more details as to what he had in mind to expedite action in the Senate. He also tried to put a little pressure on the Senate by reporting on action in the House of Representatives. Baker addressed the Senate:

> Mr. President, I am pleased to note that the Committee on Ways and Means of the House of Representatives met until the early hours of this morning to complete action on a tax bill in the House of Representatives. I believe that is a hopeful sign that may indeed reignite the flicker of hope that we can finish this session by the first of the month and keep the schedule adopted earlier in the year for the statutory August recess. In that connection, Mr. President, there will be a vote at 11 a.m. today on a Dole tabling motion against the Dole amendment (No. 509) in the first degree. I hope that when this

> issue is acted upon we can get on with the business at hand and complete action on the tax joint resolution here as it will be necessary, of course, to meet with the House of Representatives in conference on this joint resolution (*Congressional Record* 1981, 16849).

Baker then began to outline again a possible unanimous consent request to deal with the numerous amendments expected to be offered:

> As I indicated yesterday, Mr. President, it is my hope that the distinguished minority leader and I, as well as other Senators who are interested, could today actively explore the possibility of one of several possible unanimous-consent agreements to expedite the passage of this measure. I especially wish to examine the possibility of establishing by unanimous consent the number of amendments yet to be dealt with and the sequence. I have such a list on this side of the aisle, and I hope we will have an opportunity to explore that possibility this morning. I hope, in the same connection, that we may be able to establish time limitations on the amendments remaining to be disposed of. I optimistically express the hope that they will be very short-time limitations except in the few instances where major issues are yet to be resolved by this body (*Ibid.*).

Baker then turned to the Senate schedule and a target for completing action:

> So, Mr. President, I think that by the action of the House of Representatives last evening and this morning in ordering the bill reported or at least completing work in order to prepare for that final vote today and by good progress, that I hope and trust the Senate will make on the tax joint resolution here, with our efforts to design unanimous-consent agreements in respect to the amendments to be dealt with, the manner in which they are dealt with, and the time in which they are dealt with, that the Senate can complete action on the tax joint resolution by Friday. If we do that, Mr. President, I think there is some chance, at least perhaps even a good chance, that the House of Representatives and the Senate could complete action on the tax bill and complete the conference process in time for the August recess to begin late on the evening of July 31 or the early morning of August 1 (*Ibid.*).[29]

[29] The conference process refers to the fact that bills must be passed by the House and Senate in identical form in order to become law. If the two Houses pass versions that are not identical, some reconciliation of the differences must occur before the bill can be sent to the President for signature. This is usually done in a conference committee. The committee works out the differences, and must focus only on the differences, and reports the bills back to the respective Houses for an up-or-down vote (no amendments are allowed at that point). Bills reported from a conference committee back to the either House are known as conference reports.

In order to reach the Friday target, Baker would need the agreement alluded to in his comments above. He was not prepared as yet, however, to seek the agreement in specific terms.

The next order of business was the vote on Dole's motion to table his own amendment. Recall that Dole hoped that this motion would be defeated by a large margin so as to convince Metzenbaum that his opposition was futile and that he had little support. Dole's motion did fail but not by the margin that Dole had hoped. The vote was 47-49, no doubt giving encouragement to Metzenbaum. Baker, concerned that obstruction would produce a backlog of amendments, in characteristic fashion of not wishing to intrude on a bill manager's prerogatives, took the floor again to encourage the interested parties to work out a deal. However, Baker coupled that encouragement with yet another clear threat:

> Mr. President, the Senate was closely divided on this issue. I would not presume to advise the adversaries on this measure how they should proceed next. I simply reiterate what I have said before: We have to finish this bill and we have to find a way to do it. Mr. President, I assume for the moment that debate will continue on the second-degree Domenici amendment to the Dole amendment (*Congressional Record* 1981, 16857).

Baker went further to put pressure on the Senate:

> I would urge that Senators consider every hour that goes by and every day that goes by reduces the prospect that we can finish this bill in time to get it through conference and to obtain our recess goal of July 31. I wish to repeat to the Members of the Senate that, notwithstanding statements from the White House and the Speaker of the House, I have never subscribed to the ideal that we must go until August 7. *I continue to believe we can finish our work by August 1, or by the evening of July 31. Unless we get on with the business of the Senate-and the business of the Senate at the moment is the completion of the tax bill-then I have to confess that commitment is receding in prospect* (*Ibid.;* Emphasis added).

Baker again raised the prospect of a UCA to put the Senate on a timely and orderly course:

> Mr. President, what I hope we can do at this point is to continue the debate, if that is the wish of Senators, on the pending question. I would like to explore with my counterpart, the distinguished minority leader, the prospect for ordering and arranging amendments in time for the consideration of the remaining amendments on this bill. If we can do that, then I think we will make good progress. If we cannot, we will be stuck on this for the moment. So, I shall not make any further effort at this time to end debate on this amendment. I would expect that, within the next little while, we could have some further statements made, or at least I hope so. But, for the moment, Mr. President, I have no further recommendation to make (*Ibid.*).

The Minority Leader Weighs In To Help Move the Bill

Byrd then assisted Baker in urging swifter action by the Senate. Byrd, unlike Baker, took a position on what the next step ought to be by suggesting to Dole that his amendment should be taken down, thus siding with Metzenbaum on procedure if not substance. Byrd offered this option:

> *First let me say, Mr. President, that, with all due respect to the majority leader and those who are supporting this amendment, we will not finish our work on this tax bill by August 1, or even by August 15, if the pending amendment stays before the Senate.* I will not argue the merits or demerits of the amendment at this point. But I hope that the proponents of the amendment will decide to take it down, because this is not the way to expedite the work of the Senate on this tax bill. There will be a prolonged debate on this amendment.... So I suggest that this battle be delayed until another time and that we get on with action on the tax bill and forget about this amendment for the time being (*Congressional Record* 1981, 16857-58; emphasis added).

Byrd also announced his willingness to cooperate with Baker in putting the Senate on an orderly course:

> Mr. President, it is my intention to submit to the majority leader the amendments that Senators have on this side of the aisle. I am going to propose-and I want my colleagues on this side of the aisle to hear this: the distinguished majority leader and I have discussed this, so I think we pretty well agree that this might be a good approach-I am going to propose to my colleagues here that I give to the majority leader a list of our amendments. He will then indicate the identity of the amendments and the authors of such amendments on that side of the aisle so that there will be no surprises....This will enable the Senate to complete its action before the House measure gets over to the Senate, and the majority leader will be assured of our completing our business. He is entitled to that assurance (*Ibid.*).

Byrd then went on to affirm Baker's offer of a reward should members be cooperative:

> I, for one, want to see action completed on this bill. It seems to me if we do that, we can, I hope avoid a Saturday session and be assured that the bill will be acted upon. With everybody knowing what is coming by way of amendments, everybody will be prepared. We can sequence the amendments, and we will then proceed in an orderly way. If I do not hear objection from my side of the aisle, this will be my proposal to the majority leader. I yield the floor (*Ibid.*).

Byrd was trying to do a number of things with these remarks, including playing a role in trying to move the Senate by offering a list of Democratic amendments to be included in a unanimous consent request. The most important of Byrd's goals was probably to assign blame to the proponents of the pending amendment for holding up the Senate. This is not surprising, since the amendment had a Republican sponsor and the primary opponent was a member of the Democratic party. Additionally, Byrd was indicating his willingness, apparently developed in negotiations with Baker behind the scenes, to accept an agreement that would make in order only amendments on the two

leaders' lists. Baker, following Byrd's remarks, rejected the assignment of blame to the proponents of the amendment for any resulting delay. Baker also took the opportunity to renew his threat:

> Mr. President, I cannot say that I am put off with the idea that we may have a filibuster on this amendment or that passage of this amendment may jeopardize our recess time. I am not so wedded to July 31 or August 1 that I would not stand here as a matter of principle. I am prepared to say that if that has to be, that has to be. But I do not wish it. In the meantime, Mr. President, we will continue with the debate on this amendment. I will retire now with the minority leader, if he will agree, and we will consider these several elements of the matters we have discussed. Perhaps we can even find a way to liquidate the pending amendment while we agree on the other issues as part of that larger package. Mr. President, if we cannot, we may be seeing the termination of our expectation of a recess after July 31 (*Congressional Record* 1981, 16858).

What is of interest here is the fact that Baker was unwilling to apply pressure to his fellow partisan to take down the amendment. That decision would be left to Dole. Nor did he attempt to invoke cloture, which was still an option available to him. He at least considered it and prepared for it by permitting only speeches during an earlier period of routine morning business. Metzenbaum had made it clear that he intended to prevent a vote if he could, so Baker was not under the illusion that benign extended debate was taking place that would expire eventually.

Debate continued that produced some bitter remarks about the Dole amendment and a rather hostile exchange between Dole and Senator Joe Biden (D-DE) (*Congressional Record* 1981, 16859). Afterwards, Baker rejoined the fray to announce a temporary resolution. After consultations with the managers of the bill on both sides and the minority leader, "It is agreed that the best course to pursue at this moment would be to temporarily lay aside the pending amendment and proceed to the consideration of the so-

called Hollings-Bradley amendment" (*Congressional Record* 1981, 16860). Debate on the Hollings-Bradley amendment would carry the Senate to recess for that day. Little other business, aside from negotiation related to disposition of the Dole amendment, the vote to table the Dole amendment, and a vote to reject the Hollings-Bradley amendment to limit the size of the tax rate cut and target it to middle income taxpayers, was dealt with that day. Dole, by setting aside his amendment, was prepared to give up the fight temporarily, but not without trying to salvage something of his amendment as will become clear in the next chapter.

Lessons Learned

The debate to this point was a long and rancorous one. This chapter demonstrates the difficulty in moving a complex bill through the Senate, especially a bill that will change the direction of policy. Any bill that proposes to do that can expect bitter and partisan fights. The basic purpose of this chapter, and the next one as well, is to demonstrate that internal resources, that is resources inherent in the abilities of the majority leader (i.e. persuasion) do exist and can be used effectively to control conflict and move a bill. Leadership resources do exist, and the current literature on congressional leadership generally minimizes their importance. Thus far, Baker was willing to use ego-stroking, praise, rewards, threats, and appeals to bipartisanship. He had used them to clear a number of hurdles. With these resources Baker moved the bill a good distance toward passage, even if he was not satisfied with the pace of activity. Baker did, however, show

his ability to control the legislative, situational, and institutional context by intervening when appropriate, through ego-stroking, deferential leadership, and, at times, standing his ground when his prerogatives were challenged, all without engendering any serious ill-will on the part of opponents.

The point has not been reached at which the existence and usefulness of persuasive resources is firmly established. From what had occurred up to now, one may get the impression that Baker was failing to get senators to the floor to offer their amendments in a manner that would keep the Senate moving and preserve precious debate time. Baker had yet to face an all-out filibuster attempt on the tax bill which he will later have to do. It will be when Baker actually began to attempt forcefully to forge a unanimous consent agreement that would place restrictions on members' parliamentary rights that his leadership skills were tested most severely. This is the subject of the next chapter. It begins with the initial attempts at obtaining unanimous consent for such an agreement. A new element will be added to Baker's rhetorical and persuasive repertoire, however. Baker will add the use of "shame" as a tactical device.

Chapter Four

The Second Phase: Getting to a Final Vote

This chapter discusses the progress of the 1981 tax bill after the majority leader developed a feel for the issues and the dispositions of the players involved. It begins with Baker's negotiation of a unanimous consent agreement to set a time for a vote on final passage and to list the amendments that could be brought up before then. It would be his first attempt to forge a major agreement, an ad hoc rule, to govern debate on the tax bill. The discussion then moves to how Baker went about holding the agreement together and steps taken to enforce it. That might not seem to be a difficult job since, once obtained, Baker could lodge his own objections to attempts to change the agreement. He would not do that, however, except in situations where he felt that changing the agreement would harm the momentum of the process or the ability to get to the up-or-down vote in a reasonable period of time. At other times, he would not consent to changes because of the objections of other members. Baker, as it turned out, would have to deal with numerous attempts at getting amendments into the agreement after it initially took effect. Staying with a neo-institutional context, he was in better control of the situation and better able to obtain the institutional objective of keeping the Senate moving once the agreement went into effect. Baker also had to deal with some other minor obstacles that threatened to become major obstructions. Baker had to monitor the floor situation continually to make sure that minor disagreements did not escalate into Senate-halting behavior.

Although he headed off these particular threats quite effectively, their discussion will set the stage for the following chapter. Before a return to the tax bill, however, some conceptual house-cleaning is in order.

Persuasion and Unanimous Consent

Strategies of persuasion are crucial, particularly in the negotiation of unanimous consent agreements, especially ones to establish a time-certain for a vote on final passage or to specify the amendments that can be offered. At times a majority leader must modify his request simply because the consent of every member is required. Any member can use his consent, or the withholding of it, as bargaining leverage to influence unanimous consent agreements. If objection occurs, there is only one strategy available to the leader: modify the proposed agreement to satisfy the objector. But the negotiation of the agreement is only half the story. Once an agreement is in place some problems are solved, the most vexing of which is uncertainty. However, as Baker would discover during the remaining debate on the 1981 tax measure, he had to exercise constant vigilence to keep the train on track. Senators still wanted to offer amendments that were not included in the parent agreement.

Baker and Unanimous Consent

There are two basic types of unanimous consent agreements. The first type is the simple UCA that allows a member to insert an article or remarks into the record or takes care of other simple or routine matters. The second type is the complex agreement that incorporates several elements. It may include, for example, a specification of the date on which a measure will be taken up (if negotiated before hand), the amendments to be in order, a limit on the time allowed for debate on amendments and final passage, and a time for the final vote.

The history of the complex unanimous consent request (UCR) remains somewhat cloudy. Floyd Riddick, former Senate parliamentarian, traced the complex UCR back to 1907 (Riddick 1973, 855), while Walter Oleszek found use of the device in 1846 (Oleszek 1976, 2). In any case, complex UCAs were not as common in years past as they are in the contemporary Senate (Keith 1977, 157). Today they are used frequently as a means for putting the Senate floor on a smooth course and minimizing uncertainty.

Values that are essential for the negotiation of unanimous consent include a sense of complete fairness and courtesy (Keith 1977, 149). Since the consent of every member is required, fairness may be inherent. Fairness and courtesy for all members usually comes in the form of making the request orally (though it is also usually available in writing and published in various places) and notifying absent members of the pending request, thus providing opportunities for them to be heard and even to object. The Daily Calendar

keeps members fully informed of pending requests and those that have been entered into.

A struggle which occurred on the Senate floor in 1913 between Tennessee Senator Newell Sanders (D-TN) and Senator Reed Smoot (R-UT) over a bill that would prohibit interstate commerce in liquors makes the point nicely. Sanders attempted to gain unanimous consent on three occasions over several days to set a time for a final vote on the bill. On January 10 he made his fourth attempt, but he did not offer it with the words "Mr. President, I ask unanimous consent...." Rather, he stated, "Mr. President, I submit the following." As a result of the phrasing, the presiding officer's request for objection caught Smoot with his guard down because he was engaged in conversation with another member, and he did not respond. Smoot was on the floor at the specific request of a few other members to object to an agreement that would have the effect of setting a time for final vote on the bill. When he realized that an agreement had been entered into, he arose and initiated a two day debate on the issue of fairness and the rules as they related to resubmitting a unanimous consent request (Keith 1977, 150). Since then, all members submitting UCRs generally have kept fairness and courtesy in mind when requesting unanimous consent, particularly party leaders.

Members of the Senate must balance protecting their right to object with their fear of being labeled an obstructionist in their response to unanimous consent requests. In debate on the 1981 tax bill and in other situations examined here, it was important for members, even those engaged in a filibuster, to paint their actions as not being obstructionist in character. This is because once senators acquire that label they are usually punished, if only informally, by other members.

Around 1950, propounding complex UCAs became the responsibility of party leaders (Keith 1977, 150). Patterns in the use of unanimous consent show that by 1975 nearly every complex UCA was negotiated by leaders before the related measure reached the floor (Keith 1977, 159). Byrd as majority leader kept to this practice. Baker, however, did not. Often debate would begin on a measure and would proceed for some time before he would intercede and try to regulate the proceedings via propounding an ad hoc rule. This undoubtedly caused him some problems. Baker had more difficulty in gaining unanimous consent for time-limitation requests than did his predecessors (Smith 1989b, 108). Part of the reason had to do with Baker's style of leadership, and part of the reason had to do with Byrd's use, as minority leader, of the "hotline" to keep Democratic members informed of unanimous consent requests being forged propounded on the floor to insure that all minority members consented. Baker relied more on informal communications. He also relied on his and committee staff to prepare most of his UCRs. Byrd, after having initiated communication with his party's members, would then faithfully voice the objection of any member who had problems with the proposed agreement. As a result of his style, Baker was forced to deal with more protracted negotiations over agreements and less frequently obtained consent for the agreements at early stages of floor debate than did his predecessor (Smith 1989b, 108-9).

According to Steven S. Smith:

> Baker was exceptionally open and accommodating to the requests of his colleagues, particularly fellow Republicans, for protective provisions in unanimous consent agreements. For example, Republicans were allowed to reserve spots for their amendments without identifying what their amendments were about. Such 'blank' amendments preserved senators' amending opportunities without losing flexibility to determine their specific form, or even their subject matter in some cases. Baker was

> dependent upon his staff to prepare most agreements; they would routinely incorporate individual senators' concerns in most situations (Smith 1989b, 108-9).

Baker's successor, Robert Dole, was more willing to challenge colleagues to object to unanimous consent requests and also, at least implicitly, to threaten retaliation (*Ibid.*, 109). Baker was not immune from using threats himself, but they were rare and generally did not include threats of retaliation so much as threats not to accommodate a member, for example, in regard to travel plans, by withholding roll-call votes until the member returned to Washington. Baker's most frequently employed threat was to keep the Senate late or over a weekend. But even Baker's harshest threats were comparatively mild and not mean-spirited.

Negotiating Unanimous Consent on the Tax Bill

Returning to the specifics of the tax bill, at the end of the last chapter, it was reported that Baker had hinted that an agreement was going to be attempted that might put aside the pending amendment that was the cause of controversy and delay, that being a Dole windfall profits tax reduction amendment. The date at this point is July 22, and with the Dole amendment still pending (along with a second-degree amendment to that offered by Domenici), Baker announced to the Senate that an agreement was being negotiated off the floor related to the contentious amendment, and that it would also arrange for final disposition of the bill, Baker's basic goal. The leader outlined the effects of the proposal should it be agreed to:

> Mr. President, if I may have the attention of the Senators. I intend in a moment to offer a unanimous-consent request that has been worked out by many Senators, and it will provide for final disposition of this measure. I ask Senators to give me their attention

> while I propound this request. Before I do, Mr. President, let me say that if this request is granted, two things will occur that the Senate should be aware of as it considers the request. The first is that the pending amendment by the distinguished Senator from Kansas and the second-degree amendment to it by the distinguished Senator from New Mexico will be withdrawn, assuming that the unanimous-consent request is granted.... Mr. President, I repeat: If the request I am about to make is granted, it is my understanding that the Senator from Kansas will ask unanimous consent to withdraw his underlying first-degree amendment, which will take with it the second-degree amendment of the Senator from New Mexico. Since the request I am about to make provides for a time certain for reaching third reading of this measure, *I will propose, after the granting of the request, to vitiate the order for the Senate to convene on Saturday* (*Congressional Record* 1981, 16891-92; emphasis added).

Then Baker began the process of seeking unanimous consent:

> With those two matters, I should like to make the request: Mr. President, I ask unanimous consent that the following time limitations be ordered with respect to certain amendments to the committee amendment on House Joint Resolution 266: 30 minutes on each amendment, equally divided, to be controlled as to time in the usual form, except for those amendments contained in the attached list, consisting of 92 amendments. I may say, parenthetically, that on that list are a number of amendments on which there are 1-hour limitations, equally divided; and in some cases, notations that no time is requested at all or no roll-call will be required. I further ask unanimous consent that a time limitation of 6 hours be imposed on the bill, that this agreement be in the usual form as to the division of time (*Ibid.*).

So as to avoid any misunderstandings, Baker restated the effects of the request for members to consider:

> Parenthetically, once more, the 6 hours will be under the control, under this formulation, of the distinguished chairman of the committee and the distinguished ranking minority member. They would have 3 hours each. They could yield time on any other amendment from the bill, by this provision. They will have the time under their control for whatever purpose they wish. I further ask unanimous consent that these first-degree amendments which are listed and the committee substitute as amended be the only amendments in order on this bill; that following the disposition thereof the bill be taken through the stage of third reading, with third reading to occur no later than 4 p.m. on Wednesday, July 29, 1981, to the exclusion of further debate, but not to the consideration of these amendments; that no further debate, point of order, or appeal in regard to the joint resolution be in order thereafter; that the joint resolution then be returned to the calendar, and that no motion in respect thereto be in order except for a nondebatable motion to proceed to its consideration (*Ibid.*).

Baker then clarified the agreement once more for good measure:

> Mr. President, before the Chair puts the request, let me say that the net effect of this is as follows: First, we will now know what amendments are to be dealt with to the exclusion of every other amendment. Second, there will be no second-degree amendments, only first-degree amendments, as shown on the list attached to the request, which I will supply to the clerk. Third, time limitations will be imposed according to the list, and in the absence of a notation on the list, a time limitation of 30 minutes, to be equally divided, shall apply. Next, that we will reach third reading on this joint resolution not later than 4 p.m. on Wednesday, July 29; that at that time, if we have not disposed of the amendments which are listed under this formulation, Senators will be entitled to call up those amendments for votes, notwithstanding the 4 p.m. time, as has been the case and the practice of the Senate in previous situations. Mr. President, it also means that we would not proceed to final passage of this joint resolution but, rather, to third reading. It is fully anticipated that if we do this and if the House acts as I expect it to and sends us a House-passed measure, we will meet (sic) that bill in the usual form and move to amend or accept that bill, as the Senate has done previously under the rules, and perhaps ask for a conference and appoint conferees (*Ibid.*).[1]

With these remarks, Baker offered a reward for cooperation (to vitiate the Saturday session), proposed to eliminate second-degree amendments, specified the amendments which would be in order, and have Dole withdraw his contentious amendment, the original windfall profits tax reduction amendment, and the Domenici second-degree amendment to it. Once the bill reached third reading, then no further debate would be in order should the agreement be accepted by the Senate.[2]

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[1] The reason for placing this quite lengthy unanimous consent request in the narrative is to show how complex requests can get and also to provide a reference to the original request, because this agreement will not be accepted as is. Negotiation, and plenty of it, would be necessary before Baker would get the consent of all his colleagues. Even then, however, members will make additional demands. The agreement that Baker eventually got is in Appendix C.

[2] When no member is seeking recognition for the purpose of offering an amendment and no amendment is pending, the chair will order third reading of the bill. This closes off the amending process and precedes final passage of the bill (Tiefer 1989, 643). Usually, the majority leader requests unanimous consent to go to third reading.

Baker described the effect of the agreement three times so that no one could claim mistreatment or misunderstanding. If Baker could get this agreement, he would have assured relatively smooth floor management for the rest of the debate on the tax measure. Or so he thought. As he would discover, however, it is difficult to get members to waive their parliamentary rights, which is what they would be doing if they agreed to the request.

Accommodating Objections

The first obstacle Baker had to overcome was raised by the minority bill manager. Russell Long began the negotiation phase of the process by reserving the right to object to the request in order to inquire if his name was on the list. Long had an amendment at the desk and wanted to make sure he was not left out. Baker replied, "That is off to a bad start, Mr. President, because I have the Democratic list here, and I do not observe the name of the distinguished Senator from Louisiana" (*Congressional Record* 1981, 16892). Long then asked Baker to add his name so that his amendment could be offered. Baker did not want to challenge Long to object and added Long's amendment to the list.

Kennedy then reserved the right to object and wanted clarification as to whether there were any further amendments, once the Dole and Domenici amendments were taken down, that would reduce the windfall profits tax. He did not want any amendments to be in order that would have that effect. Before Kennedy's question could be addressed by Baker, Bennett Johnston (D-LA) reserved the right to object, wanting to know if, after

disposition of the bill, the pending business would be his cloture motion on an amendment he offered to the Department of Justice (DOJ) authorization bill.[3] Johnston was seeking to protect his parliamentary rights on his amendment to the DOJ authorization bill which was also being filibustered.[4] Thus, an agreement on one bill can be held hostage to procedural understandings on another. Baker assured Johnston that it was his understanding that Johnston's cloture motion would be the pending business after disposition of the tax bill. Unsatisfied with Baker's assurances, Johnston asked Baker to make that a part of his UCR. Baker replied, "I am not trying to pull any fast and fancy footwork on this. I really do not think that [it] is necessary....I do not want to get into the cloture proceeding and get cloture and be locked out of the final passage of the tax joint resolution" (*Congressional Record* 1981, 16893).[5]

Baker then suggested that the Senate agree to the proposition that when and if DOJ became the pending business, it could be laid aside on a motion by him, after consultation with the minority leader, so that they could come back to the tax measure without being locked out of passing the tax bill until after disposition of the DOJ authorization bill. This was acceptable to Johnston. All he wanted was to go to his cloture motion on DOJ immediately after third reading of the tax bill when everyone likely would be present.

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[3] Department of Justice authorization was being considered by the Senate at about the same time as the tax measure. It is common for the Senate to skip around and deal with different measures rather than deal with one bill at a time.

[4] Johnston could not offer his cloture motion unless the DOJ bill was the pending business.

[5] Rule XXII asserts that when cloture has been invoked, the Senate must remain on the "clotured" item until final disposition. Only unanimous consent can get around this, and Baker did not want to take that chance.

Senator Spark Matsunaga (D-HI) reserved the right to object but only to inform Baker that there were 92 amendments, averaging thirty minutes each and some up to an hour, with roll-calls on at least 45 of them. This would mean 245 minutes would be added, increasing the time needed to 60 hours. If the Senate worked 10 hour days, Matsunaga said, with only 5 days remaining, the Senate would not be able to vote at 4 p.m. Wednesday as the agreement required. Baker then revealed his plans for dealing with the situation:

> Mr. President, the Senator from Hawaii is, of course, correct and underlying the request is the implication and suggestion that if we are going to finish and still have time to debate these amendments, some of these amendments are going to have to be withdrawn and not offered. It is my personal estimate that a great number of the 92 amendments will never see the light of day. They will not be called up and offered. I obviously cannot say how many, but I know of several that will not be offered. I expect there will be a great number that will not be called up as we proceed with debate on this joint resolution (*Congressional Record* 1981, 16893).

Upon further inquiry, Baker informed Matsunaga that should amendments still be pending at 4:00 p.m. Wednesday, the Senate would proceed to consider the remaining amendments but without further debate, notwithstanding time allotted in the agreement. Continuing, he noted, "Mathematically and theoretically we are building a trap for ourselves, but I do not believe we are and I think it will work as a practical matter" (*Congressional Record* 1981, 16893).[6] Matsunaga then asked if Dole would determine which amendments come first, and Baker responded that he tried to get a sequence into the unanimous consent request but "difficulties" arose. He went on to say, however,

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[6] The mathematical and theoretical trap that Baker is referring to is a crunch of amendments once time ran out. Those who have not offered their amendments by that time will lose their time to debate the merits of their amendments. Baker will later refer to this as "the great amendment stampede" (*Congressional Record* 1981, 17048).

> [I]t is my full intention and, I am sure, the intention of the distinguished managers of the bill and the minority leader to try to accommodate the convenience of Members on both sides by arranging a sequence of amendments to be considered from time to time. I hope we can always have a backlog of a half-dozen amendments that we know in advance would be dealt with next (*Congressional Record* 1981, 16893).

Baker intended to do what he could to reduce the number of amendments and to reduce the time needed for debate via additional unanimous consent agreements as the Senate proceeded toward third reading. With these assurances Matsunaga withdrew his reservation and another obstacle to the agreement was eliminated (*Ibid.*).

Heinz took the floor to reserve the right to object and inquired if the 92 or so amendments would be considered germane and not vulnerable to a point of order. Dole, Byrd, and Baker asserted that this should not be a problem. Heinz consequently did not object to the agreement (*Ibid.*).

In the Senate, word about what is happening on the floor flows in a steady stream to the offices of senators and to committee rooms. Reactions to Baker's negotiations from off the floor began to be heard. Baker noted at this point:

> Now, Mr. President, let me say to the distinguished Senator from Louisiana that one of the many blessings of electronic legislation is that people listen when they are in their offices and away from the floor. Since we began this colloquy I have had at least one Senator and, perhaps, others by now, who have indicated they would not be willing to agree to a consent order that we proceed to the consideration of DOJ after third reading and final disposition (*Congressional Record* 1981, 16894).

Baker's assurances to Johnston began to crumble. He then explained why he after all would not be able to accommodate the senator from Louisiana in his request:

> Let me urge the Senator from Louisiana, however, to consider not objecting to this request and I will reiterate the assurance I gave him before, and that is after we do the tax bill and the reconciliation conference report or between those two, if there is time

> available for that, DOJ will recur, and I will make my best efforts to see that it does recur. But to change this agreement at this time to say it will recur after third reading, before final passage, at least would be objected to by at least one Senator, and I would not be prepared to agree to it at this time (*Ibid.*).

Thus, Baker declined the opportunity to engage in modification of the agreement. Either way, there would be objection and Baker felt he could accommodate Johnston in a manner while accommodating senators opposed to his DOJ agenda.

Illustrating the fluidity of Senate floor proceedings and the potential for rapidly changing circumstances, within a few minutes, and after further parliamentary inquiry by Johnston, Baker reported that the senator who indicated he would object to an agreement that committed the Senate to proceed to a cloture vote on DOJ had withdrawn his objection, so long as the Senate only proceeded to the cloture vote and not debate, and that nothing was done to prevent the Senate from going back to the tax bill or the reconciliation conference report. Baker indicated that he would try to put language in the agreement to accomplish all of that. Johnston said that was acceptable to him (*Congressional Record* 1981, 16894).

Matsunaga then again reserved the right to object and inquired if Baker would be amenable to a modification of the unanimous consent request allowing a five minute time limitation equally divided for the amendments now on the list which the Senate did not reach by 4:00 p.m. Wednesday (*Ibid.*). Prior to this request, no time was set aside for such purposes but the Senate, under the rules, would go to an immediate vote on any remaining amendments once the deadline had expired for a vote on final passage, as Baker had explained previously. Baker saw an opportunity at this suggestion and made a

counter-offer to add that particular request by Matsunaga to the list along with a provision to move the vote up one hour from 4:00 to 3:00 p.m. Baker used the opportunity to offer a "reward" for senators, Matsunaga specifically, to go along with this request. Baker also included a provision that in a stacking of votes on amendments, if provided for in an agreement, there be a fifteen minute roll-call on the first vote and ten minute roll-calls on the others (*Congressional Record* 1981, 16894).[7] Baker, was trying to inch the Senate closer to the vote on final passage by saving a few minutes here and there.

Further Negotiations

The Senate typically conducts its business in a slow grind, and a majority leader has to make small agreements when he can that will move the Senate forward. Negotiating a complex agreement of fairly broad scope is quite difficult. Even though Baker was trying to put together a rather large parent agreement to carry the Senate to final passage, he knew that he had to negotiate "mini-unanimous consent agreements" in order to maintain movement. This point was illustrated when Packwood took the floor on behalf of Roth who wanted a railroad rolling-stock amendment added to the list. Dole then asked to have a Rudy Boschwitz (R-MN) amendment added to the list. Baker said he would incorporate them into the agreement (*Congressional Record* 1981, 16895).

[7] Stacking means that after debate on several amendments, they are voted on in order without further debate.

Baker then brought into the request some additional provisions that he wanted. Specifically, Baker wanted to provide that a call for the regular order would not bring back the DOJ bill, notwithstanding the provisions of the agreement. He did not want to get stuck on DOJ, but instead wanted the flexibility to deal with the tax bill as it was a major presidential initiative that needed to be disposed of before the August recess. A potential problem was that Baker did not specify that he could only bring back the tax bill or a reconciliation bill. If allowed to call up any bill simply by a motion offered by him, this would represent a significant power for a majority leader for which there was no precedent. Byrd, always on guard for the minority, was unwilling to allow this. He had developed the habit of critically scrutinizing Baker's unanimous consent requests and often suggested clarifications or more appropriate terminology (Smith 1989b, 108). He caused Baker to alter the proposal to deny himself the discretion to proceed, by a potential motion, to consideration of anything other than the reconciliation bill or the tax bill (*Ibid.)*.

It should be recalled at this point that a motion to proceed to consideration is how bills are sometimes called up in the Senate, absent unanimous consent that would place a measure before the Senate, and motions to proceed are debatable. If Baker could circumvent this process by simply putting a measure before the Senate without a unanimous consent request or a motion to proceed, he could prevent an opportunity to filibuster on the motion to proceed. This points out the significance of Byrd's actions to protect the minority.

In what was beginning to become a pattern, Packwood asked if Metzenbaum's amendment related to day care was on the Democratic list, and Byrd indicated that it was.

The senator from Oregon then requested unanimous consent to allow a second-degree amendment to that amendment if it was offered. Baker, sensing the agreement getting away from him, took the floor to urge Packwood not to make this request because second-degree amendments were precluded by the pending request and suggested that Packwood offer it as a first-degree amendment. Packwood seemed to want to attach a strategic, or weakening, amendment to Metzenbaum's. However, Packwood agreed to Baker's suggestion to put his amendment on the list as one of the first-degree and with a ten minute time limitation (*Congressional Record* 1981, 16895).

Dole, seemingly frustrated, then said that he hoped this would be the final reservation so that he could withdraw his pending amendment and send another, per the agreement, to the desk that phased in the windfall profits tax reduction at 25 percent in 1982, 20 percent in 1983, and 15 percent in 1984. Kennedy intervened at this point and illustrated another aspect of the politics of unanimous consent requests. He attempted to use the threat of objection to the agreement to secure substantive changes in Dole's amendment. The senator from Massachusetts said that he did not want to interfere with Baker's request but expressed concern about revenue losses he calculated would result from Dole's amendment. He wanted to consult briefly with Dole and eventually took the position that he would have no objection to moving the 25 percent drop up one year to 1982 if the other figures were altered in such a way so that there would be no subsequent revenue loss. Baker then tried to remove this new obstacle.

> Mr. President, a great deal of work and effort has gone into this request. I really hope that it will not founder on this element. This is not even a part of the unanimous-consent request. The request was predicated on a statement by me that if it is granted the Senator from Kansas would withdraw his amendment. I have to say I do not know anything

about the substance of this. I have not discussed it with anyone. But I would hope we could go ahead with this request: that the Senator from Kansas would withdraw his amendment. Then, of course, the Senator can offer an amendment, as the list provides (*Congressional Record* 1981, 16895-96).

Dole then informed Baker that according to his list, he would not have the right to offer the amendment that concerned Kennedy. Baker was taken by surprise and suggested the absence of a quorum so that he could discuss the situation with Dole and other senators. Baker apparently wanted this amendment on the Republican list. Other amendments were still being nominated for inclusion, and during the negotiations between Baker and Dole, Senator Charles Percy (R-IL) took the floor to urge the Finance Committee to offer an amendment to incorporate a transition rule into the bill. Prospects were not looking good for an agreement.

Potential Resolution

Dole returned to the floor to inform the Senate that the informal negotiations on windfall profits had produced a resolution. The rate would be 27.5 percent in 1982, 25 percent in 1983, 22.5 percent in 1984, 20 percent in 1985, and 15 percent in 1986 (*Congressional Record* 1981, 16907). Baker restated the request to make sure everyone was working off the same page. He then asked Byrd if he had any reformulations to the request, and a brief discussion took place as to when the pending Dole amendment would be taken down. According to the UCR, it did not have to be taken down until third

reading of the bill unless there was some other understanding. Dole indicated his amendment would be taken down immediately after Baker's request was agreed to and that he understood Byrd's concerns and assured Byrd that his word was good. Byrd then wanted to know what assurance Baker could give that the bill would remain before the Senate until final action after third reading, tentatively set for the following Wednesday, and that it would not be set aside for another. Baker assured Byrd and said that he even was willing to amend the order in that respect if Byrd wished. Furthermore, Baker gave his "personal assurance" that his intention was to proceed to third reading on this measure and not displace it with another except by unanimous consent. Byrd replied:

> Mr. President, the majority leader's word is good enough for me. I just want to make sure every opportunity is given to Senators whose amendments are enumerated to call up those amendments before the hour of 3 o'clock is reached next Wednesday. Mr. President, can the two managers of the measure assure the Senate that sessions will be fairly lengthy during the interim? (*Congressional Record* 1981, 16908).

The underlying reason for the concern expressed by Byrd was protection of the rights of the minority to have amendments considered and to get adequate debate time. Since a time-certain for the vote on final passage would be established by the agreement, Byrd wanted to make sure that laying this measure aside and moving on to other measures would not be a tactic used by the majority leader or the bill manager as a means for preventing minority amendments from being considered. Essentially, this was Byrd doing his job as minority leader. In response, Baker expressed the hope that the bill managers would stay late that night (notice Baker's typical deference to bill managers) so as to slice into the ninety-two or so amendments now on the agenda.

Byrd also exercised leadership responsibility for protecting his side of the aisle by stating, "I hope that-and I am attempting to protect members who have amendments, certainly those on my side of the aisle-they will be prepared to call those amendments up in a timely fashion so they will be able to get the time that is allotted to include them under the order" (*Congressional Record* 1981, 16908). Baker joined Byrd in these sentiments.

Just when Baker thought he had his agreement, Byrd rose again, as this particular parliamentary wizard was prone to do, to reserve the right to object in order to clarify a point. It related to a power given to Baker by the agreement, which Byrd asserted he would not otherwise have. Baker now found himself stuck between Johnston's insistence that once the bill was disposed of, the cloture motion on his amendment to the DOJ bill would be the pending business as part of Baker's UCR, and Byrd's concern about provisions in the agreement that in the event cloture was invoked on the Johnston amendment, Baker could then move to take up the House or Senate tax bills, certain conference reports, and one appropriation bill. It was the provision related to tax legislation that particularly concerned Byrd. Ordinarily Baker would not have the right to unilaterally put before the Senate the House tax bill still pending there, if it moved to the Senate. Baker was concerned that if cloture were invoked on the Johnston amendment, the DOJ bill must remain the pending business for the 100 hours of available post-cloture debate time. Byrd asserted that he did not want to obstruct, but he did not want to accede to the request giving Baker the ability to proceed unilaterally to the House tax bill in the event cloture was invoked on Johnston's amendment *Congressional Record* 1981, 16908). Byrd was not saying that he would object to a request to go to that bill, but he

did not want to waive the right on the part of the minority or of any senator to debate the merits of proceeding to its consideration.

Those who knew Byrd knew of his mastery of the rules and of Senate procedure, as well as his adamant refusal to have the Senate stray from them. But those who knew Baker also knew that he also did not like to stray either, particularly to the point of establishing new precedents. Those who were familiar with Baker's style also knew that he went to great lengths to protect not only his own party's members, but those of the minority as well.

Baker addressed Byrd's specific concerns by stating that the provision was included only to assure Johnston that he would attempt to go only to one of those five items and further that:

> I do not attempt to create any new right beyond that which has been stated, nor waive any right the minority leader would have or any Senator would have in an attempt to prevent the Senate's proceeding to those measures. I would point out, as I did to the Senator from Louisiana, that under the response to the parliamentary inquiry put by the Senator from Louisiana on the status of the DOJ bill, the cloture vote after third reading, we are also creating a right for that vote to occur. Otherwise it would not occur after third reading. So it really is a question of accommodating the wishes of the Senator from Louisiana, and then giving certain rights to the majority leader to do other things that appear necessary and desirable (*Congressional Record* 1981, 16908).

Byrd trusted Baker but did not want to take any chances:

> Mr. President, I know that was the intent of the majority leader. I ask that he include in his request that any motion to proceed to the House tax bill or to one appropriation bill not waive any rule or right that any Senator presently has (*Ibid.*).

Baker acquiesced and included Byrd's suggestion in the request.

Baker thought he had the agreement at this point, but Dole raised another problem:

> Mr. President, I raise one other question as manager of the bill. As I understand the agreement, there will be some effort to schedule major amendments at the earliest possible time. I do not want to get into all the sequences, but I hope the managers of the bill will have an opportunity to try to negotiate some of these amendments. It puts the manager under a certain handicap if he is locked into a time agreement. So, I hope we are not in effect, getting ready to raid the treasury here with time agreements, because I think many of these amendments might be negotiated (*Congressional Record* 1981, 16908).

Baker wanted the Senate to pick up the pace and pleaded:

> Mr. President, I would say to the distinguished Senator from Kansas that I think it is issential *(sic)* that we try to schedule these bills and do the major bills soon. I would hope that he and the distinguished Senator from Louisiana (Mr. Long), would take the responsibility for trying to arrange that schedule so that we have a reasonable number of amendments on tap and ready to go, maybe six of them at a time, so that we have some expectation of what is before us at any given time (*Ibid.*).

The presiding officer asked if there were any objections to the agreement as stated and there were none. Baker had finally gotten an agreement that included the very important provision of establishing a time-certain for the vote on final passage. The text of the agreement negotiated at this point is in Appendix C. There would be some later changes to be discussed shortly, but those changes had to be made with unanimous consent, and Baker or any other senator could object.

The importance of the agreement cannot be overstated. With a time-certain provision, filibusters were precluded. No member could delay or prevent the vote on final passage. If the amendments were not all disposed of when the time for a final vote arrived, then each amendment would get five minutes of debate time equally divided,

unless otherwise noted in the agreement, until the listed amendments were disposed of and third reading accomplished.

After the agreement was adopted by the Senate, Baker thanked all senators and expressed special gratitude to Dole, Long, and especially Byrd who Baker said was most helpful. After Baker yielded the floor, Dole withdrew his amendment per the agreement and sent another amendment to the desk, the negotiated phase-in amendment, which was agreed to by voice vote (*Congressional Record* 1981, 16910).

Protecting the Agreement

When the Senate convened the next day, July 23, it had been on the tax bill off and on for a week. On the floor, Baker discussed procedure and urged the body forward and its members to offer their amendments. In fact, Baker offered a reward should senators be cooperative, especially by withdrawing their amendments:

> Mr. President,...We now have an order for third reading of the tax measure at 3 o'clock on Wednesday, July 29. That is good news. The bad news is that we have 91 amendments to deal with, more or less, and my devout wish is that it shall be less. But that also means, Mr. President, that we will surely have to work very hard and very late in order to assure that every Senator has an opportunity to present, *if they wish to do so,* his or her amendment that appears on that list, and in an orderly way, and not save them for the last minute to have a stampede of amendments beginning at 3 o'clock on Wednesday. *So I must say with great regret that I expect the Senate will be in very late tonight; I would estimate perhaps as late as 11 or 12 o'clock in the evening. There already is an order for the Senate to convene at 10 o'clock tomorrow. It will be my intention to adjust that time to an earlier hour, if it is necessary, to accommodate any requests for special orders. I regret that it is necessary to announce that the Senate will be in late tonight and probably tomorrow night, and also we expect late sessions on Monday and Tuesday night, but I do believe that is necessary if we are to fulfill our legislative responsibility and complete work on this joint resolution and go to third reading by 3 o'clock on July 29* (*Congressional Record* 1981, 17048; emphasis added).

Byrd followed Baker and, underscoring the leader's admonitions, warned the Senate that it was in a relaxed state and that senators might be tempted to feel no great rush to get their amendments called up. Byrd urged them to have their amendments ready to go at a moment's notice and stated that he would ask the Democratic Policy Committee staff to attempt to keep Democratic senators alerted to the need for calling up amendments.

The Senate was already starting to get behind at 9:44 a.m., because Thurmond still had not yet used his time for "special orders" and, according to the agreement, the Senate was scheduled to resume consideration of the tax bill at 10:00 a.m..[8] Baker asked unanimous consent, already changing the agreement, that the Senate resume consideration of the tax bill "without any intervening debate, motion, or point of order" at the conclusion of the time allocated to Thurmond whenever that might be. No objection was heard.

After the Senate proceeded to consideration of H. J. Res. 266, Bentsen asked unanimous consent that his amendment be added to the list because he was not present when the parent agreement was made (*Congressional Record* 1981, 17053). Dole, the manager of the bill, said that he had no problem with accommodating Bentsen and no objection was heard to Bentsen's request. The Senate continued its slow grind to consider pending amendments.

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[8] Special orders are speeches made by senators usually at the beginning of the day in which members can speak on any topic they wish. Often this time is provided for by a unanimous consent agreement at the end of the previous day so that the Senate can save time when it reconvenes. The House usually provides for special orders at the end of the day.

After action on a few amendments was completed, Heinz called up his amendment (co-sponsored by Domenici) related to target-job tax credits. The agreement provided for two hours of debate, but Baker took a chance that he could negotiate some of that time away and asked Heinz, Domenici, and the minority manager of the amendment, Senator Baucus, if they would agree to reduce the time for debate to one hour equally divided. Domenici indicated that was fine with him, but Baucus reserved the right to object asserting that he did not know if the relevant members on his side would agree to the time reduction. Baker withdrew the request temporarily and expressed the hope that since the sponsors had agreed, that the minority might do so as well. Baucus said he would do what he could and the absence of a quorum was suggested so that negotiation could take place (*Congressional Record* 1981, 17084). Baker had the quorum call rescinded and announced that Byrd and the minority manager had agreed to reduce debate time to one hour equally divided.

Baker again had succeeded in saving valuable time, though no particular persuasive strategy was used. Heinz' amendment passed by a vote of 95-1, although it was modified numerous times before passage. There were still, at that point, 93 amendments remaining to be dealt with out of 101 amendments listed in the unanimous consent agreement.[9] Baker again expressed the hope that some members would not offer their amendments and that others would not insist on roll-call votes in order to save time. He also asserted that the Senate had made good progress thus far but not enough to meet

[9] There were 118 total amendments to the bill: 101 in the parent agreement and 17 disposed of prior to the agreement.

the deadline and prevent a "great stampede" of amendments near the end. The leader then took the opportunity to alert senators to the costs of delay by asking unanimous consent that the Senate convene at 10:00 a.m. on the following Monday rather than at noon as provided for in the agreement (*Congressional Record* 1981, 17090).[10] Baker was providing more maneuvering room. He also stated that if the Senate did not make better progress, they could expect 11:00 p.m. and 12:00 a.m. sessions on Monday and Tuesday, thus renewing a threat, or perhaps an offer of a reward of early recesses for cooperation.

Byrd, puzzled, inquired why there were now 101 amendments on the list when there were only 92 when the agreement was first made. The Senate erupted into laughter when Dole replied that 10 were added while they were getting the agreement. Perhaps suggesting something about the job of majority leader, Baker said that he ran around trying to gather all of the different lists but that he did not succeed in keeping "diligent staff people" from scribbling amendments on the list and the result was 101 amendments (*Congressional Record* 1981, 17091).

Small Victories: Reducing Time for Amendments

Byrd, at this point, felt the need to take further steps to protect his side of the aisle and hinted strongly that Baker might want to do the same:

[10] This convening time is not in the agreement in Appendix C, but was added to the agreement later via unanimous consent. Generally, once a parent agreement is in place like the one reproduced in Appendix C, a number of smaller "baby-agreements" are negotiated to accommodate scheduling requirements and the changing dynamics on the Senate floor.

> Mr. President, It is not my desire to attempt to tell the majority leader what to do. I am really concerned about the number of amendments. Most of them are on my side of the aisle. So I think I am justified in saying this: I suggest that my side at least-I will not tell the majority leader what to do on his side-but I am going to ask my side to contact via the cloakroom, via the hot line, Senators to see if they would have any objections to cutting down the time on 30-minute amendments to 20 minutes, and let us start there and perhaps the majority leader would want to think about having 10-minute rollcalls after the first rollcall tomorrow and each day because I can see right now we are going to be in one big squeeze and someone is going to get squeezed if we do not take action early, and most of the amendments being on my side I feel I am justified in making this suggestion because it is going to cut most deeply on my side (*Congressional Record* 1981, 17091).

Baker agreed with Byrd's suggestion and indicated that he would urge his side to do likewise. He said he also would ask unanimous consent after the next roll-call vote to reduce time for amendments from 30 minutes to 20 minutes and to reduce the roll-calls from 15 minutes to 10 minutes starting that night, instead of Byrd's suggestion of tomorrow, because committees would not be meeting and members more likely would be on the floor.

Dole informed the Senate that he was trying to get senators to volunteer not to call up their amendments, and hoped to be down to 50 amendments by 11:00 p.m.. Baker responded with both flattery and praise:

> Mr. President, if the Senator can do that I will add another medal to his array and cluster of medals because that would be a great contribution to the Senate, to the country, and certainly to the tranquillity of our weekend. Mr. President, I am prepared now to yield the floor and to urge once again all Senators to take account of the announcements that I have made and make their plans accordingly (*Congressional Record* 1981, 17091).

One cannot determine whether this use of a persuasive strategy, praise in this case, had any effect, but immediately after these remarks John Stennis (D-MS) took the floor to

announce that he was doing his part and withdrawing his amendment. The Senate had slowly disposed of a Packwood and a Long amendment when Dole informed Byrd that he had negotiated away some of the remaining amendments and consolidated others. Baker then took the floor to give more praise and again renew his offer of reward regarding the Senate's schedule:

> Mr. President, I hope that other Senators will follow the good example of Senators who have now consolidated their amendments and eliminated a number of amendments that now appear on the list. If we can continue to do that, there is a chance we can finish these amendments in far less time than expected. It is 6 p.m. now. What I would like to do is, at 8 o'clock, meet with the distinguished minority leader and see what progress we are making. *If we are making enough progress, by following this example, perhaps we can shorten the estimate for the end of this session today. I should like to do that, but it depends on what progress we are making.* We shall check a little later (*Congressional Record* 1981, 17103; emphasis added).

It began to appear that Baker's use of persuasive devices was working as Percy immediately took the floor and announced that, although his tax-straddle amendment had 60 minutes for debate allotted by the agreement, he estimated that it could be wrapped up in 30 minutes. Baker responded with praise for Percy saying, "Mr. President, I express my appreciation to the Senator from Illinois and point to that as an indication of what we can do if we want to" (*Congressional Record* 1981, 17103). The Percy amendment subsequently was adopted by voice vote. The Senate continued to consider amendments at a measured pace.

Baker was not yet ready to provide the reward that he had offered earlier, and made comments to that effect so as to not create an incentive for slowing the momentum that seemed to be building on the tax measure:

> Mr. President, according to comments I have heard around the Capitol in the last 30 minutes or so, some people have misconstrued the remark I made earlier on the floor to the effect that we apparently are making good progress in disposing of amendments and that perhaps we could recess earlier than the 11 or 12 o'clock I announced earlier. I still hope for that. I should like to improve on that time a little. I have never heard the rumor that there will not be any more votes tonight. There most assuredly will be votes tonight. It is my hope that we will have two, three, or four amendments tonight. I certainly counsel Senators not to assume that there will be no more votes tonight. I assure them that there will be. Mr. President, I hope the Senator from Kansas may be in a position to call up another amendment or to call another Senator on the list to do that at this time (*Congressional Record* 1981, 17119).

Baker then requested unanimous consent to set the time for a vote on the next amendment at 8:00 p.m.. It was a Dole amendment to express the sense of the Senate that the conferees on the tax bill should limit the revenue loss in 1981 to $1.5 billion; $38.3 billion in 1982; $91.8 billion in 1983; and to $150 billion in 1984(*Congressional Record* 1981, 17119-23). By doing so, he simultaneously moved the Senate along and protected the rights of members because the vote was set for a time when it was likely that members would be on or near the floor. Interestingly, it was Baker who asked for the yeas and nays on the Dole sense-of-the Senate amendment rather than letting it go through on a voice vote, after he had stated that he hoped the number of roll-calls could be minimized. The amendment was adopted by a vote of 95-1, suggesting that there probably would have been no objection to a voice vote. Baker may have asked for the roll call to remind senators that there would be votes that evening and therefore they should be attentive to what was happening on the floor. Baker was still monitoring and occasionally managing the floor urging members to come to the floor and offer their amendments and inquiring at one point, "Mr. President, will it be possible for the Senator from Kansas or the Senator

from Louisiana to arrange for another amendment? The Senate has now a voracious appetite for amendments" (*Congressional Record* 1981, 17119).

Sharing Information About the Schedule

After a Durenburger and a Dole amendment were disposed of, Baker again addressed the Senate to inform members about the schedule:

> Mr. President, I announced earlier that after 8 o'clock I would try to take stock of the situation and make some estimate of when we could finish this evening. As I understand the arrangement now, the Senator from Tennessee (Mr. Sasser), my colleague, has an amendment to offer which will probably be accepted and may not take more than 3 to 5 minutes. After that I understand the Senator from Massachusetts (Mr. Kennedy) will offer an amendment on which there will be a rollcall. After that, I understand the Senator from Texas (Mr. Tower) has an amendment, and he will wish a rollcall as well...[Interruption]

John Tower (R-TX) then interrupted to indicate that he did not wish a roll call because he thought there was widespread support for his amendment on both sides of the aisle. Baker continued his remarks:

> Yes, Mr. President, in any event it appears that there is time for at least two additional rollcalls tonight, and I estimate then that if we have time of 30 minutes and none yielded off the joint resolution and if the Senate grants the request I am about to make in a moment for 10 minute rollcall votes we should be able to do that and recess about 10 p.m. That is good progress for this evening, and it is earlier, I think, than most of us thought we could do it. But I think that is a fair arrangement, and I am not going to take any additional time. I hope that we can do that. I wish to see us be able to conclude action on this joint resolution at least by about 10 p.m. or thereabouts. At this point, in order to expedite that and to improve the chances that we may realize on that, I ask unanimous consent that any rollcall votes ordered beyond this point this evening before the Senate recesses over until tomorrow be 10 minutes in length (*Congressional Record* 1981, 17123).

There was no objection to the request for 10 minute roll calls.

Kennedy called up one of his amendments and indicated a willingness to cut down on the 30 minutes of time provided for debate. Kennedy may have made this offer because he knew his amendment had little support as evidenced by its eventual failure by a 9-87 vote. Numerous amendments had been disposed of without roll calls when another lull emerged on the Senate floor. Again, Baker rose to urge members to offer their amendments. Senator Dennis DeConcini (D-AZ) announced that he would not call up his amendment and Baker offered him his "profound thanks," until he discovered what DeConcini actually had in mind. It was to not offer the amendment *at that time* but rather on Monday before the final vote on Wednesday. Baker suggested the absence of a quorum probably to try to convince DeConcini not to offer the amendment at all (*Congressional Record* 1981, 17132). Meanwhile, the Senate waited in quorum call "down-time" for members to come to the floor and offer their amendments.

Shaming the Senate

Baker gave up trying to get more amendments disposed of before the Senate recessed for the day. In frustration, he expressed his feelings in a brief monologue peppered with his first attempts to shame his colleagues.

> Mr. President, I must say that I have tried as hard as I know to find some Senator who is in a position to offer an amendment tonight. I believe the minority leader has done as much. The distinguished chairman of the committee has tried hard, going through his list repeatedly, as has the minority manager, to find some amendment that is eligible and ready. It had been my fondest hope that we could have at least one, perhaps two more amendments this evening. But I have to say I do not believe we are going to make it. What we will do instead, Mr. President, is schedule at least three amendments for action in the morning, two of the three will require rollcall votes, one probably will not, and adjust the convening hour so that we can get on the bill at 10 o'clock. I would like

> now Mr. President, to put a unanimous-consent request (*Congressional Record* 1981, 17133).

Senator Jennings Randolph (D-WV) reserved the right to object and asked the leader if he had made a decision regarding how late the Senate would be in the next day. Baker replied that, as much as he would like to accommodate the wishes of the senator from West Virginia with a commitment, he could not do so. Baker wanted to keep his options open to use reward and threat in order to keep the Senate moving:

> I really cannot do that. I know I am doing a disservice to every Member of the Senate by not doing that. I indicated earlier that we would be in until 11 o'clock tonight. I think this train is pulling the engine instead of the engine pulling the train. So I am not going to presume to suggest what time we will finish tomorrow night, but it will be a full day's work. We will stay as long as we can gin up amendments, and that is going to be until late afternoon and maybe into the evening (*Congressional Record* 1981, 17133).

Baker then asked unanimous consent that the Senate convene the next day at 9:15 a.m. rather than the 10:00 previously agreed to and no senator objected.

Baker next began to put a sequence in place via unanimous consent for the consideration of amendments. He first requested that at 10:00 a.m. the next day the Senate resume consideration of the tax measure and that Senator Dan Quayle (R-IN) be recognized to offer an amendment on rehabilitation. The first 45 minutes was to be used to get routine matters out of the way such as chaplain's prayer, approval of the Journal and so forth. After Quayle, Sasser's amendment on Social Security would be called up, and after Sasser's amendment, Senator Baucus' amendment would be considered (*Congressional Record* 1981, 17133). There was no objection. In arranging for a sequence to be locked in, Baker was attempting to minimize "down time." He expected a

Heflin amendment to be added sometime tomorrow. Baker then gave a status report on the progress of the Senate:

> Now, Mr. President, we have disposed of 24 amendments from the list of 101, 22 of them today with six rollcall votes and two of them last night. That is good progress. But, once again, Mr. President, it is not good enough to avoid the stampede of amendments that almost inevitably will occur beginning on Wednesday at 3 o'clock. Mr. President, let me explain to the Senate, to every Member, why I have tried to push as hard as I have today. I fully appreciate the fact that the Senate has granted a unanimous-consent order providing for the disposition of this measure to third reading not later than 3 o'clock on Wednesday. If we are going to finish our work and get out of here anyplace close to the beginning of the first of August, we are going to have to do at least that well, because we are going to end next week with two conference reports, one on the tax bill and one on budget reconciliation. If we do not improve on that Wednesday time for third reading on the tax bill, we are going to end up with both of those conference reports in our laps, maybe on the same day (*Congressional Record* 1981, 17133).

Baker then challenged the Senate to see if his colleagues could expedite proceedings:

> Mr. President, I am not asking for a change in the consent order that has already been entered. I certainly am not ungrateful for the accommodation Senators have already provided for the third reading time of next Wednesday. But I urgently ask Senators to consider offering as many amendments as possible tomorrow, that we have a good full day of work tomorrow, and a good day; a late day on Monday; and that we try to get to third reading on this bill on Tuesday rather than Wednesday. The order provides, as Senators will all recall, that we will reach third reading not later than 3 o'clock on Wednesday. Mr. President, I respectfully challenge the Senate to try to improve on that by 1 day. In order to do that, Senators are going to have to do better than we did today, although 24 amendments is an extraordinary accomplishment by the Senate by any measure. This is an extraordinary bill. There is a great number of amendments. But it simply is not good enough. I commend the distinguished chairman of the committee, the ranking minority member, the minority leader, and all Senators for working hard and working late this day. But I urge them once again, Mr. President, to improve on our list of accomplishments by tomorrow (*Ibid.*).

It is worth reiterating that the majority leader is not alone in attempting to drive the Senate to a conclusion. His resources are complemented by those of the bill manager

and often by those of the leadership on the other side of the aisle. In this instance, Dole followed Baker and stated that in his view the Senate could process amendments even more rapidly, notwithstanding the progress made thus far. Byrd then pledged that he would give whatever support he could to Baker to assist in advancing expeditiously to third reading. Baker, in response to Byrd, offered his views on what it takes to manage the Senate floor:

> Mr. President, I am extremely grateful to the minority leader. I learned much from him in his years as majority leader. One of the things I learned most profoundly was that it usually takes the joint leadership to move an important piece of legislation. I acknowledge my gratitude to him and the necessity for his cooperation, which he has so generously offered. Mr. President, there will be no more votes tonight, I must announce reluctantly (*Ibid.*).

Baker then recessed the Senate after a brief period of routine "morning business" at 10:06 p.m. until the next day, Friday, July 24, at 9:15 a.m.. Thus Baker did not keep the Senate until eleven or twelve o'clock as he had indicated, or threatened, earlier.

Nudging the Senate Along

The next day, as agreed the previous evening, Quayle was the first to begin the amending process with an amendment that increased to $40,000 the expenditures per dwelling unit of low-income housing that would be eligible for 5-year amortization in certain situations that provided for the sale of the units to tenants (*Congressional Record* 1981, 17269). His amendment was laid aside so that Howell Heflin (D-AL) could offer

one that created an income tax credit for the planting of certain pecan trees. Shortly after 10:00 a.m., after the Quayle and Heflin amendments were agreed to by voice vote, and a Sasser sense of the Senate amendment acknowledging problems in the social security program was passed, Baker probed the Senate as to which remaining amendments were "serious," that is, would be offered and require a roll-call vote:

> Mr. President, I shall not take very long, but if I could have the attention of the Senate, I think we can get a better view of where we are and where we are going today and next week on this joint resolution. Mr. President, I report that as of this moment there are 75 amendments, according to my count, yet to be disposed of on the list of qualified amendments attached to the unanimous-consent request which was granted previously. We have done pretty well. That means that we have disposed of about 28, but it also means we have a long way to go. It will not offend any Senator, I am sure, when I say that I have a strong feeling that a number of those 75 amendments probably will never see the light of day and that some of them are duplicates, some of them closely coincide with other amendments, some of them may be noncontroversial and some of them may be hedging of bets, and that is all right with me. That is good strategy, and it is good legislative technique, and I have even done a little of that myself from time to time (*Congressional Record* 1981, 17277).[11]

Baker then pleaded with senators to understand where they were in terms of time and to do whatever they could to keep the process flowing:

> Mr. President, we have reached the point where we simply must get a realistic view of where we are heading. May I inquire, are there Senators here who can now tell the leadership that they do not intend to offer their amendments or that they are willing to substantially reduce the time that is allocated under the order or under the special provision of the order for debate on their amendments? There are 75 amendments remaining, and I would be most pleased to have any statements by Senators on either side of the aisle in respect to amendments that will not be offered so that we can take them off the list and plan for the remainder of this day and for the time remaining before we reach a third reading. Mr. President, I would not presume to inquire of the minority Members. I could ask the minority leader instead if he would consider stating that

[11] The phrase "hedging of bets" refers to senators offering a number of amendments, not with the intent of actually offering them to legislation, but rather to use as "bargaining chips." That is, senators negotiate with other members offering to withdraw one of their amendments if the other member will withdraw theirs. Kennedy had seven amendments on the list, many of which were negotiated away in this manner. Further, Baker's amendment-count (28 amendments disposed of and 75 remaining) implies that 2 additional amendments had been added to the list of 101 qualified amendments. Alternative explanations may be that he miscounted or there was a misprint in the *Congressional Record.*

> inquiry for his side of the aisle and if indeed he will support the request that I have just made (*Ibid.*).

Byrd followed with a suggestion to quicken movement, asking if there would be any objection on his side of the aisle to moving third reading of the tax bill forward by a day from Wednesday at three o'clock to Tuesday at six o'clock p.m. Should there be no objection there would be added pressure on members to get to the floor with their amendments. Also there would be an increased probability of, to use Baker's words, a "great amendment stampede," but at an earlier time. Biden said he would agree to moving the time up a day but not if that would mean those at the end of the list would be precluded from offering their amendments or having them debated. Byrd responded that he was contemplating the same agreement reached earlier that provided for five minutes of debate for amendments remaining once the deadline was reached. Byrd also expressed the opinion that many amendments would not be called up or would be negotiated away (*Congressional Record* 1981, 17277-78).

Matsunaga next inquired if Baker was putting a request that would amend the previous agreement to which Baker replied:

> Mr. President, I have not put such a request. But I must tell the Senator from Hawaii that I would, with any encouragement at all, do so. But I agree with the distinguished minority leader. I think we can finish on Tuesday instead of Wednesday, and both he and I mentioned that possibility last night in the closing moments of the session, that it should be possible to finish this bill on Tuesday instead of Wednesday, and that if we do not do that, we are going to end up with two big conference reports in our lap, maybe both on the same day (*Congressional Record* 1981, 17278).

Matsunaga suggested to Baker that rather than making a general appeal as the minority leader had done, that he work through the whip system and have the whips approach each individual senator with an amendment. Baker, in replying to Matsunaga's suggestion again took the opportunity to shame the Senate:

> Mr. President, I thank the Senator from Hawaii. Of course, I will do that. *It does not appear that I am gong to get a single response to my request about eliminating amendments, and I find that disappointing.* But I say to my friend from Hawaii we have worked this list over and over and over again, and I believe the minority leader has worked on his side as well. We will work again. But, Mr. President, we simply have to try to identify those amendments on this list, this remaining list of 75, that are not going to be offered so that we can do justice to those which are (*Ibid.*; emphasis added).

Playing the shame game apparently worked as several senators proceeded to contribute to lightening the leader's burden. Boschwitz announced that he would not offer his permit expensing amendment, pointing out that it was the fourth one he had withdrawn. Baker directed praise in the direction of Boschwitz saying, "Mr. President, if the rules of the Senate permitted, I would ask for a round of applause for the distinguished Senator from Minnesota" (*Ibid.*).

Senator James Exon (D-NB) then took the floor to say, "In the spirit of trying to ease the difficult job the two leaders have" he would be willing to offer his only amendment, on interest rates, on Monday morning if agreeable to Baker, Byrd, and the bill managers. The amendment originally was scheduled for two hours equally divided but, in exchange for rescheduling, Exon was willing to reduce that to an hour and a half equally divided. Baker turned to Dole to see if that was acceptable, and Dole counter-offered to reduce the time to one hour using only fifteen minutes himself and giving Exon the remaining forty-five minutes. Byrd put the brakes on this deal by reserving the right to

object and suggesting further discussion of the issue. Baker sent Exon some praise anyway saying, "I want to say that I appreciate the offer of the Senator from Nebraska and I will make every effort to schedule it on Monday. I am personally very grateful to him" (*Congressional Record* 1981, 17279).

Senator Steven Symms (R-ID), perhaps moved by the same spirit that had moved Boschwitz and Exon, stated that he would not offer his timber evaluation amendment. Baker expressed gratitude and asked unanimous consent to remove the amendment from the list.

Baker, after working out an understanding with Helms, successfully requested unanimous consent to reduce the time on a Helms amendment related to motor carrier operating authority from thirty minutes to ten minutes equally divided (*Ibid.*).

After Baker acted on Boschwitz' request that one of his amendments be removed from the list, he stated:

> Mr. President, I guess that is as far as we can go. The dam did not break. We did not get a big flood of Members volunteering to take their amendments down, but I think we have made some progress. I hope both sides, Mr. President, will continue to canvass their Members and try to reduce this list in the course of the day. I yield the floor Mr. President (*Ibid.*).

The Senate then continued to call up amendments with Baker playing a limited role in bill management by occasionally offering motions to reconsider votes or to table such motions. The Senate slowly continued its progress toward third reading of the tax bill.

The Constancy of Accommodation

A constant in floor management is trying to accommodate senators and their interests while at the same time keeping the legislation on track. This was illustrated when Metzenbaum called up an amendment on day care tax credits. Baker interjected indicating that he wanted the Budget Committee chairman, Senator Domenici, in the chamber because he had "expressed an interest" in the amendment. This could have meant trouble, because expressing an interest generally means opposition to an amendment. In fact, Metzenbaum did not know of Domenici's "interest". Baker suggested the absence of a quorum to allow negotiating time and then had the quorum call rescinded to announce that an agreement had been reached:

> Mr. President, I am advised there is not a budget question to be raised against the proposal of the distinguished Senator from Ohio. Before we proceed, may I inquire if there are other arrangements that need to be attended to in that connection.[12]

Metzenbaum pointed out to Baker that Biden, who also had an amendment on day care tax credits, was not in the chamber and was not willing to have a voice vote that night but would be agreeable to setting it for a time-certain on Tuesday. In essence, the problem

[12] Domenici's "interest" was apparently a budget point-of-order. A budget point of order is an assertion that any member makes that an amendment violates the *Congressional Budget and Impoundment Control Act of 1974*. If an amendment would have the effect of raising spending above the ceiling set in the budget resolution or reduces revenue below the floor set in the same budget resolution, it is subject to a budget point-of-order and the amendment can be ruled out of order. However, the Senate can vote to waive the Budget Act, agree via unanimous consent to allow the amendment's consideration, or simply ignore the violation. In 1981, it required only a simple majority vote to waive a point of order. The Gramm-Rudman legislation in 1986 tightened that up to require a three-fifths vote (Tiefer 1989, 908-919).

was this: the Metzenbaum amendment came up at this time because of its placement on the list in the agreement. However, the author did not want immediate completion out of deference to the absent Biden who had a similar amendment. Baker indicated that he was willing to put it over until Tuesday, but he also asked how Metzenbaum felt about making the amendment the pending business when the Senate returned on Monday morning. Metzenbaum informed Baker that he would not be present Monday and Baker asked about Tuesday. Baker, at this point, could have refused to agree to Tuesday because, for one thing, the Senate had a deadline established and, secondly, he could have used that leverage and forced a vote on Monday unless Metzenbaum gave something in return, such as withdrawal of his amendment. But Baker decided to forego this negotiating ploy and instead inquired about a Tuesday vote. Metzenbaum indicated that Tuesday was fine with him, even 7:30 in the morning would be fine, to which Baker responded, "The Senator tempts me" (*Congressional Record* 1981, 17385).

Dole, however, had problems with the proposal, indicating that disposing of the amendment that night would help him because it would take care of about seven or eight names on the long list of amendments including Biden's.[13] Further, Dole said, "We do have an agreement on it. By Monday it might get out of the bag" (*Ibid.*). Metzenbaum suggested that either way would be fine with him. Baker then asked Biden, now in the chamber, if he would be willing to have a voice vote on the matter that night. Biden,

[13] This suggests that certain members were waiting to see what happened on the Metzenbaum amendment before they decided if they would offer theirs.

because of personal scheduling difficulties, said he would not be willing. Baker had to concede the issue:

> Mr. President, I am advised now that the problem has arisen which the chairman of the committee predicted, that we take these amendments as they occur. Mr. President, in view of that request, I cannot agree to do other than to call up the amendment. It may be that we will not finish it today, in which case it would go over until Monday. I am not in a position to take it up and set it for Tuesday (*Congressional Record* 1981, 17385-86).

Senator Long joined the exchange and asked if they could agree informally among themselves to strive to vote on the amendment sometime in the next couple of days and suggested that if Metzenbaum was not there, he would be willing to handle the amendment in his place. Metzenbaum would not budge and said that he had worked hard on it and was not trying to delay the Senate, but he wanted to be the one to call up the amendment. He also asserted that he did not view setting it for a time-certain on Tuesday to be an unreasonable request. He further asked, "[W]hat is the problem on the other side? It would not put anyone at a disadvantage" (*Congressional Record* 1981, 17386).

Baker attempted to clarify the problem and then conceded to Metzenbaum on the entire matter altogether and set the vote on the amendment for Tuesday stating:

> If the Senator will permit me to interrupt. Mr. President, I am going to do something I almost never do. That is to recognize the special and unique circumstances involved here. I am now advised that I do not have a formal request for an objection on that, but, rather the expression of a preference. There is a distinction that may not be important to anybody but me, but it is a distinction. I am prepared now to recede from the position I stated earlier and let the Senator go ahead and offer his amendment with the understanding that it will not be voted on tonight. I am prepared to make a unanimous-consent request, if it is agreeable to the two managers and other Senators involved, that after debate on this issue is concluded this evening, when we return to the consideration of the bill on Tuesday it will be the first order of business and the vote will occur at that time. If the Senator is agreeable to that, if the managers are agreeable to that, and the minority leader, I am prepared to make that request (*Congressional Record* 1981, 17386).

The fact that there were no formal objections but merely statements of preferences suggests that Baker might have tried pushing a little harder, or used some resource at his disposal, to bring this problem to a resolution more in line with his own preferences. Baker offered no reward and made no threat. He brought no persuasive devices to bear on this particular issue and just conceded altogether. In the larger scheme, however, this did not represent a major setback, because Baker already had his agreement to advance to third reading at a time-certain and perhaps did not want to push the Senate too hard.

Further Demands on the Majority Leader

In the legislative process, the seeming resolution of a problem can lead to further complications. One arose immediately when Durenburger indicated that he wished to offer an amendment and wanted it voted on at the same time as Metzenbaum's. His agreement to Baker's request would be predicated on that understanding. Although Metzenbaum said that it was acceptable to him for the two votes to occur together, it presented a problem for Baker:

> We have a list of amendments with no second degree amendments. If the Senator is agreeable to consider these two amendments together, to modify the amendment of the Senator from Ohio by incorporating the amendment of the Senator from Minnesota so that it would then be a single amendment-would that be agreeable? (*Congressional Record* 1981, 17386).

The problem was solved when both Durenburger and Metzenbaum said that was acceptable. Baker made it official by incorporating this arrangement into a UCA. The leader was taking every opportunity to reduce the number of amendments (*Congressional Record* 1981, 17394).[14]

There were no pending amendments to be dealt with at this point in the debate, so Baker took the opportunity to again try to obtain a time-limitation agreement and the sequencing of ten different amendments so that the Senate would be ready to go and "hit the ground running" when it resumed consideration of the tax bill. Metzenbaum reserved the right to object to make sure this new agreement would not alter the limitations and proscriptions of the earlier parent agreement. Baker assured Metzenbaum that those provisions would still be in effect (*Congressional Record* 1981, 17395).

As it turned out, Baker was able to sequence only eight of the ten amendments at this time.[15] He then moved, in accordance with the agreement previously reached, that the Senate stand in recess until 10:00 a.m. the following Monday, July 27.

The Senate had concluded a very long Friday with Baker fully locking the Senate into the consideration of amendments at pre-established times on Monday. This was a significant achievement, because the major problem that Baker now faced, since he had already gotten a time-certain set for vote on final passage, was in getting members to the

[14] There is an indication in the *Congressional Record* at this point that the time was 7:45 p.m.
[15] It was not made clear in the *Congressional Record* why there were objections to including two Glenn amendments that were due for consideration at this point, according to the list, could not be included in the agreement. One was an amendment to expand the tax credit for research and development and the other was an exclusion for domestically performed research and development from Section 861 of the Internal Revenue Code. Glenn did not interject to offer explanation and he may have been absent since the two amendments were included in the agreement the following day.

floor to offer their amendments. It should be kept in mind, however, that Baker needed the prior agreement of the senators involved, those who were the sponsors of the amendments, and the Senate as a whole in order to accomplish this.

The Push for a Final Vote

When the Senate reconvened on Monday, the first order of business after the daily prayer, approval of the Journal, and other housekeeping matters, was for Baker to solidify the agreement reached on Friday. He wished to add two John Glenn (D-OH) amendments that had not been included in Friday's agreement. After briefly discussing the upcoming budget reconciliation conference report, Baker spoke about the tax measure and relying on his old friend shame tried to spur the Senate forward.

> On the tax bill Mr. President, I also have had the opportunity over the weekend to review the amendments that remain to be disposed of. And there is a considerable number. I would hope that today Senators would carefully examine the list of remaining amendments *and just as carefully scrutinize their consciences* and see if there is not some way we can eliminate a number of amendments from further consideration and shorten this list. Otherwise, we are going to be hard put to finish this bill by the hour designated in the previous unanimous-consent order. Once again, Mr. President, I express a note of optimism. I believe we can do that. Indeed, I believe we can finish the tax bill on Tuesday instead of Wednesday. I inquire of my friend the minority leader if he has any views on that subject and most especially whether or not we might entertain a consent order or modification of the previous consent order to change the time for third reading of this bill from Wednesday, as provided, until sometime on Tuesday, a day earlier? (*Congressional Record* 1981, 17434; emphasis added).

Byrd asserted that he was not in a position to offer any realistic hope that the time could be moved forward one day. He thought it possible that they could finish on

Tuesday, the next day, but would make no promises. To illustrate the degree of cooperation between the majority and minority leaders, Baker replied to Byrd's remarks saying:

> Mr. President, I thank the minority leader for his statement. I join him in the hope that we can, indeed, finish this bill tomorrow. And I hope that we can, indeed, finish this bill tomorrow. And I would even presume to wish for a modification of the order. The minority leader was the original one to suggest this and I express my gratitude to him for the suggestion. I have adopted his suggestion. I hope with not unseemly haste. But, in any event, we will do the best we can to continue to hope for the conclusion on Tuesday (*Ibid.)*.

After a vote on an Exon amendment, a Kennedy amendment was due for consideration, but Baker took the floor to propose another agreement that the two Glenn amendments that could not be included in Friday's request due to objections, but now in order, be taken up immediately. Baker asked Glenn how much time he required on the two amendments to which Glenn responded "15 or 20 minutes for both" (*Congressional Record* 1981, 17434).

Dole, as bill manager, then pitched in and asked if it would be all right with Kennedy and John Melcher (D-MT), who had amendment ready to go, to have twenty minutes divided, with his side taking none of the time, so that there would be ten minutes or less for each amendment. Dole added that since there was an agreement among the principals involved, he did not "see why it would take more than 2 minutes. I would hope we can take them now. It would save us a couple of hours down the line" (*Ibid.*). Melcher agreed but asked to be added to the list of sequenced amendments that was

negotiated late Friday. Baker added him to the list via unanimous consent to follow a Heinz amendment.

As the Senate took up these amendments and others, Baker continued to forge restricted unanimous consent agreements to provide for ten-minute votes rather than the usual fifteen. He also stacked votes and took other actions that in some ways helped the Senate to lurch forward toward third reading. In the process Baker offered a progress report:

> Mr. President, in response to the inquiry of the distinguished chairman of the committee, let me say that the minority leader and I have been in consultation about the amendments that remain and how they will be disposed of. According to the count I have before me there are 38 amendments left on the list of qualified amendments. I am advised by the minority leader that it is his understanding that of that number 14 will be called up and will indeed be debated according to the order in the time-frame provided. There are 5 amendments of the 38 that are currently in one stage of negotiation or the other and it is possible none of them will be called up. It is, perhaps, more possible that some of them will be acceptable, others will not. But in any event, five are in limbo. It would appear at this time that there are 16 amendments on the list of qualified amendments that will both be called up or otherwise disposed of by the Senate. Those amendments have not yet been designated, but that is the estimate by the Democratic side, based on the canvass of their members (*Congressional Record* 1981, 17501).

He then announced that there had been movement in the right direction and renewed his offer of reward should more of the same occur:

> Mr. President, in addition to that, I am advised by the minority leader that two amendments will be offered and debated, but votes will not be required. I presume that means they will be taken down. This is the report I received from the minority leader, and based on that report I hope we can proceed shortly to the next roll-call vote, which will be the vote on the Mitchell-Cohen amendment, and then following after that we can schedule business for in the morning and avoid a late session this evening. If I may inquire of my distinguished chairman of the committee his preference in that respect I will be prepared to make a further statement (*Ibid.*).

From these remarks one can see again the degree of cooperation among a majority and minority leader and a bill manager. Baker and Byrd always kept each other informed of events and activities related to the floor, per the agreement they made when they became the party leaders in 1977 not to surprise each other. It long had been the custom in the Senate for the leaders "to work out mutually satisfactory arrangements as to what, how, and when the Senate will consider a bill or a presidential appointment" (Baker 1980, 29). Note also at the end of Baker's remarks his deferral to Dole on the Senate's schedule, thus again illustrating Baker's distinctive style of leadership.

Threats and Offers of Reward in Exchange for Cooperation

Dole indicated that there were 9 amendments left on the Republican list and 38 listed for Democrats for a total of 47.[16] He added that if even only half of them were called up, he was not sure he could finish by 3:00 p.m. the next day unless the Senate stayed late in the evening. Dole also recommended that the Senate come in earlier than noon the next day so as to provide additional time (*Congressional Record* 1981, 17501). Byrd suggested that Baker consider scheduling the vote on the Metzenbaum amendment early and Baker replied he would be happy to do that but wanted to consult with Dole one more time, further illustrating Baker's preference for a collegial style of leadership. Baker

[16] It is not clear why Dole's count differed from Baker's. It may have been that members were notifying either Dole or Baker of the plans not to offer amendments but not both. Each may have been scratching off different amendments as not to be offered.

then propounded a UCR offering the additional enticement of a reward if there was no objection to it:

> Mr. President, let me make a unanimous-consent request *and if it is granted then I am prepared to announce there will be no more rollcalls after the next rollcall if we proceed in the way I am about to present*...Mr. President, I ask unanimous consent that when the Senate recesses today it do so until the hour of 8:15 in the morning; that after the recognition of the two leaders under the standing order and after the recognition of the Senator from South Carolina (Mr. Thurmond) and the Senator from Connecticut (Mr. Dodd) on special orders, there be a brief period for the transaction of routine morning business and that the Senate resume consideration of the tax bill at 9 a.m. tomorrow; that at 9 a.m. tomorrow a motion to reconsider the vote on the Metzenbaum, et al., amendment be in order and that a vote occur thereon immediately after the bill is laid down; that the Chair entertain a motion to reconsider and that a vote occur thereon without further debate or motion. I ask unanimous consent, Mr. President, that it be in order to ask for the yeas and nays at this time (*Congressional Record* 1981, 17502; emphasis added).

The most important provision of that agreement was perhaps that the vote related to the Metzenbaum amendment occur without further debate or motion. This precluded extended debate that might have the effect of shutting out debate on the remaining amendments, although according to the parent agreement they would get five minutes of debate when the time set for third reading arrived. The presiding officer asked for objections and there were none, after which Baker kept his promise and announced, "Mr. President, after this vote, which will be a 10-minute vote, there will be no more rollcall votes tonight" (*Ibid.*). Senators could safely leave without fear of missing votes. He cautioned his colleagues, however, that there would be votes all day Tuesday, the next day, and stated that he had not abandoned the hope that the Senate could finish the bill then. Senators, he then stated, should be on notice of a "strong possibility of a late session" the next day (*Ibid.*).

On this Monday, July 27, the Senate disposed of only 13 amendments.[17] Of those, 4 received a roll call vote, 8 were agreed to without a roll call vote and one amendment was withdrawn. There was only one other roll call vote and that was on a motion to table a Nunn amendment which failed. Interestingly, the Nunn amendment was immediately agreed to without a roll call vote once the motion to table it was rejected. When the day ended 63 amendments to the tax bill had been disposed of one way or the other leaving 38 to go on the list of qualified amendments. The Senate recessed at 7:55 p.m. until 8:15 a.m. Tuesday, the next morning.

When Tuesday arrived, the day Baker hoped that the Senate would conclude the tax bill, two votes quickly occurred fulfilling the provisions of the agreement reached just prior to recess the preceding day, as well as a vote on a Lawton Chiles (D-FL) amendment. Baker then addressed the Senate to discuss the order of procedure contemplated at that point and accentuated his remarks with a basic plea for the Senate to conclude the bill that day, one day earlier than provided for in the parent UCR:

> The purpose of seeking recognition, Mr. President, is to say that it is my hope that the Senate will continue from this hour for the remainder of the afternoon to take up and dispose of amendments, notwithstanding that there are conferences and caucuses on both sides of the aisle, beginning at 12:30 and running until approximately 2 p.m. In the past, we have not infrequently recessed during that period, but I do not propose now to ask that the Senate recess, because we have a great volume of work yet to do. I urge Members to consider offering their amendments during this period from 12:30 to 2, when the two parties are in caucus. I understand that that is an imposition on Members, but it is necessary, I believe, under the circumstances. I urge, however, that the distinguished chairman of the committee and the ranking member consider stacking any votes that may be ordered during that period until 2 p.m. I do not make that request at this time, but in the event there is a request for the yeas and nays, if the managers of the

[17] The Senate did not stay on the tax bill the entire day. It went into executive session once and dealt with other smaller matters. However, the tax bill did take up the lion's share of the Senate's attention during the day.

> bill would go forward with that request, I hope there will be no objection to it (*Congressional Record* 1981, 17803).

Baker then expressed a sense of optimism but not enough to renounce a possible late session. That would be determined by the members' response:

> Mr. President, it is still my hope that we can finish this bill today. I think we can. It will require a high level of dedication and diligence and a willingness on the part of Senators either to offer their amendments or declare that they will not offer their amendments. I believe it is essential that we finish this bill today. I do not propose to ask the Senate to recess early today as long as there is any hope that we can finish. On the contrary, I expect that we may be in late in order to accomplish that purpose (*Ibid.*).

After disposing of a few more amendments Baker again took the floor to clarify his intentions as to the schedule, but, perhaps unsatisfied with the results of his earlier statements, he punctuated these remarks with a clear threat, an offer of reward, and some shame thrown in for good measure. However, the shame was directed not at the entire Senate but only at Democrats. The implication was that in comparison with the number of amendments on the Republican side, it was the numerous Democratic amendments causing him to punish the Senate with a late session:

> Mr. President,.... I would like to try to describe the situation as I see it at this moment. It looks like we are not going to go out at an early hour tonight. I had thought for a while it might be possible to run to a fairly reasonable hour and then set a time certain tomorrow earlier than we originally planned to try to finish this bill. But, you know, even given a willingness to do that, and I believe both the majority and minority leaders were willing to consider that, if you take a look at the list of amendments, it simply is impractical. There are five amendments remaining on this side of the aisle, there probably will be only three offered, maybe just two. *But on the other side of the aisle, Mr. President, we have 22 amendments, according to my list.* So even if we go until the 3 o'clock hour tomorrow, we are going to probably end up with what I called on the first day the final passage stampede because we will be hard put to dispose of 27 amendments in the time we have remaining (*Congressional Record* 1981, 17827; emphasis added).

Baker then simultaneously renewed a threat and a possible reward:

So, Mr. President, I think we are going to have to remain in session tonight. I do not know how late we will go. I will consult with the distinguished minority leader and, of course, with the managers of the bill on both sides. But I would urge Senators to consider that we will be in for some little while yet working our way through amendments. I have not totally abandoned the idea that we will finish tonight. But, based on what I have just told you, with 27 amendments remaining, it would appear more likely that we will work fairly late tonight and still not be able to finish it. I felt constrained to advise Senators so that they can make appropriate plans (*Ibid.*; emphasis added).

A subsequent colloquy between Baker and Dole clarified the relative position of the tax bill in terms of the time set for third reading and allowed Baker to make his threat clear, yet still offer the reward of a relatively early recess if amendments were disposed of with dispatch or withdrawn:

Dole: Mr. President, I hope, as one who has been here for some time, that we would get all these dogs out of the way tonight, and the horses, too. But we will just keep working our way down the list. I think most of them will fall by the wayside. We have got two coming up right now we have an agreement on. We are still working with the distinguished minority leader on an amendment. I think we have worked one out for the Senator from Kentucky (Mr. Huddleston). I have just been advised by the Senator from Delaware that he is willing to bring up an amendment any time we wish, so we are really making good progress. I should think in a couple of hours we will have disposed of a number of amendments., if they have been cleared all the way around. We have one, as I say, now pending involving Senators Baucus and Roth. We have one involving Senator DeConcini and Senator Armstrong, and they are prepared to take 5 minutes. So how many amendments are left?

Baker: Twenty-seven.

Dole: I have just taken care of seven.

Metzenbaum: May I point out to the Senator from Kansas that the horse amendment of Senator Huddleston is still a matter of just how much it is going to cost, the way it is going.

Dole: They are at the gate, in any event. [Laughter]

Baker: Mr. President, in view of the remarks by the distinguished chairman of the committee and others, it is clear we are going to be in for a good while tonight just working our way through amendments. We will take another look at 8 o'clock and see how it is then. But I would advise Senators that we are here for a while tonight (Congressional Record 1981, 17827).

An Expression of Optimism

After a few more roll-calls Baker gave a more optimistic report on where he thought the Senate was, suggesting that his persuasive strategies for moving the Senate to final resolution was finally having the desired effect:

> Mr. President, I thank the minority leader for his inquiry. I think we are making good progress and I am advised by the distinguished manager of the bill for the majority, and I believe he has conferred with the minority manager as well, that it appears that we can continue to make good progress. I expect at least two more rollcall votes tonight and the Senate to be in until 9:30 or 10:00 (*Congressional Record* 1981, 17842).

When Dole indicated that it looked as if there were no additional amendments ready for consideration and advised Baker that he might want to consider recessing the Senate until the next day, Baker declined the opportunity, still wanting to push the Senate as far as he felt it could go. He asked, "Why don't we wait then and see how we get along tonight before we set the time for convening tomorrow" (*Congressional Record* 1981, 17843). After a short while, however, Baker sensed that the Senate would be unable to go any further that evening and accepted Dole's suggestion. He still wanted to include some sequencing of amendments in a unanimous consent request before recessing:

> Mr. President, if the Senator from Kansas would permit me, I have consulted with the minority leader, with the chairman, and with the ranking member of the Finance Committee. It seems clear that there are no other amendments that we can do tonight. So I wish to announce there will be no more votes this evening. Mr. President, sometime shortly I will ask the Senate to enter an order to convene at 9 o'clock tomorrow morning. I inquire of the distinguished chairman of the committee if he is in a position to suggest a listing and sequence of amendments to be disposed of tomorrow and perhaps an overview of how many amendments remain and when he thinks we might reach the final stages of consideration of this bill on tomorrow? (*Congressional Record* 1981, 17855).

Dole responded with a suggested sequence of amendments that could be offered the following morning. After consulting with the minority leader, Baker made the request. In the process, he said that Kennedy might only offer two of his remaining amendments, perhaps none, and implied that Kennedy might have been using his amendments as bargaining chips to negotiate away amendments filed by others that he opposed. After the request was agreed to by the Senate, Baker provided, via unanimous consent, that the Senate stand in recess until 9 a.m. the next day, Wednesday, that the time for the two leaders customary opening remarks be reduced to two minutes each, and that after special orders and a period for routine morning business, the Senate automatically return to consideration of the tax bill. (*Congressional Record* 1981, 17855)[18] After the Senate agreed to the request Baker took the opportunity to praise Dole and other helpful senators:

> May I say to the Senator from Kansas that he, the Senator form Louisiana, the Senator from Virginia, and others, have done an extraordinary job in dealing with more than 100 amendments on this bill. I would hope that the handful of amendments that are yet to be dealt with can finish this bill sometime in the early part of the day on tomorrow *(sic)*. I yield the floor (*Congressional Record* 1981, 17855).

The praise was not necessary because Baker had already gotten his agreement. The Senate then ended the day with Baker failing to accomplish his goal of disposing of the tax bill a day earlier than provided for in the parent agreement.

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[18] If this provision had not been included in the request and agreed to then the measure would have to be called up by a motion to proceed to consideration which is a debatable motion. Generally, the majority leader will provide in an agreement the preceding day that the measure return as the pending business after special orders and morning business so as to avoid this potentially time-consuming activity.

The Day for the Final Vote Arrives

The Senate continued the amendment process when Wednesday arrived, the day set for third reading. After the disposition of an Thomas Eagleton (D-MO) amendment and a Baucus amendment, the Senate took up an amendment by Sasser which he immediately withdrew. The reason given by Sasser was that an earlier amendment he previously offered was also a marriage penalty amendment. It failed, and he did not want to take up the Senate's time with a similar matter (*Congressional Record* 1981, 17943). Dole then dispensed praise for senators who were helpful to him on this bill, and Baker addressed the Senate and began what has become a custom of majority leaders, namely, praising the managers of the bill and others who were helpful in securing passage. Though the Senate was not yet over the finish line, Baker was beginning to see the tape:

> Mr. President, I, too, would like to take this moment to express my appreciation to all the members of the committee, the [Finance] chairman in particular. I shall have more remarks to make about their efforts on this bill, but let me add to the remarks made by the distinguished chairman of the Committee on Finance in respect to our friend and colleague, the Senator from Delaware (Mr. Roth). I want especially to compliment him for his tireless efforts in pursuit of meaningful tax relief for the American taxpayer (*Congressional Record* 1981, 17955).

In addition, Baker commented on the substance of the legislation in the hope that it might spur members on toward passage:

> The centerpiece of President Reagan's economic recovery plan is the tax package we are about to pass and the heart and soul of that package is the across-the-board tax cuts which were first introduced in the Chamber over 4 years ago by Senator Roth... Perhaps more than any other person, the Senator from Delaware will be remembered as the

> initiator of what may be the most fundamental shift in tax policy our Nation has even *(sic)* seen, a shift that will restore incentives for working Americans and encourage the production needed to revive our sputtering economy. Without the efforts of Senator Roth, the working men and women of this country would certainly have been buried under an avalanche of increasing taxes. Mr. President, Senator Roth is to be commended for the leadership and forepersistence *(sic)* as a legislator...to reduce the taxes of all Americans (*Ibid.*).

After a few more amendments were disposed of, Dole withdrew one of his and sent a technical amendment to the desk.[19] It was agreed to without a roll call but there was some controversy over this vote. The presiding officer asked for the yeas, and then the nays and indicated that in his opinion the nays appeared to have it. Dole asserted he did not hear the vote and asked for another voice vote. The procedure was repeated and again the presiding officer asserted the nays appeared to have it. Then Dole asked for a division vote in which the yeas prevailed.[20] Baker then moved to reconsider and Dole moved to table that motion, settling the issue permanently.

Baker inquired if there were further amendments to be dealt with to which Armstrong announced that he intended to offer an amendment to repeal the family rental/home office tax but, at the request of Treasury and the chairman of the Finance Committee, he would withhold it (*Congressional Record* 1981, 17972).

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[19] A technical amendment is an amendment that proposes no substantive changes in law but rather corrects a mistake, such as a wrong date, in an amendment that has already passed or for which the yeas and nays have been ordered, thus preventing the sponsor from withdrawing it or correcting it without unanimous consent being required.

[20] In a division vote has the members in favor of the proposition stand and are counted and then those opposed to the proposition would stand and are counted. However, no names are taken so one would not know how any particular member voted unless they observed in person the actual vote.

The Senate Finally Votes on the Tax Bill

Finally, the bill, as amended, was agreed to (89-11). Dole moved to reconsider and Baker moved to table that motion, thus precluding a re-vote on the matter. House Joint Resolution 266 was then read a third time. That accomplished, no further amendments were in order and the amendment process had come to an end (*Congressional Record* 1981, 17983-84).[21] Perhaps more importantly, Baker's long struggle to negotiate amendments away and to provide for time limitations had come to a successful end. He met the deadline without the great stampede of amendments that he feared.

Baker then asked unanimous consent to address the Senate for two minutes. He traced the bill from when the Finance Committee reported it twelve days earlier through passage. During those twelve days, Baker said, the Senate completed action on one of the largest and most comprehensive tax reforms ever considered by Congress. In those grueling twelve days, there were over 100 hours of debate. There were a total of 118 amendments considered, 101 of them included in the parent unanimous consent agreement. While 30 of the amendments were agreed to by the managers without a roll-call vote, 49 passed on a roll call vote, 17 were rejected on a roll call vote, 8 were tabled,

[21] A bill, upon third reading, is not actually read but third reading merely signifies the end of the amending process. The bill is then "engrossed" meaning it is written up in final form including the amendments that had been adopted in that particular chamber.

12 were withdrawn, and 2 left undisposed of on the list (*Congressional Record* 1981, 17984).

Baker then offered substantive remarks on the bill, much as he did when debate opened on the Senate floor and at key points thereafter, then moved on to again praise the senators who were most helpful in getting the measure to third reading. The minority leader also offered generous amounts of praise, and Senator Dole, the bill manager, in turn praised Baker, Byrd, and others. Even Budget Committee Chairman Domenici got in on "the praise fest." Baker concluded by asserting, "Madam President, may I say in all sincerity I do not believe any Leader of the Senate has been more fortunate than I am in having two chairmen of the caliber of the Senator from Kansas [Dole] and the Senator from New Mexico [Domenici] to handle measures of this magnitude. I once again express my appreciation" (*Congressional Record* 1981, 17985).

The rest of the day was mainly devoted to DOJ authorization and Johnston's cloture motion on that bill, per the provisions of the parent agreement. This was not the end of the story with respect to the tax bill, however.

Epilogue on H. J. Res. 266

The conference process began on Thursday, July 30, and it got off to an inauspicious start when Kennedy asked Baker when conferees were going to be appointed for the tax measure. Baker indicated perhaps that night but probably the next morning.

Kennedy then revealed the reason for his inquiry. He wanted a full debate at the time of conferee appointments, because if there was going to be a "full or substantial yielding to the House position on the additional tax relief [granted] to the major oil companies" [i.e. windfall profits] "the issue would be debated and discussed at length" (*Congressional Record* 1981, 18668).[22] It was a clear filibuster threat. Kennedy was not going to let go of the windfall profits issue. Baker, however, was unruffled, responding, "Madam President, I understand and appreciate the interest of the Senator in the subject, particularly in the procedure that will lead to the final resolution of the tax bill. He has my personal assurance that I will give him notice to the extent that it is humanly possible to do so of the time when I will ask the Senate to proceed to the consideration of this measure" (*Ibid.*). Baker was not required to keep Kennedy or any member personally informed of the schedule, other than publishing it, although it is the custom in the Senate for majority leaders to do so, particularly when asked.

The fact that unanimous consent is required for many activities in the Senate may be responsible for the level of deference to the interests of colleagues exhibited by most contemporary majority leaders. Kennedy noted Baker's cooperative tone and paid homage to the leader's reputation stating, "Madam President, the majority leader and the chairman of the Finance Committee have been extremely fair during the whole discussion

[22] Conferees from the Senate are chosen by the presiding officer usually from a list provided by the chair of the committee with jurisdiction. Often the decision on who goes to the conference is made by unanimous consent but can be done by resolution (Tiefer 1989, 792).

and debate with both those who supported their position and those who opposed it. I thank the Senator and I am grateful" (*Ibid.*).

Senator Dale Bumpers (D-AR) then asked Baker if he planned on a voice vote on the conference report, when it was reported back, "since there is little doubt about the outcome" (*Ibid.*). Baker replied that he would have no problem with that but since they were dealing with perhaps the biggest tax bill in history, he would like to confer with others before giving an answer. This was further illustration of Baker's consultative style of leadership.

The Prospect of a Filibuster is Again Raised

Next came another filibuster threat from Metzenbaum. It was implied in an inquiry by Metzenbaum asking Baker to indicate if it was correct that the rules required that the conference report be read. Baker attempted to preclude the use of that particular rule to delay action:

> Madam President, once again I would not presume to interpret the rules of the Senate. That is a matter that addresses itself to the Chair, or in some cases to the entire Senate. I hope the Senator is not suggesting that he would ask for the conference report to be read. It may indeed be voluminous, and I will be glad to supply him with a copy in advance in order to reduce that possibility, if he would make that request (*Congressional Record* 1981, 18669).

Metzenbaum made his intentions clear:

> Well, the Senator from Ohio has always tried to be very candid and very clear with the distinguished majority leader, and the majority leader has always been candid with the Senator from Ohio. The majority leader and the chairman of the Finance Committee have been extremely cooperative in the handling of this measure. I think the majority leader is aware of the fact that a number of us have had some very strong views with

> respect to the extra $26 or $32 billion that is to be included in the House bill for the oil companies over and above the $20 billion that is in the Senate bill. *Since the Senator from Ohio has definite feelings that our Nation is concerned about getting this tax bill brought to an early conclusion, but also recognizes that the people of this country are not aware of what the House bill contains in this respect, I wanted to advise the majority leader that I think it may take some time to let the people of the country become aware of what the whole issue is about, and by putting it over during the printed period it might very well give them an opportunity to digest better what the actual facts are. So I thought I ought to let the Senator know what my thinking is* (*Ibid.*; emphasis added).

In "wild west" terms, Metzenbaum was calling Baker out. Baker responded to the threat with a threat of his own coupled, however, with a slight stroke of Metzenbaum's ego in order to prevent things from getting out of hand:

> Madam President, as always I am grateful for his consideration and concern and for the advance notice. I know what I am about to say will be accepted in the best of spirit, and since he has been kind enough to give a preview of what he has in mind, *I think he should know it is not beyond the realm of possibility that it will be necessary to file a cloture motion to limit debate on the bill.* So I think we sort of understand each other. *As in the past, the Senator from Ohio is a worthy adversary, when he is an adversary, and a great ally when we are together, but always a distinguished Senator.* So one way or the other we will resolve this issue, and I would only express the hope that we will do it very promptly (*Congressional Record* 1981, 18669; emphasis added).

This is the first time that Baker threatened a cloture vote on this measure, but he had come too far to let it get bogged down at the final stage of the process.

Friday, July 31, arrived and Baker declared his intention to lay before the Senate the House version of the tax bill (HR 4242) at 12:00 noon. In order for a bill to become law it must pass both chambers of Congress in identical form including the bill number. What Baker planned to do was to lay HR 4242 before the Senate and ask that all after the enacting clause be stricken and in lieu thereof be placed the language of H. J. Res. 266, the

Senate-passed bill as amended. When that was done Baker would appoint the conferees to work out the differences between the House and Senate.

Ready to proceed, Baker noted that all relevant parties were present including Kennedy and if those interested in the matter were ready, he was prepared to move forward. Metzenbaum stated that they were. Baker moved that the Senate proceed to the consideration of HR 4242. The bill was designated by title and, importantly, there was no objection to its consideration. The first opportunity to delay was allowed to pass.

Baker then attempted to carry out his intention, stated earlier, to strike the House language and insert the Senate language. The presiding officer asked if there was objection and Metzenbaum rose to speak, generating a brief exchange with Baker:

> Metzenbaum: Mr. President, I object only for the purpose of preserving my right to object. I want to ask the majority leader a question. Is it his intent to act in this manner and to subsequently appoint conferees? The Senator certainly has no intent of asking the Senate to accept the House bill?
>
> Baker: I do not. It is my purpose to proceed, first, to the unanimous-consent request that the Senator from Colorado will offer which the Senator from Ohio is aware of, I believe.
>
> Metzenbaum: That is correct.
>
> Baker: And after that, that we proceed to insist on the amendments, request a conference with the House on the disagreeing...[amendments], and ask the Chair to appoint conferees.
>
> Metzenbaum: And that motion is a debatable motion with the second motion?"
>
> Baker: Yes.
>
> Metzenbaum: I have no objection (*Congressional Record* 1981, 19039).

The presiding officer asked again if there was objection to Baker's motion to strike-and-insert and none was heard, clearing yet another hurdle. The big obstacle was yet to come.

The newly revised bill was then read a third time and passed. Baker moved that the Senate insist on its amendments, request a conference with the House, and appoint conferees.[23]

Baker then took a risk by asking unanimous consent that it be in order to move to reconsider the vote by which the bill (HR 4242) was passed and added, "I will in no way interfere with the right of the Senator from Ohio to debate my last request [to appoint conferees]. I ask unanimous consent that it be in order to do that. I ask unanimous consent that it be in order to make that motion at this time" (*Congressional Record* 1981, 19039). Metzenbaum could have objected, knowing that a motion to table the motion to reconsider would immediately follow, thus making permanent the vote on passage of the bill. But it was not the Senate version that Metzenbaum and others had a problem with, but rather the House version. Metzenbaum, Kennedy and others feared that the Senate conferees would agree to House provisions that gave additional tax considerations to the oil companies. Baker nonetheless moved to reconsider the vote by which the bill was passed and Senator Long moved to lay that motion on the table. There was no objection and the motion to table was agreed to (*Ibid.*).

Metzenbaum then rose to address the issue of appointing conferees. However, he could not prevent what was by then inevitable, and Baker's motion to appoint conferees

[23] When the Senate insists it is saying that it does not wish to resolve its differences with the House version by bringing up House amendments for a vote but rather wishes to utilize the conference mechanism. Additionally, insisting on amendments is not binding. The conferees have the authority to negotiate the differences in the two measures. The statement is meant only to remind the conferees that their primary loyalty is to the Senate and not to give away too much and offend the majority and thus endanger Senate passage of the conference report.

was agreed to by the Senate after briefly setting it aside to allow senators to make statements, thus remaining faithful to his style of allowing debate to run its course.[24]

The Conference on HR 4242

The conference process began almost immediately and was nearly as contentious as the debate and action on the measure when it was known as H. J. Res. 266, but on the eve of the scheduled August recess, there was pressure for rapid movement. The committee completed action at 8:05 a.m. the next morning. Prior to that, all through Friday night and early Saturday morning Baker exhorted the Senate to bear with him in that he expected the conference committee to report the bill any moment. This went on through the night with Baker occasionally recessing the Senate for an hour or so at a time. Finally Baker recessed the Senate at 2:30 in the morning of Friday, July 31, until 6:00 p.m (*Congressional Record* 1981, 19227).

During conference on the bill there were few major disagreements. This was probably due to the fact that Reagan lobbied both chambers vigorously was able to get his way on most items. Also, conference committee Democrats Bentsen and Harry F. Byrd (I-VA) were conservatives. The oil-related tax breaks were the major obstacle. What Kennedy feared and suspected happened. The Senate conferees yielded to the House language on the tax provisions for the oil companies. Oil royalty owners were given more

[24] The Senate contingent to the conference committee included Republicans Dole, Packwood, Roth, and Danforth, along with Democrats Long, Harry F. Byrd, and Bentsen.

generous exemptions from the windfall profits tax and so-called "stripper" wells were completely exempted after 1982. When the Senate reconvened, Kennedy was no more inclined to accept the House provisions related to oil companies than before, and he moved to recommit the conference report to the conference committee with instructions (*Congressional Record* 1981, 19283).[25] Baker responded to the challenge by trying to preclude serious obstruction. He asked unanimous consent that when the Senate convened on Monday that it consider H.R. 4242. Baker did not want to risk a motion to consider the bill because it would be debatable and could be filibustered. He also asked that two hours be provided for debate on Kennedy's motion to recommit, equally divided between Dole and Kennedy. Also in the request was a provision that if the motion to recommit should fail, the Senate would immediately, without further debate, motions, points of order, or appeals, proceed to a vote on the adoption of the conference report (*Ibid.*). By getting this in a unanimous consent agreement, if he were successful, Baker would have precluded further delay. However, it required unanimous consent and if Kennedy, Metzenbaum, or any other opponent of the bill were adamant about obstructing the legislation, they could object and keep open the possibility of a filibuster. However, an agreement negotiated off the floor was reached by the principals involved. It set the time

[25] A motion to recommit a bill to committee, in this case the conference committee, with instructions does not necessarily mean that the committee meets again. It merely means that all amendments that have been agreed to are stripped from the bill as if they had never been agreed to and, if there are instructions, to insert new language. The motion is voted on and, if a majority agrees to the motion, the recommitment and the accompanying instructions are considered to have been carried out. The motion may also be used to kill a bill, if agreed to, since there was no obvious majority to pass it and a majority voting to recommit.

for vote on the Kennedy motion to recommit at 2:00 p.m. on Monday and then, pending the outcome of that vote, a vote on final passage.

Another Floor Fight Over Scheduling

A major fight took place over the 2 p.m. vote time when the agreement was brought to the floor. Boschwitz and others wanted a later time such as 3 p.m. to accommodate travel plans, but Byrd and some Republicans objected to a 3 p.m. vote because of plans of their own. It was some time before Boschwitz and his allies were placated, and eventually Baker got his agreement providing for a 2 p.m. vote.

When the Senate reconvened on Monday, Baker had to fend off a request by Metzenbaum, who called from Atlanta, to extend the time for the vote on the Kennedy motion to recommit. This time, Baker had Metzenbaum over a barrel and knew any attempts to change the time of the vote, which would require unanimous consent, would draw an objection. Baker felt compelled to share the episode with the Senate:

> Mr. President, a few moments ago, I talked with the Senator from Ohio (Mr. Metzenbaum) on the telephone. He was in Atlanta. At that time, Senator Metzenbaum asked me to agree to a unanimous-consent request to try to extend the time for voting on the Kennedy motion. I had to tell the Senator from Ohio that that was not feasible to do, that a great number of Senators are committed to the voting sequence that has been established for 2:15 and then 2:30. The Senator from Ohio, I believe, understood why that unanimous-consent request could not be agreed to. That, together with the complications of the air controllers' strike, apparently indicates that the Senator from Ohio will not be here. I promised to put in the Record, as I am doing now, the fact that he made a very diligent and good-faith effort to be here, including his request to extend the time for voting, which I regret I could not grant (*Congressional Record* 1981, 19315).

The time for the vote on Kennedy's motion to recommit finally arrived. It failed 20-55, then Dole moved to reconsider and Long moved to table that motion. The vote then occurred on the conference report which was adopted 67-8. Dole moved to reconsider and Baker moved to table Dole's motion, bringing a final and permanent end to debate on one of the most contentious measures considered by the 97th Congress (*Congressional Record* 1981, 19329).[26]

Lessons Learned

The *Economic Recovery Tax Act of 1981,* in the larger sense, represented a victory for Baker although he had to suffer some small defeats along the way. When one is discussing leadership success, it is probably with respect to the larger sense for which leaders are remembered and evaluated. In this case, that is getting the measure passed in desired form. The bill that was passed after the conference process concluded was very similar to what the president wanted, after Reagan had earlier in the process bowed to certain demands from the Senate, accepting them as the price for Senate approval. One of those changes was a Senate Finance committee proposal to provide an "all-saver's" plan as a way to respond to dwindling deposits in financial institutions. It would allow banks, credit unions, and savings and loans to issue one-year certificates that would earn 70 percent of the yield of a one-year Treasury bill. Reagan's opposition to this and other

[26] Some senators, already convinced of the impending outcome, had already left town for the scheduled August recess.

additions to his proposal was predicated on his desire for a "clean" bill and did not represent a defeat for the president, since he eventually agreed to them in order to get his program passed. Reagan and the Finance Committee clearly won the war, if not every battle along the way, over the 1981 tax bill. In the Senate, Reagan can attribute that success mostly to the Senate majority leader. In this case, Baker prevented potential filibusters on at least two occasions related to the tax bill and he did so without having to resort to a motion to invoke cloture, although he did threaten it.

The Senate is about deliberation. It is often referred to as the greatest deliberative body in the world. The members would not take too kindly to anyone, even a majority leader, trying to alter that particular characteristic. Thus, a majority leader is somewhat constrained by the institutional environment as to what he can do to accomplish the task of moving the chamber along. However, the point of this chapter, and it can be stated as a conclusion, is that majority leaders have at their disposal numerous resources to assist in accomplishing goals, aside from procedural strategies to be discussed in more detail subsequently. In this case, Baker could use unanimous consent agreements in the place of cloture petitions to move the Senate, but only because the other members consented and allowed him to do so.

With respect to the bill that was the focus of this and the previous chapter, Baker most often relied on offers of reward: letting the Senate go out early, on time, or declaring no further roll-call votes would occur so that senators not directly occupied with debate could leave. Threats also played a role at key moments such as keeping the "children after school" (i.e. late or weekend sessions). Both of these were used to get senators to the

floor to offer their amendments and for other reasons. Flattery and praise were utilized by Baker, but mainly in an attempt to maintain an environment conducive to compromise.

His effective use of flattery and ego-stroking was perhaps best described by Roth when he referred to Baker as "a political neutron bomb" who "destroys his opponents and leaves their egos standing" (quoted in Annis 1995, 8). This tendency was demonstrated early in the consideration of the tax bill when Baker flattered Moynihan before moving to table his amendment. In fact, before Baker would "destroy" an opponent he would let them know of his specific intentions before-hand (Annis 1995, 3). It is probably for Baker's ability to maintain comity and civility in the Senate that he will always be best known.

Shame also proved useful at key moments, particularly in getting members to offer their amendments, withdraw amendments, or to not offer them. Baker's use of shame is most intriguing, because in order to have any effect its targets must have a conscience in order to be vulnerable to such a strategy. Many lay-persons, and not a few scholars, might argue that no member of Congress has a conscience. Frequently during debate on the tax bill, Baker appealed to members sense of shame and often it worked. At other times, however, playing the shame game had no effect as in the example of Metzenbaum's refusal to bow to it at his first attempt at a filibuster on a Dole amendment.

There is even a story describing Howard Baker's use of shame during roll-call votes that were likely to break down along party lines. It seems that when a vote began, which in the Senate is done by an actual verbal call of the roll, Baker would sit on one of the two tables provided for the parties where the respective members cast their votes.

Thus, when the bell sounded for a vote and Republican members came from their offices to cast their votes, they would have to walk down the aisle toward the Republican table and be forced to look Howard Baker in the eye before casting their vote. This no doubt made it difficult to vote against the party.[27] This is just one example of the use of shame by Baker, aside from his use of it during debate on the tax bill.

These persuasive strategies were used by Baker on other legislation, but the tax bill is representative enough of Baker's persuasive styles and pet strategies that significant conclusions can be drawn. He avoided certain persuasive strategies that he felt would be counterproductive, such as mockery or ridicule.

Appeals to party loyalty during debate on H. J. Res. 266 generally came in the form of enticing Republicans to support the new Republican president emphasizing that it was his tax program and the party would suffer if it went down to defeat. This is illustrated by Baker's opening remarks on the bill.

Baker was a restrained or deferential type of leader, as demonstrated in this case by his refusal to strong-arm the tax bill through the Senate and his open sharing of information with potential opponents. That is not to say that Baker never resorted to the exercise of raw institutional power, because he did. That topic will be discussed in more depth in the next chapter. Party leaders can be, and Baker in particular was, a strong leader. Only a persuasive leader could have gotten unanimous consent on the agreement

[27] This anecdote was told to the author during a discussion with David M. Welborn, who is directing the Howard Baker Oral History Project at the University of Tennessee, and has conducted numerous interviews with Baker and other senators who served with Baker. There is also mention of this in Annis 1995, 7.

negotiated by Baker to establish a time-certain for a final vote and to limit the amendments that would be given consideration. But even Baker had to renegotiate provisions of that agreement almost up to the point of third reading. It was a long, hard struggle for Baker to get the agreement in the first place as well as to manage the floor and lead the Senate to final passage. He might have had an easier time if he had adopted Byrd's approach to unanimous consent agreements. Byrd insisted on nailing down agreements before he brought legislation to the floor rather than trying to negotiate them after he found himself in the parliamentary flow (Tiefer 1989, 579).

Negotiating a complex unanimous consent agreement in the Senate, especially on a controversial or major policy change, can be a long and tedious process. An important attribute of leadership is skill at negotiation--negotiating personally and stimulating the negotiation efforts of others. Getting agreement from 100 senators representing different types of constituencies is inherently a difficult task. It takes constant negotiation and consistent pressure from the leader to obtain an agreement. Sometimes, even the opposing leader must intervene in order to lure recalcitrant members to agree and again get the Senate moving. Once the agreement is reached, the majority leader changes roles and becomes the defender of the agreement and pushes for senators to offer their amendments in a timely fashion so that there will not be a logjam, or "great stampede," as the time for final vote approaches. In Baker's case on the tax bill, he had to be accommodative in order to get an agreement. Once the agreement was reached he continued to be accommodating, allowing members to add their amendments to the list of those that would be in order per the agreement. Only if altering the agreement would

jeopardize the time for a final vote on the tax bill, or when it would incur objection from other members, would Baker decline invitations to alter the agreement.

Not only was Baker an accommodating leader, but he also was willing to allow others to help move the Senate forward, usually the bill managers or the Democratic leader. However, other members attempting to seek unanimous consent on anything other than routine matters would cause Baker to interject and protect the prerogatives of the majority leadership.

All of the strategies used by Baker to obtain his objectives illustrate how neo-institutionalism is the best approach for understanding what happens on the Senate floor. Ego-stroking, rewards, shame and other strategies all change the institutional environment and apparently affect the behavior of other members. Baker, as majority leader, thus was very much a part of the institution that defined the environment for the legislative process to work. Of course, the strategy or strategies used by Baker depended on the situation, adding further evidence that a "situational" model is most appropriate when examining Senate leadership. Most often, Baker was able to use positive strategies interlaced with a few negative sanctions such as threats and punishments.

A leader cannot always be accommodating and deferential as Baker was on the 1981 tax bill. The focus of the next chapter will be on Baker's use of institutional resources, including powers over scheduling and the rules and precedents of the Senate, to affect the outcome of legislation, or at least to move the Senate toward completion of action on a measure. When things got too far out of hand, Baker would resort to the use

of raw institutional power in order to break a logjam and move toward final passage. The threat to final passage in these cases would come in a new form: full-blown filibusters.

Chapter Five

On Obstruction

The last two chapters illustrate how the position of majority leader is very much a part of the institutional context within which legislation is considered. Baker demonstrated how instruments for floor management could be used to effectively lead the Senate and deal with problems that arise and threaten to derail the institution. The problems that Baker had to deal with on the 1981 tax bill were minor compared to the ones he would have to deal with during the episodes discussed in this chapter. This chapter, among other things, shows how Baker was able to deal with filibusters and other dangerous parliamentary situations. Needless to say, the institutional resources available helped him to accomplish his goals. Persuasion also was useful and effective. This chapter, then, provides more evidence, if the previous two chapters were not enough, as to how and why Baker was an effective leader, that the situation determines a majority leader's response more so than a model of centralization, decentralization, or individualism, and, building on that, the neo-institutionalist perspective is the most appropriate approach for exploring congressional leadership in general and Senate leadership in particular.

One major way in which the Senate differs from the House of Representatives, and in many ways makes the Senate more interesting, concerns the opportunities for obstruction. There are no rules in the Senate that assert that a member may obstruct

indefinitely. Rather, it is the lack of rules that place limits on debate which provide the opportunities for obstruction. Until the cloture rule was adopted in 1917, members could talk a bill to death or offer hundreds, even thousands of amendments with the intent to delay proceedings until the leadership or a measure's sponsor decided to withdraw it. The filibuster is most effective, hence more common, when a scheduled recess is near. For example, if the Memorial Day holiday is approaching, other members can put informal pressure on the sponsors to take down an offending measure so that a recess will come on schedule.

In the last chapter, there was some discussion of the Senate rules, but not as they were used to influence the ultimate outcome of the legislative process. Recall from the last chapter that as majority leader, Baker usually was much more interested in facilitating the process than in any particular outcome. Although he did have a preference when it came to final disposition of the tax measure, he did not have to worry about passage because he probably knew the votes were there. Baker did not resort to the use of cloture to shut off debate on the tax bill, which is an interesting fact in itself. However, he no doubt would have done so if "extended debate" had extended too long. But what of situations in which passage was jeopardized, particularly for measures Baker favored? This chapter addresses some of these situations. Scholars who appreciate political intrigue may perhaps find it more interesting than the previous two, because forthright uses of leader power are examined.

The format of this chapter will differ from the last. There, the discussion revolved around one bill to demonstrate how difficult it is for a leader to guide legislation to final

passage. Baker primarily relied on strategies of persuasion to negotiate mostly small unanimous consent agreements to nudge the Senate along leading up to one parent agreement establishing a time certain for the final vote and limiting the amendments that could be introduced. It was difficult to get that agreement, and it may be argued that it did not limit the number of amendments effectively, as many senators insisted that their amendments be included on the list, in some instances after the agreement was adopted. Baker, in characteristic style, allowed the amendments to be put on the list when he could have refused.

In this chapter, one piece of legislation will be discussed in considerable detail, but other measures will be examined to illustrate the institutional resources available to a leader and how they may be used or not. All of those falling in the 1981-85 period precipitated complex legislative situations that challenged Baker's ability, as majority leader, to keep the Senate moving. By the conclusion of the chapter, the reader should see that a majority leader in the Senate has more institutional resources at his disposal than current congressional literature typically suggests. Taken in conjunction with his own skills at persuasion and his prerogatives, a potent package is created that allows for effective leadership of the Senate.

Effective leadership in the minority as Baker was in the 1977-81, at times required the deployment of varied resources for obstruction. A portion of this chapter deals with such situations. As minority leader, Baker protected his party colleagues by frequently siding with them in filibuster attempts. He also, on one occasion in 1977, sided with majority leader Byrd in an explicit attempt to break a filibuster led by two Democrats.

This was an example of raw power that set a particularly odious precedent in the minds of some members who gave it the invidious label, "Black Monday."

A Brief History of the Filibuster and Rule XXII

Opportunities for obstruction in the Senate did not always exist. From the organization of the Senate until 1806, there was a rule, then known as Rule V, that allowed any member to "move the previous question." Similar to the rule that still exists in the House, after someone moved the previous question, that motion was then voted on with a simple majority prevailing. If the motion prevailed, then the previous question, be it the bill or an amendment, was then voted on, thus ending debate. In 1806, the Senate repealed Rule V, and from that point until 1917, except for a brief period during the Civil War, there were absolutely no procedural means for bringing debate to an end (Tiefer 1989, 693). The opportunity to filibuster was unbounded. However, filibusters during this period were rare and not very dramatic in their significance and effects.

In 1917 the Senate adopted Rule XXII which provided for cloture as a means for ending debate. The rule was a consequence of a filibuster on President Woodrow Wilson's proposal for arming American merchant ships prior to entry into World War I. Rule XXII required the votes of two-thirds of all senators present and voting to invoke cloture after sixteen senators filed a cloture petition with the clerk. The cloture vote was to take place after an intervening day of session. Cloture was invoked only four times in

the decade following the adoption of Rule XXII. Subsequently, thirty-five years passed before cloture was again invoked.

The rise of the civil rights issue caused reconsideration of the rule after World War II. In 1949, the requirement for cloture was raised to two-thirds of the entire senate membership whether present and voting or not. However, in 1959 the Senate reverted to the previous standard , providing again for limitation of debate by a two-thirds present and voting (67 if there were no vacancies and no absences) two days after a cloture petition was submitted. If cloture was invoked, further debate was limited to one hour for each senator on the bill as well as the amendments to it. No new amendments could be offered except via unanimous consent. In addition, non-germane amendments and dilatory motions were out-of-order.

In 1975, Rule XXII was again revised by lowering the vote needed for cloture to three-fifths of the entire Senate (60 if there were no vacancies). This revision, however, did not apply to proposed rules changes to end debate, which still required two-thirds present and voting. Four years later, after extensive negotiations between Byrd and Baker, the Senate again altered the cloture rule by providing that once cloture was invoked, a final vote had to be taken after no more than one-hundred hours of debate (one hour for each senator). All time on quorum calls, roll-call votes and other parliamentary procedures would be included in the one-hundred hour limit. This was the situation that prevailed from 1981 through 1984 when Baker was majority leader, although some new precedents were set that affected floor activity. In 1986, the cloture rule was again altered. Only 30 hours of debate would be allowed once cloture was invoked. This

change was part of the compromise that brought television coverage of floor proceedings to the Senate.[1]

Obstruction was a problem for Baker as it has been for all recent Senate majority leaders. There were certain measures that were filibustered when Baker was the Republican leader that warrant discussion. Some of these filibusters were supported by Baker and others were opposed by him. Some of them caused Baker particular difficulties when he became the majority leader as they produced massive logjams.

Massive Logjams in the Senate

A massive logjam occurs when the Senate has reached a stalemate. A filibuster occurs, the leader cannot get cloture, and the sponsor of the measure will not back down. The minority may wish to try to create logjams as leverage to force the majority to negotiate a compromise. Often, this is the only way the minority can move policy in their direction. Of course, if a minority member offers an amendment which members of the majority begin to filibuster, the minority may be the side trying to remove the logjam. If the logjam threatens the ability of the Senate to accomplish important functions, the majority leader may side with those wanting to eliminate the obstruction.

In order to deal with logjams, a majority leader must call on all resources available to him. Usually, persuasion is attempted first. If that fails, the leader may turn to his

[1] Television of proceedings was perhaps Baker's greatest personal failure in the Senate, because it was consistently on his agenda, yet he failed to get the measure passed while he was the majority leader.

prerogatives to try to get a deal worked out by the parties to the conflict. If the logjam is over an important measure, the leader may resort to the rules and precedents (i.e. strategies of procedure) to break the logjam. Upon occasion the leader will use raw power to force the Senate to move forward. Raw power may refer to the establishment of new precedent giving the leader additional procedural resources to drive the Senate forward. It may also relate to a new interpretation of the rules and precedents that has the same effect. It generally robs members of parliamentary rights. For this reason, raw power must be used sparingly and very carefully. If raw power is used recklessly, comity in the Senate breaks down and the debate gets personal. The exercise of raw power, then, has opportunity costs associated with it. If used too often or in a careless manner, the opportunities for future compromise is endangered, and compromise is the major ingredient in making the Senate move.

Rules and Precedents

The Senate's rules and guiding precedents are one of three major resources available to a majority leader. His prerogatives and persuasive abilities are the others. Generally, institutional resources, based on the rules and precedents, are resorted to when the other two resources prove to be inadequate. Strong-arm tactics and raw power are particularly rare, because of the tradition in the Senate of individualism and extended deliberation. Moreover, institutional resources based on rules and precedents are the weakest of the three types.

The Senate often is characterized as the greatest deliberative body in the world due to the rights retained by its members and unrestrained debate that ensues. This implies that legislative outcomes reflect compromises between the members. An inference drawn from such an implication is only partially correct. What legislative outcomes more accurately reflect is the end result of a strategic game in which members use resources available to them. In addition, the level of information possessed by both leaders and members helps determine, in many cases, the final outcome of the bargaining process.

Before the use of strategies of procedure can be examined, further discussion of "precedents" is in order. Precedents are not part of the Standing Rules of the Senate. The rules of the Senate, unlike those of the House of Representatives, remain in effect until they are altered. In the House, the membership adopts new rules, which may or may not have changed, at the start of each new Congress. Senate precedents originate in the rulings of the chair. Thus they require no vote, except as they are appealed to the full body. In reality, new or revised precedents come infrequently.

When a new parliamentary practice occurs, the effect is to establish that practice as precedent, so that when a situation arises similar to that leading to the establishment of the precedent, the Senate leadership knows how to deal with it. In that sense, precedents in the Senate are like judicial precedents that guide courts in deciding legal issues as they arise. Senate precedents do not bind leaders absolutely. They are, however, considered to carry great weight and are not challenged lightly by any leader.

An example of a Senate practice established by precedent is the tracking system. As noted previously, tracking allows a leader to pull a bill being filibustered from the floor,

allowing the Senate to move on to other matters. The filibustered bill is placed on one track while other legislation is considered on another. The tracking system was developed in the 1960s under the majority leadership of Mike Mansfield. The tracking system allows the majority leader a way out of a jam by allowing the Senate to move forward despite a filibuster. Tracking is usually resorted to when cloture has failed, perhaps more than once, and it seems the only way of preventing gridlock. The majority leader and the filibusterers both seem to get what they want in that the offending bill is pulled from the floor, making the obstructionists happy since they do not have to remain on the floor in opposition, and the majority leader keeps the Senate going forward. The only losers are those in favor of the measure that has been pulled. One possible negative effect of the tracking system, however, is that it may have encouraged more filibusters. A filibusterer need not fear the wrath, or informal sanctions, of his colleagues for holding up the Senate when there is a means for the chamber to move on to other matters. Thus, the majority leader may have lost a means leverage to use against obstruction.

Republicans in the Minority: 1977-81

It goes without saying that when the Republicans were in the minority in the late 1970s, they were often the ones most responsible for the filibusters and other obstructionist tactics employed in the Senate. In the 1977-81 period, 16 measures were subject to cloture votes. A number of them were responses to the obstuctionist tactics of

Democrats, most notably measures related to the windfall profits tax and the rights of the institutionalized. In a number of instances Republicans were involved including Hatch's leadership in opposition to labor law revision in 1978 and Hatfield on a draft registration funding bill in 1980. For the labor law revision measure, Hatch had the help of a few southern Democrats. In some cases, attempts to end a filibuster was bipartisan as when Byrd and Baker broke a filibuster on natural gas pricing. There were a limited number of instances in which filibusters involving Republican's became something like party undertakings. The campaign financing bill in 1977 is the best example of GOP solidarity in opposition to a measure.

Baker's primary role as leader at that time was to protect the members of his party from "the tyranny of the majority." When there was no danger that the Democratic majority was going to abuse the Republican minority, Baker could then devote most of his attention to the pursuit of policy-oriented goals. The purpose of this section is to show what goals Baker sought in relation to filibuster activity and how he did so. The cases presented here suggest four major goals pursued by Baker. First, he wanted to make the Senate work. The "Black Monday" episode to be discussed shortly illustrates this nicely. In that case Baker was willing to cooperate with the Democratic leadership to break a filibuster using what has been described as strong-arm tactics or raw power. Second, Baker wanted to protect the partisan political interests of Republicans. This is demonstrated by Baker's actions related to an attempt to reform campaign finance laws in a way the Baker felt would benefit Democrats in the electoral process by providing public financing of campaigns. Since the Democrats were in the majority at the time, any change

that benefited incumbents, as this would by equalizing campaign expenditures of incumbents and challengers, worked to the advantage of Democrats. Third, Baker wanted to assert the policy interests of Republicans and to underscore their differences with Democrats. The debate over labor law revision will illustrate this clearly. It should be noted that it is sometimes difficult to distinguish between the second and third goals. Finally, Baker wished to reshape policy along lines more acceptable to Republicans and conservative Democrats--the conservative coalition-- while having to stand largely on the sidelines. The fight over windfall profits has been chosen to illustrate Baker's pursuit of this goal.

Baker's basic attitude from 1977-1981 was that filibusters generally should be avoided in order to make the Senate work, but he was quite tolerant of full debate, then and in the majority period. In that era, when the Democratic minority or any of its members began to filibuster and to stop the flow of the legislative process, Baker felt obligated to remove the threat. However, there were important differences in the way Baker did his job as minority leader as opposed to the majority leader period.

The first goal of the Republicans' filibuster efforts in the 1977-1981 period, aside from trying to become a force to be reckoned with policywise, was to protect the party from Democratic aggrandizement. Any efforts to increase the power of the Democratic majority or its leaders at the expense of Republicans were strongly opposed. Campaign finance reform in 1977 provides an example. Republicans did not appreciate Democratic attempts to "level the playing field" by implementing equal spending caps for incumbents and challengers in Senate campaigns. GOP members of the Senate understood the

"incumbent advantage" phenomenon quite well. Since they had fewer incumbents, Republicans would suffer under the proposed changes, since challengers could not use money to overcome the advantage that name recognition provides to incumbents. The other Republican-organized filibusters in the minority period were aimed, in their view, at protecting businesses and the economy. Such was the reason for GOP opposition to labor law revision in 1978. The revisions would have greatly enhanced the leverage that unions would have in collective bargaining and organizing. Republican efforts to filibuster President Carter's energy program were directed at moving the policy further toward decontrol, though Baker was supportive of a modest windfall profits tax increase.

The GOP record of success on filibusters during the 1977-1981 period was generally positive. The Republican position against campaign finance reform carried the day for reasons to be discussed subsequently. Republicans also were successful in preventing the labor law revisions from taking effect. They caused modification of the windfall profits tax proposed by President Carter. A discussion of these efforts and a fight over deregulating natural gas prices follow. First, however, a primary example of Baker's commitment to making the Senate function effectively as a legislative institution is examined.

"Black Monday"

In September and October, 1977, the Senate was considering S. 2104, a measure that would have the effect of deregulating natural gas prices. It was vital for the Senate to

pass the bill because, in the opinion of proponents, the oil shocks had punished the economy and something had to be done. Carter called the energy crisis "the moral equivalent of war." Majority Leader Byrd had the votes to pass the measure in the Senate, he but did not have the votes to prevent a filibuster led by Metzenbaum and James Abourezk (D-SD). Abourezk filed hundreds of amendments attempting to kill the bill. Recall that filibusters do not always consist of pure speechmaking on the floor of the Senate. Each amendment takes time to consider and vote on and are each subject to filibuster. Further, the filibusterers required that amendments be read in their entirety by the clerk, slowing the process to a crawl. Majority Leader Byrd kept the Senate in session for 18 to 20 hour days to break the filibuster. There was even some discussion on the floor about changing the rules, specifically rule XXII, so as to prevent obstruction of the type that was now going on. Baker made his position on that clear when he took the floor on October 1:

> I said yesterday I think we learned one thing, and maybe one thing, in this debate, and that was we need to modernize and overhaul rule XXII. Yesterday I said I would ask three Senators on this side to serve informally as a group to study that issue and to make recommendations in that respect. I do not say I would never vote that the reading of an amendment is dilatory or out of order and subject, for that reason, to a point of order. I might under some circumstances. I would not say I would not agree at some point that the Chair, in calling up and reading an amendment generally, either to the bill or otherwise, is out of order, but only if, Mr. President, we thoroughly consider what we are about. Only if we change that rule. There is a resolution on the Calendar now that has been there since the first day of the session. As I recall, it is Senate Resolution 5 introduced by the distinguished majority leader [Byrd], which says just what we are talking about here or proposing the Chair do (*sic*). I rose to speak against that. I took certain steps to try to avoid its being submitted to the Senate as a rule change. I am not certain I was right then. I may very well have been wrong that time. But what I am saying is, I do not want to make a rules change by a ruling of the Chair in the midst of superheated debate when tempers are high and passions are high (*Congressional Record* 1977, 31859-60).

By October 3, the Senate had been debating the bill for 13 days. It was becoming clear that holding the Senate late was not working for Byrd. As a result, he and Baker

met in Byrd's office to devise a strategy to end the filibuster. Participants in the meeting included minority (Republican) secretary Bill Hildenbrand, Henry Jackson (D-WA), Russell Long, and Murray Zweben, then the Senate parliamentarian. The problem was that even if cloture was invoked bringing debate to an end after 100 hours, as the rules stated in 1977, they permitted each amendment that had been filed with the clerk prior to cloture, and was germane, to be voted on. These votes, in conjunction with endless quorum calls, neither of which counted against the 100 hour limit, could keep the Senate busy for months if there were enough amendments (Howard Baker 1980, 30).

Initially, Byrd raised the prospect of some rules changes, but Baker would not go along because rules changes were likely to hurt Republicans whose influence was enlarged by the potential to filibuster. It would represent a serious abrogation of duty for him to go along with that, and his fellow Republicans would surely filibuster those rules changes.

When it was realized that Rule XXII prohibited dilatory motions, however, a solution suggested itself, although new precedents would still have to be established. The first was that the presiding officer would take the initiative and rule out-of-order any amendments that were "dilatory." The second precedent to be established gave a member expanded "property rights" to his or her amendments. That is, previous practice held that once an amendment was introduced, it no longer "belonged" to the sponsor and would require unanimous consent to have it withdrawn.

Once they returned to the floor, Baker made a parliamentary inquiry that eventually allowed Stevens to "recall" four amendments he had pending to the bill that had yet to be called up for a vote. This allowed Stevens, the minority whip, to reduce the number of amendments at the desk. Under the response to Baker's inquiry, another senator would be precluded from calling the amendments up. This action was the second precedent discussed above.

The third precedent, also to be established by a Baker point-of-order, was that if a quorum call had taken place since the previous vote, then another quorum call was to be considered dilatory. Only when "new business" was conducted was another request for a quorum call in order. If motions, amendments, and requests for the yeas and nays have been ruled dilatory under cloture, those rulings do not constitute transaction of new business for the purpose of serving as a basis for requesting another quorum call (Berlow 1977, 2128).

However, before Baker would agree to the plan in 1977 that would establish the new precedents, he established a condition, telling Byrd, "Look, if we're going to do this deed, if we're going to do these things, boys, you have that Vice President [Mondale] in the chair. The White House is going to share the responsibility for this" (Howard Baker 1980, 31). Baker understood the implications of using raw power to accomplish a short-term goal.

Byrd and Baker took the floor on October 3 to begin the process of establishing the precedents (*Congressional Record* 1977, 31922). Eventually, all of the points-of-order that established the new precedents were upheld by the full Senate. The final step was to have Mondale rule the dilatory amendments out-of-order by recognizing Byrd, and only Byrd, to call them up one by one for that purpose. If hundreds of amendments were filed with the clerk, many of them nearly identical, it was a safe assumption that the intent was to delay and that they were dilatory in nature. This was the justification for ruling them out-of-order. However, a remaining problem was that senators still had the right to appeal the ruling of the chair, which meant that if the opponents lost the right to have their amendments voted on they could still require votes on appeals from the chair's rulings which they were sure to do if their amendments were going to be systematically thrown out. The solution to this problem was one that Baker described as the toughest decision

for him to make, because it represented an exercise in raw power (Howard Baker 1980, 31). This is where the right of first recognition comes into play.

Baker has written that the right of first recognition is one of the few real powers that a majority or a minority leader has (*Ibid.*). The decision was made that Byrd and Baker would use the right of first recognition to prevent further delay. The plan called for Byrd to call up one amendment after another (any member can call up any amendment even if not the sponsor, apparently despite the new precedents) and the chair would rule it out-of-order as dilatory. After the precedents were established, Byrd took the floor and began the process of eliminating the amendments (*Congressional Record* 1977, 31927). Many of the amendment were ruled out of order because they were non-germane and others were out of order because they were directed at more than one part or section of the bill, something not permitted by the rules. In *No margin for Error*, Baker described the scene thus:

> He'd [Byrd] call up one amendment after the other and get it ruled out of order. We went through hundreds of amendments that way, with everybody screaming, beating on the desks, and carrying on. That's the only time in my career I've ever used pure raw power (Howard Baker 1980, 31).

At the time Baker wrote that, it was true, but Baker would return to this strategy in 1982 on the Department of Justice (DOJ) authorization bill. One gets the impression that Baker felt somewhat guilty for what happened that day. Although it was legal, risky precedents were set. Black Monday got its name because no one was sure what the events of that day would mean for the future. In a way, the precedent was set that the ends justify the means (Howard Baker 1980, 32). In fact, Baker's attitude about the rules and his passion for democratic principles was revealed when looking back at the episode he wrote:

> The rules are designed to keep things moving. But both the rules and custom provide a strong bulwark against tyranny of the majority. Every time we bend those rules out of shape, every time we break custom rooted in time, we walk along a dangerous precipice...What we did was perfectly legal. We didn't change any rules and we didn't prejudice any Republican rights; but we really did treat the filibuster senators shabbily because we flat cut them out with the power of the leadership. I sympathized with... [their] position, but it had to be done (Howard Baker 1980, 32).

In these remarks, Baker acknowledged that the leadership does in fact have considerable institutional power that can be used in managing the Senate floor, even if it means breaking new ground in order to do so. They bear close resemblance to Byrd's rationalization of "Black Monday" in 1977: "I did what I had to do to break that filibuster. And I did what I had to do to save the bill" (quoted in Berlow 1977, 2128). Both Baker and Byrd had great respect for the rules and precedents. Both of them, however, showed that they were willing to bend, or change them, when required to move an important bill. The natural gas deregulation bill passed on October 4.

Campaign Finance Reform in 1977

Before the campaign finance reform bill (S.926) was brought to the Senate floor in July of 1977, Baker informed Byrd that "there were few things he was as opposed to as...the extension of public financing [to congressional elections] and that he would make every effort to ensure that it did not become law" (*Congressional Quarterly,* 30 July 1977; quoted in Annis 1985, 424). In his opening remarks on the floor on July 25, Baker initially took a seemingly neutral stance imploring senators to look at the legislation

carefully and to understand what they actually would be voting on. However, hints at opposition also could be found. Specifically, Baker said,

> I doubt that in the 10 1/2 years I have served in the Senate I have ever participated in a debate that had more far-reaching effects on the future of government in the United States as we know it. I think the Senate will be called on to exercise the highest sort of good judgment and responsibility in deciding what disposition will be made of this legislation. I think that not only the two-party system, but the political structure, the image of Congress, and its future utility and value as a forum in which the great issues of the country are debated and resolved, are all intertwined in our consideration of this measure. So, Mr. President, at this point I urge our colleagues on both sides of the aisle to give most careful attention to the discussion on both sides of the issue and to consider most carefully the measure and the amendments to it which will no doubt be offered during the course of the debate. I believe the country will be watching us most carefully, and, in turn, I believe it is incumbent upon us to consider and debate this issue most carefully (*Congressional Record* 1977, 24643).

Baker went on to present an implied threat of extended debate, asserting, "I think we will have a good, thorough and energetic debate, and, no doubt, a long debate (*Ibid.*).

One of Baker's problems with the legislation was that he considered it "an incumbent protection bill" and thought that it would hurt Republicans, since there were more Democratic than Republican incumbents. Equal funding levels for both challenger and incumbent would benefit incumbents because they have the benefit of name recognition. Challengers would not be permitted to spend the extra amount needed to overcome that advantage.

As was his practice, Baker proposed an alternative that would expand a series of tax credits to contributors which he believed would encourage small contributors to participate in electoral politics at greater levels. Democrats defeated each proposal that Baker, Robert Griffin (R-MI), and Mark Hatfield (R-OR) proposed in the Rules Committee. The Democratic plan came to the Senate floor in late July.

The Senate rejected a Hatfield amendment on July 27, by a vote of 37-56 that would use federal tax revenues to pay part of the costs of Senate primary elections (*Congressional Record* 1977, 25174). The original bill only covered general elections. Hatfield's amendment may have been a strategic killer amendment, because during debate he expressed concern that the extension of public financing would bankrupt the Presidential Election Campaign Fund, revenue for which is supplemented by the $1 checkoff box on income tax returns. The Senate then settled in for a filibuster, although the public financing bill was interspersed with other Senate business through the tracking system. Baker engineered the filibuster and was backed by a coalition of conservative organizations. The first cloture vote came on July 29. Byrd's motion to invoke cloture shocked Republicans, because it was then the custom in the Senate to wait at least a week before forcing a cloture vote. Byrd concluded that both Baker and Hatfield were going to attempt to talk the bill to death and thus made his move. The motion to invoke cloture was defeated by a 49-45 party vote with sixty needed to pass (*Congressional Record* 1977, 25700; see also Annis 1985, 425). Baker lost only two Republican members on this vote. The Democrats, on the other hand, suffered twelve defections, mostly because of Byrd's premature action which Jacob Javits (R-NY) called a "Democratic attempt to roll over the Republicans with raw power" (quoted in Annis 1985, 425). Also hurting the Democratic leader's cause were President Carter's phone calls to Democrats urging them to adopt cloture. Although presidents often call members of Congress on legislation, it was unprecedented for a president to so openly weigh in on such a matter such as cloture, and his actions were interpreted by some senators as invading Senate prerogatives and

challenging the separation of powers. Thus, Carter's calls had the opposite effect of what was intended (*Ibid.*).

What happened subsequent to the cloture vote was somewhat intriguing. First, Byrd sent another cloture petition to the desk. This would insure another cloture vote after a day of intervening business (*Congressional Record* 1977, 25700). Then, after a brief period of debate on an environmental measure and the campaign reform bill, the Senate adopted a concurrent resolution to adjourn the Senate on August 6 and the House of Representatives on August 5 (*Congressional Record* 1977, 25724). It provided that both houses would return on September 7. It is strange that Majority Leader Byrd would pin his forces against the wall by bringing up and adopting the adjournment resolution, since a scheduled adjournment tends to benefit filibusterers. In the meantime, the Senate continued debating the campaign reform bill.

There were five days left before the scheduled adjournment, although the Senate could still take up where it had left off when it reconvened in September. The second cloture vote took place on August 1, this time failing by a 47-46 party vote (*Congressional Record* 1977, 25817). Proponents of public financing were still 13 votes shy, having lost two votes on the second attempt. Byrd submitted two additional cloture motions.

The next day Byrd got another vote on cloture. The third attempt resulted in Byrd's forces picking up five votes, only eight votes short of cloture (*Congressional Record* 1977, 26022). Republicans split 4-33 and Democrats split 48-13 on the vote.

Byrd subsequently vitiated the scheduled vote on the second cloture motion that he submitted the previous day (*Congressional Record* 1977, 26038). Although he had picked up support on the last cloture vote, off-the-floor negotiation were causing Byrd to lose confidence. Senator James B. Allen (D-AL), recognized widely as a parliamentary wizard whose skills rivaled Byrd's, split the Democrats by offering a strategic amendment to delete the part of the bill that provided for public financing of Senate election campaigns. It was voted on immediately after the last vote on cloture suggesting that negotiations produced an agreement that should Byrd fail to get cloture on the August 2 attempt, he would not obstruct a vote on the Allen amendment (*Congressional Record* 1977, 26022-23). Democrats tied 30-30 while Republicans voted 28-9 in favor of the Allen amendment. Byrd, after failing to get cloture, threw in the towel and voted for Allen's amendment. Baker and his Republican colleagues won this battle, although Baker and Byrd later cooperated to defeat subsequent amendments to the bill by tabling them. Baker, however, voted on August 3 against a motion to table an amendment offered by Helms that would prohibit political use of labor union funds that were collected under a compulsory union contract (*Congressional Record* 1977, 26330). Baker felt that the money was being used in contravention to the wishes of ordinary members of the unions. His position lost in this matter as well as on a motion to table an amendment to prohibit the use of reduced postal rates for political elections by any corporation, labor organization, and a few other types of organizations. Baker voted against the motion to table, but the amendment was tabled nonetheless.

Baker accomplished his main mission of deleting public financing from the bill. The watered-down version passed 88-1. The only "no" vote was cast by Republican Jesse Helms. This particular battle, then, must be classified as a victory for Baker's forces who won by obstruction. Baker was able to get a number southern Democrats to side with him, because they were used to facing only token GOP opposition with little financial support in their reelection campaigns. With public financing, these members would face better-financed challengers. Thus, the conservative coalition contributed to Baker's victory in defeating public financing. It also taught Byrd the somewhat bitter lesson that Republicans were a force to be reckoned with and that few controversial measures would pass without their active support, particularly when Baker could hold most of the thirty-eight Republicans together and persuade a few southern Democrats to defect.

Labor Law Revision in 1978

Howard Baker was minority leader for only a year when a bill was reported to the floor from the Labor and Human Resources Committee that revised the National Labor Relations Act (HR 8410). The bill added two more members to the National Labor Relations Board and, therefore, allowed more three-member panels to resolve unfair labor practice cases. The bill also allowed the board to summarily affirm, without extended review, decisions made by administrative law judges. Opponents charged that this amounted to packing the board with pro-labor members and giving them nearly unlimited

power. The bill also authorized the NLRB to seek court orders forcing management to rehire workers that unions claimed were fired for organizing and provide back pay at 150 percent of lost wages (*Congressional Quarterly Almanac* 1978, 284). Further, it authorized the board to award workers whose employers refused to "bargain seriously" a back pay remedy based on wage increases won by other workers during the same period. This would force the employers to bargain "in good faith," and if they did not, they would face forced wage increases based on those received by workers in other industries. Further, the bill set time limits on when representation elections could be held, basically between 21 and 30 days after a certified union filed an election petition provided at least half the workers signed union cards. Exceptions of 45 days and 75 days were granted in special circumstances. However, the shortened time frame gave pro-union forces an advantage, because they ordinarily did not call organizing elections until they were sure they had majority support. The time limit placed a barrier in the way of union opponents to mobilize and change the minds of supporters. Finally, the bill allowed union organizers access to workers on the job. The organizers would be permitted to address workers during working hours if the employer stopped production to "lecture the workers on the perils of unionism" (*Ibid.*). If employers did not stop production, organizers could speak to workers during breaks, in lunchroom areas, the parking lot and other non-working areas. This provision led to great opposition from small businesses, a fact not lost on the committee or senators generally (*Congressional Record* 1978, 13812).

Baker had never been a big fan of the NLRB. One provision of the bill he basically agreed with strengthened the right of organizers to meet with workers on the job. This

provision was aimed specifically at the J. P. Stevens company, which was known for union busting (Annis 1995, 132). Baker sided with labor on this issue but was afraid that the bill's other provisions would hurt small businesses especially to the point that they would be seriously injured. Thus, he supported Orrin Hatch (R-UT), Richard Lugar (R-IN) and other conservative Republicans in a filibuster. This position put him squarely at odds with the other party's leader, Robert Byrd, and the Carter Administration. Hatch would also secure the assistance of James Allen, widely recognized for his parliamentary skills and perfector of the post-cloture filibuster, to assist in procedural duels. On the Senate floor, Byrd, also known for parliamentary expertise, would be backed up by the bill manager Harrison Williams (D-NJ), Ted Kennedy, and Howard Metzenbaum.

Debate began on May 16 in an environment of full knowledge of an impending filibuster, but the bill's supporters were quite confident that they would prevail. In fact, "Democrats were so confident of victory that their worst fear was crushing Hatch and Lugar too quickly and arousing public sympathy. Byrd decided to let the two freshmen win the first two cloture votes, then stop the filibuster on the third" (Roderick 1994, 88). Faced with this prospect, Hatch and his colleagues concerned themselves with planning a postcloture filibuster. The combatants on both sides would go all out in order to secure victory.

By way of background, the Senate to this point in history had voted on cloture only 127 times. Never had the Senate cast cloture votes more than four times on a single measure (Roderick, 1994, 89). That record would fall during the debate on the labor law bill.

Baker knew that the impending cloture votes would be close. The outcome, as near as Baker and others could determine, would center on five undecideds, all of them Democrats. They were Chiles, Bumpers, James Sparkman (D-AL), Russell Long, and Edward Zorinsky (D-NE). Opponents filed approximately 500 amendments in case cloture was invoked. Each amendment was entitled to be read in full and only unanimous consent could waive this requirement, and each amendment was entitled to a vote, unless a motion to table was passed. Add to these quorum calls and other motions and the opponents had a rich arsenal with which to do battle on the Senate floor. This type of tactic would plague Baker in a few years when he was majority leader and primarily responsible for moving the Senate. However, a year earlier, in 1977, the "Black Monday" precedents were established with Baker's help. Thus, if cloture was invoked, Byrd would have new artillery to break a filibuster by amendment. All he had to do was use his right of first recognition and have the chair summarily rule the amendments out-of-order. In fact, the chair did not have to even wait for a point-of-order that an amendment was dilatory or non-germane.

But Byrd would have to get cloture invoked first, because only then are dilatory and non-germane amendments out-of-order. Baker knew that Byrd and his forces might be preparing a "Black Monday" style tactic, and on the first day of debate he made a parliamentary inquiry to set the stage and shore up the position of opponents:

> Baker: With respect to the amendments printed and at the desk, are those amendments now fully qualified for all purposes under rule XXII of the Senate, that is, are they eligible for consideration even if cloture is invoked?
>
> The presiding officer: They are eligible to be offered.
>
> Baker: But there is no further requirement for "qualification" under the rule?

> The presiding officer: The Senator is correct.
>
> Baker: And the only requirement beyond that would be a postcloture requirement under rule XXII that amendments must be germane?
>
> The presiding officer: The Senator is correct (*Congressional Record* 1978, 13814).

Byrd, unwilling to concede opportunities to summarily dismiss obstructive amendments made inquiries of his own:

> Byrd: They are eligible to be called up, but not necessarily in order either with respect to germaneness, if they are not germane once cloture has been invoked, or for other reasons, perhaps, for example, if they amend more than one part of the bill.
>
> The presiding officer: The Senator is correct (*Ibid.*).

Baker, in response, inquired about a backup plan:

> Baker: In the event the Chair rules that an amendment in this group that has now been qualified is nongermane and therefore not eligible for consideration postcloture, is that ruling of the Chair appealable?
>
> The presiding officer: An appeal would be in order.
>
> Baker: I thank the Chair (*Ibid.*).

Baker's role as the Republican leader was to provide cover, support and opportunity for his colleagues in the vanguard. Hatch managed the forces on the floor and substantive debate.

Lugar directed three teams of opponents, five to six members each, to cover or monitor the floor (*Congressional Quarterly Weekly Report* 1978, 1271). The teams were to see to it that no surreptitious unanimous consent requests slipped through. They also were to keep up the pressure on the wavering senators and other members with a little arm twisting to keep cloture from being invoked, for once that occurred, proponents of the

legislation would gain the upper hand. In addition, Lugar's office put out a newsletter every day to keep opponents updated (*Congressional Quarterly Weekly Report* 1978, 1520).

Until June 7, mainly a war of words had been fought. Baker called the bill an "over-broad solution to an exaggerated problem" and "tantamount to amputation of a limb when a splint will suffice" (*Congressional Record* 1978, 13818). Helms asserted that the bill was "designed mainly to unionize the South in push-button fashion...in effect by federal force" (*Congressional Record* 1978, 13830). Labor Secretary Ray Marshall asserted that the fight was between "the powerful and the powerless," and AFL-CIO President George Meany declared it "a holy war" (Roderick 1994, 89).

Baker would let Hatch lead the forces of opposition on the floor but did not play an inconsequential role. For example, he obtained the results of a poll that showed that the type of labor reform that Americans want most is less union power. The significance of this was that the poll was conducted by President Carter's own pollster, Patrick Caddell and was marked strictly confidential (Roderick 1994, 90-91). This put the administration in the position of appearing to work against the will of the people. Baker allowed Helms to detail the results of the poll on the Senate floor (*Congressional Record* 1978, 15224-37). Hatch, taking his cue from Baker, forced the Small Business Administration to reveal another secret. It was a critical report on the proposed changes contained in the bill. The report declared parts of the bill "patently discriminatory" against small businesses (Roderick 1994, 90-91).

Other than procedural maneuvers, time was consumed by long speeches, including a four hour speech given by Hatch on May 24. Hatch's preparations for procedural combat, in addition to the substantive, were dealt a devastating blow when he received the news on June 1 that James Allen had died of a heart attack.

On Wednesday, June 7, the first cloture vote took place. A cloture vote can not be prevented, because it is a privileged matter. The rules required that the vote occur, once a cloture petition was filed and an intervening day of session elapsed, one hour after the Senate reconvened. Thus, the filibuster forces had to hold their breath and hope for the best. Cloture was rejected 42-47 on a party vote at 5:15 in the afternoon (*Congressional Record* 1978, 16512). Eight Republicans defected and voted for cloture and nineteen Democrats voted against. However, Byrd had predicted that opponents would win the first two cloture votes. Opponents had cleared the first major hurdle, but there would be others. There is no limit on the number of cloture votes that can occur related to a measure. Proponents of cloture must either continue trying or give up the fight. Rarely do proponents give up after the first vote, because it is a norm in the Senate not to invoke cloture on the first attempt. It is for this reason that proponents often file multiple motions for cloture on the same day so that they can get more than one vote on cloture on the same day. However, in this case, a day went by from the time Byrd first moved for cloture and his second attempt. On June 8, cloture again was rejected 49-41 on another party vote (*Congressional Record* 1978, 16839). Again, eight Republicans defected, but only fifteen Democrats did so. Proponents of cloture, and the bill, had gained support. This day, opponents would fire their own shots and go on the attack.

Prior to the June 8 vote on cloture, Baker had moved to recommit the bill to the Labor and Human Resources Committee with instructions to conduct further hearings on amendments and the inflationary impact of the bill and to report the bill back to the Senate on July 17. If passed, this would give opponents of the bill some time to mobilize their allies, although Baker probably did not expect his motion to prevail. In fact it did not. Byrd successfully moved to table the Baker motion to recommit, winning on a 51-37 party vote (*Congressional Record* 1978, 16839). Opponents had again lost support, as ten Republicans defected from their party's position to support the Byrd motion, and only thirteen Democrats defected from their party's position. Opponents of the bill were losing.

On Friday, June 9, Long made a proposal to Hatch for the bill to be modified by removing some controversial provisions while giving something to labor by allowing more power to the international unions to bind local unions. This, according to Long, would pacify George Meany and prevent an embarrassment for Carter. However, Hatch concluded that Byrd sent Long to offer this proposal in an attempt to split the opposition and thus made no commitment (Roderick 1994, 94).

On June 13, there was another cloture vote. This time, Republicans split 10-25 and Democrats split 44-18 (*Congressional Record* 1978, 17450). Hatch's troops gained six votes. If there was any optimism among opponents of the bill, it was gone the next day when another cloture vote gave supporters of the bill 58 votes to 41 for the opponents (*Congressional Record* 1978, 17568). Cloture was now just two votes short. Democrats voted 44-17 for the motion, while Republicans voted 14-24 against. Opponents lost four

votes. With renewed optimism, Byrd attempted cloture yet again on June 15, but the outcome was the same as the vote two days earlier. Democrats split 44-17 again and Republicans split 14-22.[2] Again, by a vote of 58-39, which took 45 minutes, supporters fell two votes short of invoking cloture (*Congressional Record* 1978, 17749). The vote was still close enough, however, for Byrd not to capitulate.

One week later, on June 22, in a meeting in Baker's office, Baker told Hatch that he was going to lose that day (Roderick 1994, 97). Long, who had voted consistently against cloture, now declared that he would switch sides on the next vote, leaving supporters just one vote short of victory. Baker also told Hatch that their opponents planned to send the bill back to committee and change it enough so that all of his amendments would no longer match the corresponding provisions of the bill and thus be voided. This would rob Hatch of his ammunition for a post-cloture filibuster. Byrd planned to send the bill back to committee by a unanimous consent request. If Hatch objected, Byrd would claim it to be a procedural vote, and Baker informed Hatch that Byrd's "people will feel that they have to vote with him procedurally. They'll have enough votes to win" (quoted in Roderick 1994, 97). If Hatch did not object, then the bill would go back to committee for just enough modification to disarm Hatch. Baker told Hatch that he would back him, but that he should consider cutting his losses and take

[2] Although two fewer Republicans voted against cloture than the previous time, it means little, because a "no" vote made no difference, since 60 members of the full Senate must vote yes no matter how many vote no. When two fewer Republicans voted no, it did not represent a switch to "yes," which is the only way that cloture supporters could have gained.

Long's offer. Hatch already suspected that he may have lost Zorinsky, and that, with Long's defection, would provide the 60th vote for cloture.

Hatch, however, did not give up. He decided to do more homework and discovered that his friend James Allen, in a previous filibuster, made sure that the Senate adopted a rule that a procedural motion to stop a filibuster could be amended if the amendments were introduced before the vote was called for. Allen seemed to have reached beyond the grave to help his friend one last time. The five hundred amendments that had already been filed were edited so that they could be offered to Byrd's procedural motion to recommit (*Ibid.*). An additional two hundred amendments were created by Hatch's and Lugar's staffs. Moments before the 3 p.m. vote, Hatch entered the Senate chamber and filed the amendments with the clerk. Byrd reportedly exploded, and there was a disturbance in the gallery which was packed with pro-labor and pro-business interests. Opponents were making his job of moving the Senate nearly impossible and Byrd thought that he had outmaneuvered them. The Senate had been on the bill for five weeks already, and an additional 700 amendments could tie up the Senate just as long (Roderick 1994, 98).

Baker, Ernest Hollings (D-SC), an opponent of the bill, and Hatch then met in Baker's office. Hollings wanted to know about Zorinsky. Hatch informed him that "he was a mushy 'no' the last time I checked" (quoted in Roderick 1994, 99). Hollings then asked Hatch if he was going to object to Byrd's recommittal motion. Hatch replied that "If I object to it as a Republican, there's no doubt your fellow Democrats will feel it necessary to follow Byrd on a procedural vote. A Democrat has to object" (*Ibid.*). A few

moments before the vote Hatch got an assurance that Zorinsky was still with them and Hollings, upon being informed of this, decided that he would object to Byrd's motion. When Byrd made the motion, he looked in Hatch's direction awaiting his objection. The room erupted in pandemonium when Hollings shouted, "I object." Russell Long, in response, used the objection as an excuse to switch to the pro-labor side. He hoped that the announcement of his switch would draw another senator over to that side. At this point, Hollings declared that "the comment of my distinguished friend from Louisiana is no surprise. I always knew he was the 59th vote," emphasizing the number 59 (*Congressional Record* 1978, 18395). Everyone in opposition knew that if they switched they would provide the vote necessary to kill the filibuster and push a very controversial bill, which the public did not seem to like, upon the country. Stevens, who abandoned Hatch's team after the third cloture vote, announced that if Long was going to cross over, he would also and vote against cloture, thus neutralizing Long's action (*Congressional Record* 1978, 18397; see also Roderick 1994, 100). After asserting that he was switching back to vote against cloture, Stevens made a case for supporting Byrd's motion to recommit as a means for killing the bill. Byrd realized that his forces were beaten. Baker announced that if cloture were defeated on the upcoming sixth attempt, he would support a motion to recommit as long as it contained no instructions as to what form the bill will be modified, if at all, or set a specific date for reporting it back to the floor. In other words, Baker was trying to ease the bill to a quick and quiet burial. Hollings still continued to object when Byrd tried to get the bill recommitted to committee. He

demanded a vote and if cloture was defeated once again, he would then withhold objecting to the motion to recommit.

Byrd then announced that he, too, would vote against cloture and requested that others do the same. This was so that the vote could not be interpreted as having any real meaning (*Congressional Record* 1978, 18397). Clearly, the majority leader was trying to save face. The pendulum had swung back in Hatch's favor. This was after Baker announced that he had commitments from four senators to switch and oppose cloture if there were additional votes (*Congressional Quarterly Weekly Report* 1978, 1599). Byrd's motion to invoke cloture was voted on resulting in a 53-45 party vote (*Congressional Record* 1978, 18398). The proponents lost three Democrats and two Republicans, while opponents gained them.

Supporters of the bill gave up the fight after a total of six attempts to invoke cloture, and the bill was eventually sent back to the committee, not in an attempt to change it so that it could pass, but to kill it. However, proponents asserted that the bill was not dead and that it would be back and it would pass. They got a provision in the motion to recommit agreed to that the bill would be reported back not before July 15 (*Congressional Record* 1978, 18398). They, too, were trying to save face. Baker was willing to let Byrd and his allies save face, but, after having secured victory, was not willing to make concessions. When Byrd attempted to gain unanimous consent that the bill be recommitted with instructions to report it back within 45 days and that it be the pending business when it was reported, Baker reserved his right to object and asserted,

"Mr. President, I had hoped that the motion to recommit would be made on the basis of the original formulation suggested by the majority leader" (*Ibid.*). The original formulation provided that the bill would not be reported back to the full Senate prior to July 15. Byrd then altered his request so that the bill would be reported back to the full Senate within 45 days but not before July 15, and that it be the pending business when reported back. This was not good enough for Baker. He insisted that no provisions be made for reporting the bill back, and certainly no provision making it the pending business if and when reported back. Byrd dropped the 45 day provision. For all practical purposes, the bill was dead.

As it turned out, Byrd's decision to put off the final vote on cloture for an additional week was a strategic error on his part, because it allowed Baker further time to apply his persuasive prowess and Hatch to prepare for the procedural fight. It was Hatch who led the opposition to victory while Baker played a facilitative, though significant, role. Particularly noteworthy was the fact that Hatch, being a freshman member, already had a surprising understanding of how the Senate worked. Earlier that day, he told his forces that, "If we win today my union friends are going to be devastated. Let's not shove it down their throats. Let's not cheer or go out of our way to talk to the press. Let's just quietly walk off the floor and thank God we've won" (quoted in Roderick 1994, 100). Hatch understood that your opponent today does not have to be your opponent tomorrow.

Windfall Profits in 1979

Due to a second wave of oil shocks, President Carter proposed in 1979 a ten cent tax on every gallon of gas sold and a windfall-profits tax on oil producers. Carter's plan also called for the decontrol of oil prices starting in 1979. The windfall profits tax was a tax on the difference between the controlled selling price of oil and the price it would bring when controls were lifted. It created a 50 percent tax on the price increase that the oil industry would get due to decontrol for most already-flowing oil. That is, if a barrel of oil sold for, say, $15 under the controlled price, but would escalate to $25 under deregulation, then the treasury would take 50 percent of the additional revenue, or five dollars per barrel. The proceeds of the tax were to go toward creating an "energy security fund" to assist in the development of alternative energy sources and public transportation systems (*Congressional Quarterly Almanac* 1979, 620). The president's plan exempted oil that was expensive to produce, so-called "heavy" oil, and oil that would be discovered in the future. Carter's proposals drew opposition from various quarters. Liberals in Congress were upset, because they would increase oil prices and benefit the oil industry.

A second part of the plan was to create an "OPEC" tax that would apply indefinitely to all oil once it was decontrolled. Should OPEC raise prices again, the tax would take 50 percent of the increased revenues of oil companies (*Congressional Quarterly Almanac* 1979, 611). Others emphasized the negative effects that the tax would have on production. Baker's own ideas focused on increasing production. He

proposed a phased program of decontrol which would stimulate production, coupled with a windfall profits tax to prevent price-gouging by oil companies. Baker's plan differed from Carter's in that he wanted Congress to approve a provision that would give firms a tax incentive for diverting their profits into production and exploration (*Congressional Quarterly Almanac* 1979, 611; Annis 1985, 592). Since there was much common ground between Carter and Baker on their respective energy plans, there was little incentive for Baker to lead the opposition to the president's proposals. However, Baker was often critical of Carter when the president vacillated between decontrol and recontrol, remarking on one occasion that "Carter could win approval for the [windfall profits] tax 'virtually for the asking'" (quoted in Annis 1985, 592).

The windfall profits measure, HR 3919, was reported to the Senate floor late on November 1, 1979. The Finance Committee did not stiffen the tax above the president's proposed 50 percent tax on windfall profits, as Carter had called on them to do, but instead lowered the tax from the 60 percent level in the House passed measure, to 25 percent on oil produced between mid-1973 and 1978 for so-called upper-tier or "new" oil.[3] Also, the committee added numerous exemptions to the tax. For example, the committee totally exempted from the tax oil discovered after 1978, "incremental tertiary" oil (extra oil produced after injection of chemicals into a well), heavy oil, hard-to-get oil from stripper wells owned by independent producers, oil owned by Indians, state and local governments (if the income were used for public purposes), and non-profit schools and

[3] The bill reported by the Ways and Means Committee called for a 70 percent rate. It was amended on the floor to the 60 percent level.

medical facilities (*Congressional Quarterly Almanac* 1979, 620). Further, the committee put a limit on the total amount of revenues the government could get from the windfall profits tax, essentially phasing out the tax within three years of the time when revenues totaled 90 percent of $138 billion.

Opponents on the floor, particularly Republicans, wanted to gut any tax or other provision that would lead, in their view, to restraints on production. Members from oil-producing states wanted to prevent a tax that would hurt economic activity in their states. Opponents also wanted to defeat any amendment that would remove expiration dates. That is, they wished to avoid a permanent tax. Dole, especially, was protective of the expiration dates.

Baker, although favoring a tax in principle, did not want the windfall profits tax to go too far and, on November 28, voted for a motion offered by Long to table a Bradley amendment that increased the tax on oil discovered between 1973 and 1979 from 60 to 75 percent. The motion was rejected, however, by a 39-58 party vote (*Congressional Record* 1979, 33831). Baker lost 14 Republican defectors on this vote, although the Democrats lost 13 of their own partisans. The Democrats could afford the losses better than the Republicans, despite the defection of oil-state Democrats, hence their victory.

The Senate's refusal to table the Bradley amendment prompted a filibuster threat by senators representing oil-producing states. Senator Long, of oil-producing giant Louisiana, asserted that he intended to engage in an "extended educational campaign." (*Congressional Quarterly Weekly Report* 1979, 2707). The filibuster was launched on December 12, after debate on the bill had proceeded for better than a month. The

filibuster attempt was directed at the Bradley amendment and also at blocking action on an amendment offered by Abraham Ribicoff (D-CN) to extend the tax to newly discovered oil, oil produced by expensive tertiary recovery methods, and heavy oil (*Congressional Quarterly Almanac* 1979, 625). Late in the day, the Democratic leadership moved to invoke cloture on the bill but failed by a 53-46 vote (*Congressional Record* 1979, 35597). Baker voted against cloture.

The rejection of the cloture motion had the effect of bringing oil-tax proponents to the bargaining table. In off-the-floor negotiations, an agreement was reached that would permit a vote on one tax-increase amendment if there were no other moves to toughen the tax (*Congressional Quarterly Weekly Report* 1979, 2707).

Another item that the filibusterers opposed, at least those from oil producing states, was a subsequent amendment by John Danforth (R-MO) to tax state-owned wells. If adopted, this proposal would cost oil states an estimated $10.5 billion over the next decade (*Congressional Quarterly Weekly Report* 1979, 2818). In response, and even though he had the votes to table the proposal, Long filed over 100 amendments to Danforth's proposal. He was arming himself for a post-cloture filibuster should Byrd succeed in getting cloture.

The next day, December 13, opponents tried to force a cloture vote in the early hours of the morning knowing that the sparse attendance would doom the motion. They felt that an additional failed cloture vote would perhaps upset some members who would want to get on with other business, thus increasing the pressure on proponents to take down the offending measures. Byrd, undeterred, quickly made a point-of-order that their

move was out-of-order under rule XXII, since the Senate had not adjourned since 10 a.m. on December 12. Byrd's point-of-order was upheld 43-32 after a Helms motion to table his point-of-order was rejected 30-44, and a Helms motion to recess the Senate was rejected by the same margin. Later, when additional members began to appear, Byrd tried for cloture again, this time failing 56-40 (*Congressional Record* 1979, 35912). Byrd got the support of only three additional senators. He tried again on December 14 and failed 56-39 (*Congressional Record* 1979, 36025). Having fallen short thus far on three cloture votes, Byrd felt the need to justify additional votes on cloture, and did so by confidently predicting victory on a future cloture vote. He asserted:

> Mr. President, the vote today, which shows 56 Senators (*sic*) as having voted for cloture is a positive vote in that we have 4 of our Senators who have been voting with us absent. They will be here on Monday. That would make 60, and I have reasonably good belief, I think I have good reason to believe, we can get some additional votes by Monday. I think it was a good vote. It indicates that the Senate is moving toward cloture. We have those who voted against yesterday 40 are down to 39 today (*sic*). Those who vote for us yesterday, we have 56, with 3 of the Senators who are today absent, yesterday were absent. Four are absent today, so we can count on 60, perhaps 61 votes by Monday. I hope this will indicate the Senate is tiring of delay, wants to see action, and I hope that during the afternoon we can continue to negotiate, and, possibly, wind up action on the bill by tomorrow night (*Congressional Record* 1979, 36026).

Dole wanted to keep the hope for negotiations alive by stating

> I will say that is certainly our hope. We have never given up on negotiations. We do not take great pride in this vote. We are just happy you did not win. So we will be happy to negotiate (*Ibid.*).

Byrd responded, saying, "I thank the distinguished Senator from Kansas, who has at all times negotiated in good faith, and has helped to make progress. The negotiations will continue" (*Ibid.*). Further negotiations produced a Byrd amendment, offered in an

attempt to placate the filibusterers who were continuing their obstruction and to break the stalemate. It reduced the sting of the general windfall tax bite by about $5.2 billion by lowering the tax rate on newly discovered oil from 20 percent to 10 percent. Offered as a second-degree amendment to an Abraham Ribicoff (D-CT) amendment, it was adopted 78-13 (*Congressional Record* 1979, 36090). The amended Ribicoff amendment subsequently passed on a 52-38 vote (*Congressional Record* 1979, 36091).

Long, on December 15, was successful in tabling the Danforth amendment on a 65-28 vote, thus removing another obstacle (*Congressional Record* 1979, 36264-5). The filibuster of the bill continued. Bradley's amendment was subsequently adopted, after negotiations that produced a watered-down version, by a voice vote.[4] Byrd finally succeeded in getting cloture invoked on December 17, by a 84-14 vote, even though a compromise had been reached on most of the major sticking points which produced the large margin of victory for the cloture motion (*Congressional Record* 1979, 36442).

After a few additional minor amendments were disposed of, the bill went on to pass the Senate 74-24 on the same day as the successful cloture vote (*Congressional Record* 1979, 36510). The bill did establish a windfall profits tax on oil produced domestically, and a variety of tax credits and other "tax breaks" were included (*Congressional Quarterly Almanac* 1979, 628). There had been agreement on or elimination of most of the contentious parts of the bill, negating the need to use the hundreds of amendments at the desk in a post-cloture filibuster.

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[4] This voice vote occurred on December 17, after negotiations produced agreement on a wide range of issues including the Bradley amendment and for a successful bipartisan cloture vote.

The real fight in the Senate was over what would be done with the revenues. That is, would there be a trust fund or not? The answer to that question was mostly not. The president's proposal to link revenues from the tax to spending programs for energy was essentially wiped out in the floor fight. However, the Senate created a "Taxpayer Trust Fund" to receive the revenues attributable to decontrol of oil prices, though no particular use of the money was outlined.

The conference committee merely split the difference between the Senate bill and the much stiffer House version (*Congressional Quarterly Weekly Report* 1979, 2875). Dole continued to oppose a stiff tax in conference. He lost his fight when the Senate conferees voted 6-3 in favor of the compromise. Long and Bentsen, senators from the oil producing states of Louisiana and Texas, accepted the split. Long explained his action, after having fought so hard on the floor against the tax, by stating that he felt the final figure would end up there anyway and, "We could be here from now until February or March and still not get anywhere" (*Congressional Quarterly Almanac* 1979, 632). It took the conference committee three days to reach agreement before the bill was sent back to the respective chambers for passage. The conference report on the windfall profits tax was passed by voice vote.

Baker's role in the windfall profits tax debate was a relatively muted one. He voted on only one cloture motion, the first one on December 12, and he voted against cloture. His position won on that vote. Baker would not vote on the three subsequent cloture motions due to his absence. Baker cast a vote on only ten of the fifty-seven roll-call votes related to the windfall profits bill. He offered no amendments on the floor, no

motions to table, or any other substantive motions. He did not assist in the fight against unfriendly amendments other than voting against those he disagreed with. In essence, Baker decided to absent himself from much of the debate on the bill, probably because Carter rebuffed his efforts to forge a bipartisan effort.

Also, Baker had announced his intentions to seek the presidency on November 1, 1979 and was out campaigning during much of the debate on the tax bill. Senator Dole (R-KS) was cast in Baker's usual role in trying to broker a compromise. He tried to convince proponents to weaken their proposal in return for an end to the filibuster (*Congressional Quarterly Weekly Report* 1979, 2818). As far as Baker was concerned, he and the president generally got what they wanted by way of decontrol in domestic energy production and a somewhat weaker windfall profits tax.

The Filibuster Experience: 1981-1985

The filibuster, as is clear from the previous sections, is the greatest challenge faced by contemporary Senate leaders. Sometimes, the two party leaders work together to break a filibuster, as in the case of "Black Monday" in 1977. When Baker relied on the precedents established that day to do something of the same in 1982, however, he received only limited support from Byrd. The exercise of raw power, as Baker described "Black Monday," is extraordinarily rare in the Senate.

There were forty-five cloture votes when Baker was majority leader. There were 206 cloture votes from 1917 through 1984. Thus, 45 of the 206 cloture votes (or 22

percent) occurred during Baker's tenure as majority leader. That is a lot relatively speaking. In the previous four years, 1977 through 1980, there were only 34 cloture votes. Of the 45 votes during Baker's majority leadership, 19 of them were successful in invoking cloture. This represented a success rate for Howard Baker of 42 percent. During the 1977-80 period, there were 34 cloture votes, 13 of which were successful (38 percent).

The 42 percent success rate assumes, however, that Baker wanted cloture to be invoked on each attempt. Of the 45 cloture votes during Baker's majority leadership, 25 (55.5 percent) of them were votes on cloture petitions sponsored or co-sponsored by him. Of these 25, 15 were successful, giving Baker a 60 percent success rate for cloture attempts that he initiated. Strangely enough, in 1982 Baker moved for cloture on the Transportation Assistance Act, which was being filibustered by several Republicans due to a gasoline tax increase contained in the bill, and then voted "no" on his own motion. In this instance, cloture was defeated on a lopsided 5-93 vote. Hence, Baker's position won out even though it was his cloture petition.

In order to account for this, the proportion of times that Baker's position won out was calculated, with Baker's position determined by his vote. Excluding 3 cloture votes in 1984 in which Baker did not vote or otherwise make his position known, although the 3 motions were filed by Baker, his position represented the winning position on 20 of the 42 cloture votes. This is nearly a 48 percent success rate. If the 3 votes in 1984 in which Baker did not participate are included, and it is assumed that since he sponsored the

cloture petitions that he wanted them to pass, then Baker's success score was 23 out of 45, or 51 percent.[5]

To win on over half of the cloture votes certainly constitutes a winning record, if barely so. However, when one considers the apprehension with which senators vote for cloture and the fact that cloture is not often agreed to on the first cloture vote, the fifty-one percent figure takes on added significance. Only 14 of the 45 cloture votes (about 31 percent) were situations in which cloture was invoked on the first attempt. On 5 occasions, the first attempt failed, but cloture was invoked on a subsequent vote. Twenty-seven cloture votes were taken in situations in which cloture was never invoked at all. For the 5 instances in which cloture failed on the first attempt but was invoked on a subsequent attempt, Baker's position in favor of cloture eventually won out. That is, Baker wanted cloture to be invoked and he *eventually* got cloture invoked even though it took more than one vote.[6]

Broken down by year, Baker's position won on cloture votes 42.8 percent of the time in 1981, 36.8 percent in 1982, 71.4 percent in 1983, and 55.5 percent in 1984. If the three 1984 votes in which Baker did not participate are included, then his success rate increases to 66.6 percent. Ironically, Baker had a higher level of success on cloture votes

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[5] Baker voted "no" on five cloture votes from 1981 through 1984, and his position won each time. On two of these votes in which Baker voted "no," cloture was almost invoked, in one case, by a 59-35 vote and in the other by a 59-39 vote. In the second case, in which Senator Robert Kasten (R-WI) sponsored cloture attempts in 1983 on a Kasten amendment to the International Trade and Investment Act, two subsequent votes were taken which defeated cloture by a 34-53 and a 39-59 vote, respectively. Baker's "no" position gained momentum over the course of the three cloture votes.

[6] Two of the five were Baker initiatives. One was on a Baker substitute for the Transportation Assistance Act in 1982 and the other was on a Baker motion to waive the Budget Act on an agricultural appropriations measure in 1984.

in the 2 years after he announced he would not seek reelection to the Senate than in the prior 2 years. Intuition suggests that he would have lost some of his "leadership" effectiveness and that the reverse would be the case.

Of the 45 cloture votes from 1981 through 1984, 6 were on the Department of Justice (DOJ) authorization bill in 1981, 7 were on the debt limit increase in 1982, 6 were on the Transportation Assistance Act in 1982, and 7 were on various appropriations bills. Baker failed to get DOJ authorization to a vote in 1981 but did get an agreement for the vote to take place in February 1982 when the Senate returned.

Relative to the Transportation Assistance Act in 1982, Baker succeeded in getting cloture invoked on his motion to proceed to the bill's consideration by a 75-13 vote. He then failed to get cloture on his substitute bill by a 48-50 vote. Baker next failed to get his cloture petition adopted on the bill itself by a 5-93 vote, but he was successful in getting cloture invoked on the Baker substitute by a 89-5 vote and, subsequently, on the underlying bill by an 87-8 vote. Finally, cloture was invoked on the conference report when it came to the Senate floor by an 81-5 vote.[7]

For the cloture votes related to various appropriations measures, Baker's position won on 5 of the 7 votes. Three times Baker wanted cloture invoked and it was; twice Baker wanted cloture defeated and it was. The other two times Baker wanted cloture invoked but it was not. Cumulatively, Baker had a 71 percent success rate on appropriations cloture votes.

[7] The norm in the Senate is for members to vote for cloture on conference reports. However, upon occasion this norm is violated by some members.

A particular failure was Baker's inability to get cloture invoked on any of the attempts on the debt limit increase in 1982. Baker voted "yes" on each of these, but his position did not prevail. Three of the cloture votes were related to a Helms amendment to ban abortion. The other four were on a Helms amendment to bar Federal courts from hearing voluntary school prayer cases. It is no wonder that Baker did not like non-germane amendments and others offered as riders to important legislation. They often slowed the Senate down. Interestingly, Baker sided with Helms when voting to invoke cloture on each of the seven attempts. Baker probably did this to force a vote on these difficult amendments. Liberal Democrats would be hard pressed to vote "no" on the amendments if they got to a vote, and it was an election year.

Of the 45 cloture votes taken in the 1981-1984 period, Baker only opposed 4 attempts to get cloture invoked. One was in 1981 when Helms moved on December 11 to invoke cloture on the State, Justice, Commerce and Judiciary Appropriations bill for fiscal 1982. The motion was barely rejected 59-35, but was still a victory for Baker's position. On March 16, 1983, Dole and Baker jointly offered a motion to invoke cloture on a bill to provide emergency supplemental funding for jobs and other programs for fiscal 1983. Although Baker voted in favor of his own motion, which was rejected 50-48, on the following roll call he voted against a Kasten cloture motion on Kasten's amendment repealing requirements for tax withholding on interest and dividend income, an amendment Baker opposed. This motion was rejected, signifying another victory for Baker's position.

Kasten did not give up there, however. On April 19 and 20, 1983, Baker opposed two attempts to get cloture on the International Trade and Investment Act. Kasten offered his interest and dividend withholding amendment to this bill after having failed to get it added to the emergency supplemental appropriations bill. Baker voted against cloture on the two succeeding votes. Both cloture motions were rejected by large margins, 34-53 and 39-59 respectively.

Raw numbers, as mentioned before, do not tell the whole story. Numbers say little about the difficulties and political problems that have to be overcome to get cloture invoked, an amendment withdrawn, or a bill passed. The context of legislative battles must be known and understood before conclusions are drawn. Consequently, a discussion is offered at this point of major measures that were filibustered in the 1981-1985 period. It begins with S. 951, the Department of Justice authorization bill. A DOJ authorization bill failed to be passed by one chamber of Congress or the other in 1980, in 1981, and in 1982. After a very contentious debate over controversial amendments in 1982, Baker had to put the vote over until early 1983 because he could not get the type of agreements that had helped him to steer the tax bill in 1981.

The Fight For DOJ Authorization in 1981

When Howard Baker became the majority leader, the goals of moving legislation and, since the president was a fellow Republican, making legislation reflect the

administration's policy positions, became preeminent. The fight over DOJ authorization in 1981 was particularly contentious in its own right. The major problem in this case was the management of ideological conflict, especially within the Republican party and with respect to social issues. The debate occupied the Senate's time off-and-on throughout the summer and, as it turned out, throughout the next year. At the time the DOJ authorization bill was on the Senate floor, the chamber was also dealing with the major tax measure, H. J. Res. 266, that was the subject of chapters three and four. The Senate, when it took up the DOJ authorization bill, had just completed action on the budget reconciliation measure, S. 1377.

DOJ authorization was the first major filibustered bill faced by Baker as majority leader. The 1981 floor fight lasted six months: from mid-June until mid-December. Figure 5-1 is a summary of the key points in the floor debate over the bill. Some of the action, and inaction, proved revealing. The trouble with DOJ authorization in 1981 was much the same as it would be in 1982. Republican arch-conservative Jesse Helms offered an amendment, co-sponsored by Johnston that prohibited federal courts in most instances from ordering busing to enforce integration.

Liberal Republican Lowell Weicker initiated a filibuster in 1981, just as he would when Helms attempted to offer similar riders to DOJ authorization in 1982. Weicker also offered a second-degree amendment to the Helms amendment providing that the Department of Justice and any federal court could act to enforce a citizen's constitutional rights. It was not clear if Weicker thought busing to be a constitutional right, but his thinking was probably along those lines. The effect of the Weicker amendment, if

adopted, would be to severely water down Helm's amendment and essentially render it meaningless.

The debate started in earnest when Weicker offered his amendment on June 18. The initial skirmishes were in the context of a "normal debate," not a filibuster, which Baker attempted to regulate. Helms resisted Weicker's attempt to amend and debated with him for about seven-and-a-half hours when Baker attempted to get a unanimous consent agreement to set a time for a vote on either the Weicker amendment or on a motion to table it.[8] He expressed a desire to recess the Senate after the day's business was concluded until 10:00 the next morning and made clear that no senator would be automatically recognized absent any agreement (*Congressional Record* 1981, 12939). This concerned Weicker who wanted a guarantee that he would be recognized to speak when the Senate resumed the next morning. Specifically, Weicker asked, "Are we going to have some sort of horserace out here to see who is recognized? Somehow, I cannot see myself sort of leaping over Jesse's back to get the attention of the chair, or the other way around, for that matter. There must be some civilized way to settle this" (*Ibid.*). Helms, in contrast, expressed eagerness to support any UCR that Baker propounded. Baker then began the auction saying, "Let me shop for an agreement here" (*Congressional Record* 1981, 12940).

[8] Seven-and-a-half hours should be considered extended debate rather than a filibuster unless one of the participants announces an intent to prevent a vote. Otherwise, much more time should elapse before the conclusion is drawn that a filibuster is under way.

Figure 5-1. Summary of Key Points in the Floor Debate over Department of Justice Authorization Bill in 1981.

Date	Action
June 18	Floor debate begins on DOJ authorization.
June 18	Helms offers amendment prohibiting courts from ordering busing.
June 19	Weicker offers 2nd degree amendment to Helms amendment stating that DOJ & courts could act to enforce citizens' constitutional rights.
June 19	Baker attempts to get unanimous consent to set a time for a vote on the amendments but fails.
June 19	Goldwater intervenes to try and get Helms to agree to Baker request to set a time for an up-or-down vote.
June 19	Vote on Weicker 2nd degree amendment to Helms amendment (rejected 30-45).
June 19	Filibuster officially begins with Weicker objecting to Helms UCR to dispense with the reading of his amendment and suggesting absence of a quorum.
June 19	Baker asks Helms to temporarily withdraw the amendment so Senate could proceed with other business.
July 8	Baker shames combatants for not allowing forward movement and threatens a cloture motion.
July 10	Vote on Baker cloture motion to the bill (rejected 38-48).
July 13	Vote on Johnston cloture motion to Helms' 1st degree amendment (rejected 54-32).
July 29	Vote on Johnston cloture motion to Helms' 1st degree amendment (rejected 59-37).
September 10	Vote on Johnston cloture motion to Helms' 1st degree amendment (rejected 57-33).
September 16	Vote on Johnston cloture motion to Helms' 1st degree amendment (agreed to 61-36).
September 16	Vote on Helms amendment to prevent courts in most instances from ordering school busing (adopted 60-39).
December 10	Vote on Helms cloture motion on his amendment to limit DOJ from bringing any action that would have the effect of ordering busing (agreed to 64-35).
December 10	Baker moves that sergeant-at-arms be instructed to request the attendance of absent senators (agreed to 93-4).
December 10	Vote on Baker motion to table the Weicker motion to extend debate on DOJ authorization by 124 hours (agreed to 70-28).
December 10	Weicker moved to reconsider the vote on the Baker motion to table his motion (this move was ruled dilatory by the chair and was upheld 70-27).
December 10	Vote on Weicker appeal of the chair's ruling that his motion to reconsider the vote on Baker motion to table was dilatory (chair upheld 70-27).
December 10	Vote on Weicker motion to table the Helms amendment (failed 36-61).
December 10	Vote on Johnston motion to table Weicker motion to reconsider the vote on his previous attempt to table Helms amendment (passed 61-36).
December 11	Baker threatens a late session if the combatants do not work out their disagreements.
December 11	Baker puts off further consideration of DOJ authorization until February 1, 1982.

His first offer was to allow Weicker to be recognized for fifteen minutes after the close of morning business when the Senate resumed and the pending measure was again before the Senate. After that, Helms would be recognized for no more than thirty minutes. At the conclusion of remarks by both men, there would be an up-or-down vote on the Weicker amendment. Helms balked and Weicker insisted on more time. In Baker's characteristic style of deference, he asked Weicker for a suggestion. Weicker's proposal was for no more than an hour of debate before a vote on the amendment. Baker accommodated Weicker and revised his request to allow each an hour to speak, but Helms objected asserting that he could not agree to the up-or-down vote. He might wish to move to table the amendment instead. Baker then put in the agreement that a vote would occur *in relation to* the Weicker amendment. This would permit a tabling motion or a vote on the amendment (*Congressional Record* 1981, 12940).

This offer by Baker did not settle the differences between the two Republican antagonists. They began to openly squabble about the up-or-down vote with Weicker asserting that he had no intention of tabling Helms' amendment and wanted the same consideration. Helms countered that he had discussed a motion to table the Weicker amendment with his allies, and he did not want to "confuse them on the floor" (*Ibid.*). Baker intervened at this point and asserted that the matter had taken up the whole day and they seemed to be close enough to an agreement that he wanted them to settle on a time certain for resolution of the matter, for either an up-or-down vote or a tabling motion. The only issue was whether a tabling motion would be in order. Since Baker did not like for squabbles between Republicans to be public, and thus open to exploitation by

Democrats, he suggested that Weicker and Helms talk it over at the end of the day or the next morning (*Ibid.*). Baker was feeling the pressure to move the Senate and just wanted an agreement, any agreement, that would help him fulfill his responsibilities as majority leader.

His attempt to push overt Republican quarrels off the floor failed when Goldwater intervened and applied pressure to Helms to agree to an up-or-down vote on Weicker's amendment by calling tabling motions "a chicken maneuver...[that] allowed senators to get off the hook without anyone else knowing what happened " (*Congressional Record* 1981, 12940). Helms was not moved by such rhetoric, and he insisted that the option to table remain open. He also asserted, however, that he expected that there would be an up-or-down vote.

Baker got back into the fight and renewed the request but with two further modifications. First, Byrd would be added to the list of those to speak before the vote, making three hours of debate in order. Minority Leader Byrd pointed out that this was a fight between Republicans and felt a Democrat should be represented and, hence, volunteered his services. Second, no votes would occur before noon. This was added out of consideration for other members. A motion to table would be in order, so Helms got the better of this agreement. There was no objection to this latest attempt by Baker to get an agreement and the Senate then recessed for the day (*Ibid.*).

When the Senate reconvened the next day, June 19, and the three hours of debate time was used up or yielded back, the Senate voted on the Weicker amendment to the Helms amendment. It was rejected by a 30-45 party vote (Congressional Record 1981,

13127). This created a problem for Baker, because Weicker and other liberals were in no mood to accept Helms' modifications to the bill. The Helms amendment was then the pending business.

It is customary in the Senate for sponsors of amendments to request unanimous consent that their reading be dispensed with. This sets aside the Senate rule that requires the actual reading of amendments, some of which can be quite lengthy, and in the end saves time. Helms made a UCR to do so, but Weicker objected, signaling that a filibuster was about to begin. After the reading of the amendment, Weicker suggested the absence of a quorum, leaving no doubt that a filibuster had begun (*Ibid.*).

Sensing danger, Baker proposed an agreement that would have Helms temporarily withdraw his amendment so that the Senate could take up another amendment (*Ibid.*). This was an attempt to use a variation of the tracking system whereby a filibustered amendment could be laid aside, allowing the Senate to proceed with other business. After being unable to get the agreement due to the objections of more than one senator, Baker felt forced to take stronger measures. Before he did so, he made remarks that shed light on his approach to majority leadership. Johnston objected to a Baker UCR, because he wanted to offer a non-germane amendment to the Helms amendment. It also placed restrictions on the power of the judiciary to take action related to integration. Despite sympathy with the objectives of the Johnston amendment, Baker stated his position:

> Mr. President, I appreciate the point of view from the Senator from Louisiana [Johnston]. Indeed, I repeat that I am sympathetic to his concern and his effort. But I am sure he must-I feel that I ought to reiterate a commitment I made earlier in public and on this floor, and that is, if we can avoid trying to add the so-called emotional or social issues to the regular range of authorizing appropriating legislation-I am speaking of busing, abortion, gun control, the ones that create such high feelings, and emotions-if we can do that, if we can go ahead and do the business of the Senate, then I made a

> pledge I would, as majority leader make a special effort-and I believe I can succeed-in seeing that we have a free-standing debate on these issues either this year or shortly after we reconvene in January (*Congressional Record* 1981, 14914).

Baker then injected a little shame to make his point:

> But my effort has been, and I must confess, without a great deal of success, to try to get on with the business of the Senate, the business of the country, in authorizing and reauthorizing appropriations and programs without having to fight these fights on every bill that comes along....But I feel constrained under my responsibility to try to move the business of the Senate, and to enact this piece of legislation, to offer a cloture motion (*Congressional Record* 1981, 14914).

This attempt to invoke cloture on the bill was rejected by the Senate as Baker was able to muster only 38 votes for his effort. He lost 14 Republicans, while the Democrats lost 4 who voted for cloture. Perhaps due to the magnitude of this rebuff, Baker did not seek cloture again during the remainder of the debate on this bill in 1981. He would leave that to Johnston, who attempted cloture four times on the Helms amendment to prohibit forced busing. The first three attempts were turned away, but the fourth Johnston cloture attempt passed in a bipartisan 61-36 vote.

The reason for Baker's failure to invoke cloture was due to the fact that he was attempting cloture on the entire bill, while Johnston directed his efforts at a specific set of amendments. Had Baker's motion to invoke cloture been agreed to, all non-germane amendments would have fallen as well as any dilatory amendments. The Senate was not ready to end debate on the bill as a whole, at least not that early. It was a large and complicated bill. Baker's motion was voted on July 10. Johnston, on the other hand, attempted to get cloture on July 13, July 29, September 10, and finally succeeded on September 16.

The Helms amendment that prohibited federal courts from ordering busing was voted on during the same day that cloture was invoked, September 16, even though another 100 hours of additional debate were in order under the provisions of the rule. Opponents apparently saw the futility of further resistance and allowed the vote to occur. The Helms amendment, the subject of all of the contention, passed by a 60-39 party vote (*Congressional Record* 1981, 20795). The Republicans lost 14 defectors who voted against and the Democrats split 22-25, more than making up for the Republican defections.

It was not until December 10 that another roll-call vote would occur on the DOJ authorization bill. Baker decided on September 16 to set DOJ authorization aside so the Senate could deal with, among other things, measures related to agriculture; foreign aid authorization; continuing appropriations; debt limit increase; telecomunications; Social Security benefits; appropriations for interior; transportation; energy and water development; and the departments of State, Justice, Commerce, and the Judiciary.

DOJ came back to the Senate floor on December 10. The first order of business was a vote on a cloture motion, offered by Helms, in regard to his amendment, also co-sponsored by Johnston, that further limited the Justice Department by preventing it from bringing legal action that could lead, directly or indirectly, to busing to achieve racial balance. Perhaps the Senate was getting tired of the fight and probably wanted to get out for the scheduled adjournment, because it adopted cloture by a 64-35 bipartisan margin (*Congressional Record* 1981, 30408-09). Weicker, despite this defeat for his position, was unwilling to give up. Baker, preparing for the next showdown, moved that the

sergeant-at-arms be instructed to request the attendance of absent senators (*Congressional Record* 1981, 30409). Baker then moved to table a Weicker motion to extend debate for an additional 124 hours. Having suffered two defeats already, Weicker surely did not expect the Senate to agree to his motion. He would not go down without swinging, however. The chamber did not side with him, and senators agreed to Baker's motion to table Weicker's motion on a 70-28 bipartisan vote (*Ibid.*).

Baker finally was beginning to make headway in moving the Senate, despite Weicker's persistence. He moved to reconsider the vote by which Baker's tabling motion was agreed to. This was only an attempt to delay, because he could not have expected that the Senate would have changed its position on a dime. Indeed, Weicker's motion to reconsider was held to be dilatory by the chair. Despite that fact, Weicker appealed the ruling of the chair and lost by a 70-27 margin (*Congressional Record* 1981, 30410). His last gasp was a motion to table the Helms amendment proper, failing by a 36-61 vote, although he won back some support from liberal Democrats (*Ibid.*). The final roll-call vote of 1981 related to DOJ authorization was on a Johnston motion to table a Weicker motion to reconsider the vote on his previous motion to table the Helms amendment. Johnston succeeded in tabling Weicker's motion by a 61-36 margin (*Congressional Record* 1981, 30411).

Baker's floor management during the final stages of the debate on DOJ authorization in 1981, other than his two motions, was aimed mostly at getting amendments or the underlying bill set aside temporarily on occasion so that the Senate could proceed with other business. Weicker was doomed to failure at this stage because

he did not have the votes and he did not provide himself with the ammunition, in the form of hundreds of amendments, to be used to wage a post-cloture filibuster. However, it was not necessary at the time, because cloture had not been invoked on the underlying bill, only on two of the contentious amendments. Because of this, Weicker was still in a position to filibuster the bill later on.

As the session continued to wind down, on December 11, Baker sought an agreement that allowed him to call up the bill at any time, after consulting with the minority leader, and provided for a vote to occur on any cloture motion properly filed one hour after the bill was again before the Senate (*Congressional Record* 1981, 30897). This foreclosed the possibility of a filibuster on a motion to proceed, as one was not necessary according to the terms of the agreement. However, Packwood reserved the right to object, and Baker responded by suggesting the absence of a quorum so that he could see what the problem was and work something out (*Ibid.*). Apparently, this was not possible, because when Baker returned to the floor he withdrew the statement he had made earlier that there would be no Saturday session. Packwood opposed an amendment pending to another measure which would become the pending business if DOJ were set aside. Because of Packwood's objection, Baker threatened that the Senate would be in session for the remainder of the day and would be in session the next day (*Congressional Record* 30898). Baker was not able to get Packwood to withdraw his reservation.

Baker also was unable to get the DOJ bill through the Senate at all in 1981. From the time debate began on June 18 to the time Baker finally put the bill over until February 1, 1982, he could not bring two of his fellow Republicans together enough to move the

bill. It is fair to say, however, that Helms and Weicker represented the two polar extremes of the Republican party and it would have been difficult, if not impossible, for anyone to bring them together on an issue such as busing. Even Senate heavyweights like Goldwater were unable to break the logjam, although insulting other members was probably not the best way to handle the situation. It merely was an expression of frustration that all members were feeling. When Baker could not entice Helms to withdraw the amendment temporarily, he decided that a little shame might be in order but coupled that with the threat of cloture, something he had avoided to that point. He only offered one motion to invoke cloture, on the bill itself, and that having failed, left the remaining attempts to move the bill via cloture to a co-sponsor of the amendment. Baker mostly stayed out of the fight, at least on the floor, until he felt that things had come to a virtual standstill. The best he was able to do was to get an agreement that would put the DOJ authorization bill back before the Senate for its consideration early the next year.

On February 1, 1982, the Senate took up where it left off on the DOJ authorization bill with a continuation of a Weicker filibuster. However, Baker would not be as understanding in 1982 as he was in 1981. He would use procedural rules to his advantage to break the filibuster. That was necessary, because Baker's persuasive abilities, for the most part, failed him on this bill, the first filibustered bill he faced as majority leader. Baker wanted to ensure that DOJ authorization did not fail this time around.

DOJ Authorization in 1982

In 1982, the first bill taken up on the floor authorized television coverage of the Senate (S. Res. 20). It did not get too far, despite Baker's passion for the measure, and the Senate returned to DOJ authorization. Once DOJ was brought up on the floor on February 3, it would receive the Senate's near undivided attention until it finally passed on March 2. Judiciary Committee chairman Strom Thurmond was the majority manager of the bill and Joe Biden was the minority manager, though they did very little due to the fact that the Senate's attention was mostly occupied by the Helms/Weicker dispute over amendments. The only break in the debate over DOJ authorization was two days for consideration and passage of a supplemental appropriations bill. Figure 5-2 provides a summary of key points in the debate over DOJ authorization in 1982. Lowell Weicker, who was not a member of the Judiciary Committee, and a few allies would again create problems.

The problem with the bill in 1982 was an amendment resurrected by Helms, and co-sponsored by Johnston, to prevent the Department of Justice from taking any action or supporting any lawsuit that would have the effect of requiring busing. Recall that this amendment is not the same as the one discussed in the previous section that was directed at the federal courts. It was the amendment now pending and directed at the Department of Justice to which Weicker and others would again take exception. It is noteworthy that Weicker, though liberal, was a Republican senator and the amendment co-sponsor Johnston was a Democrat, important factors to be taken into consideration by Baker in deciding how to deal with the situation.

On February 3, Baker attempted to get a unanimous consent agreement to have S. 951 laid before the Senate (precluding the necessity to offer a motion to consider the bill,

Figure 5-2. Summary of Key Points in the Debate over Department of Justice Authorization in 1982.

Date	Action
February 1	Date and time for Senate consideration of DOJ authorization for fiscal 1982 arrives. Helms amendment to prevent the DOJ from taking action that could lead to busing is still pending.
February 3	Baker gets agreement to set a time for a vote on the Helms amendment for Thursday, February 4, at 1:30 p.m.
February 4	Vote on Helms amendment (adopted 58-38).
February 9	Vote on Johnston motion to invoke cloture on the DOJ authorization bill (agreed to 63-33).
February 9	Chaos during preceding vote on Johnston cloture motion. Debate is about the regular order of voting.
February 9	Vote on Helms motion to table the first committee amendment to increase administrative expenditures from $37.65 million to $50.2 million (agreed to 60-36).
February 10	Vote on Weicker motion to table Helms' motion to reconsider the vote by which the committee amendment was laid on the table (agreed to 60-30).
February 10	Vote on Johnston motion to table the second committee amendment increasing funds authorized for civil and criminal prosecutions from $127.1 million to $176.7 million (agreed to 63-27).
February 11	Vote on Johnston motion to table the Weicker motion to reconsider the vote by which the second committee amendment was laid on the table (agreed to 59-30).
February 11	Vote on the chair's ruling that the third committee amendment to require that $49.56 million of funding be allotted to the department's antitrust division was non-germane (chair upheld 65-25).
February 11	Vote on Johnston motion to table the fourth committee amendment to make a technical re-numbering change in the bill (agreed to 63-24).
February 23	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 83-5).
February 23	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 82-6).
February 24	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 79-8).
February 24	Vote on Johnston motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 78-10).
February 24	Vote on chair's ruling, after Weicker appealed, that Gorton amendment to prohibit federal courts or agencies from implementing plans requiring student assignment by race was germane (chair upheld 63-30).
February 24	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 87-7).
February 24	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 82-11).
February 24	Vote on Exon motion to table the Gorton amendment (rejected 40-51).
February 24	Baker decides to use strong-arm tactics to break the filibuster led by Weicker. He does this by having Weicker's amendments (his ammunition for post-cloture filibuster) ruled out-of-order by the chair.

February 24	Vote on Baker motion to kill the Weicker motion to reconsider the vote by which the Exon motion to table was rejected (agreed to 49-42).
February 24	Vote on Gorton amendment (rejected 42-49).
February 24	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 83-10).
February 24	Vote on the chair's ruling that the Johnston amendment was germane (chair upheld 66-27).
February 24	Vote on Johnston motion to table Weicker's amendment concerning compensation for Drug Enforcement Administration informers (agreed to 62-31).
February 24	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 85-7).
February 24	Vote on Baker motion to table Metzenbaum's appeal the chair's ruling that a quorum call was not in order (agreed to 69-23).
February 24	Vote on Baker motion to table Weicker's appeal of the chair's ruling that the Weicker amendment concerning program evaluations by the attorney general was not germane (agreed to 65-28).
February 24	Vote on Baker motion to table Weicker's appeal of the chair's ruling that the Weicker amendment concerning program evaluations by the attorney general was not germane (agreed to 67-25).
February 24	Vote on Baker motion to table Weicker's appeal of the chair's ruling that the Weicker amendment concerning program evaluations by the attorney general was not in order (agreed to 68-23).
February 24	Vote on Weicker motion to table the bill (rejected 30-60).
February 24	Vote on Baker motion to table Weicker's appeal of the chair's ruling that the Weicker amendment concerning program evaluations by the attorney general was dilatory and thus not in order (agreed to 65-26).
February 24	Vote on Baker motion to table Weicker's appeal of the chair's ruling that the Weicker amendment relating to travel expenses for Justice officials was dilatory and thus not in order (agreed to 65-25).
February 24	Vote on Baker motion to table Weicker's appeal of the chair's ruling that the Weicker amendment concerning Justice personnel costs was dilatory and thus not in order (agreed to 65-25).
February 25	Vote on Steven's motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 83-8).
February 25	Vote on Steven's motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 85-9).
March 2	Vote on Heflin amendment to allow DOJ to participate in legal proceedings to remove or reduce the enforcement of busing in existing court orders (adopted 72-22).
March 2	Vote on Department of Justice authorization bill (passed 57-37).

itself debatable) and establish a time certain for a vote on the Helms amendment (*Congressional Record* 1982, 326). The time Baker had in mind for the vote on the amendment was the following day, Thursday, February 4, at 1:30 p.m. A time limit of 90 minutes would be imposed and equally divided between Weicker for the opposition and Johnston as the proponent. Baker also put in the request that the bill, after the roll-call

vote on the amendment, be laid aside but could be brought up again at any time by the majority leader, in consultation with the minority leader, for a vote on a cloture motion one hour after the Senate returned to consideration of the bill. Thus, the opponents, if they did not object to this request, rather than filibustering the amendment, would instead be faced with filibustering the underlying bill. There was no objection to the request when the presiding officer submitted it to the body.

The next day, February 4, the vote occurred on the Helms amendment to prevent the DOJ from bringing legal action that could lead to busing. It passed 58-38 on a party vote. The Senate then put off further consideration of S. 951 until Tuesday, February 9, and returned to televised coverage of Senate proceedings, a bill also undergoing a filibuster.

When Tuesday arrived, the Senate voted on Johnston's motion to invoke cloture on S. 951, the underlying bill, and it passed 63-33 (*Congressional Record* 1982, 1180). During this vote, however, some rather boisterous events occurred resulting in accusations of unfairness being directed at Baker. This was the beginning of major problems for Baker and the Senate as a whole and shows what can happen once comity breaks down in the chamber.

"Regular Order"

Senator John Warner (R-VA) was the presiding officer. Warner suspended the roll-call vote on cloture midstream to restore order to the chamber (*Ibid.*). Metzenbaum was upset that, at least in his mind, the Senate was not following the regular order. The fifteen minutes set aside for the vote had expired, the necessary sixty votes had not been obtained, and the cloture motion was in danger of failing. It is the rule in the Senate that once time expires, the vote is to be announced by the chair. However, in practice the vote

generally is allowed more than fifteen minutes if there are still members in the chamber wishing to vote.

At this point in the proceedings, an exchange took place that illustrates several aspects of floor management in the Senate, especially in a hotly contested legislative matter. There is, first of all, the very basic factor of getting senators to the floor to vote when the outcome is close or uncertain. Majority leaders, including Baker, want to protect their flexibility in mobilizing their forces. Opponents, on the other hand, are quite willing to seize upon technicalities to thwart the other side, or if not thwart, snarl and change the tempo of the process. An edge comes into floor exchanges which the leader must attempt to blunt even as he defends his procedural position. The situation was as follows.

> Metzenbaum: Regular order, regular order.
>
> Presiding Officer: Are there other Senators in the Chamber who desire to vote?
>
> Mr. D'Amato: Aye.
>
> Mr. Cannon: Aye.
>
> Metzenbaum: Regular order, Mr. President.
>
> Mr. Kasten: Aye.
>
> The Presiding Officer: The clerk will prepare the tally.
>
> Mr. Johnston: Mr. President, am I recorded?
>
> The Presiding Officer: The Senator from Louisiana is recorded in the affirmative.
>
> Mr. Exon: Mr. President, how is the junior Senator from Nebraska recorded?
>
> The Presiding Officer: The Senator is recorded in the affirmative.
>
> Mr. Metzenbaum: Regular order, Mr. President.
>
> Mr. Pell: On this vote I have a live pair with the senior Senator from Massachusetts (Mr. Kennedy). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "aye." I therefore withhold my vote. [This announcement was subsequently negated by both Senator Kennedy and Senator Pell voting.]

Metzenbaum: Regular order.

The Presiding Officer: The clerk will now tally the vote.

Metzenbaum: Regular order, Mr. President.

Mr. Johnston: Mr. President--

The Presiding Officer: The clerk is in the process of tallying the vote.

Mr. Metzenbaum: Regular order, Mr. President. The Presiding Officer has the vote. Announce the vote.

Several senators continued to address the chair.

The Presiding Officer: The Senator from Louisiana has sought recognition.

Metzenbaum [ignoring the Presiding Officer's last remark]: Under the Rules, the Chair must announce the vote.

The Presiding Officer: The Chair is still receiving responses to its request. Are there any other Senators in the Chamber who desire to vote?

Mr. Dole: Aye.

Mr. Stevens: Aye.

The Presiding Officer: The clerk will present the tally.

Mr. Weicker: Aye.

Mr. Kennedy: No.

Mr. Pell: Aye.

The Presiding Officer: The clerk will present the tally.

Mr. Weicker: No.

The Presiding Officer: Are there any other Senators in the Chamber who desire to vote? There being no other Senators who desire to vote on this vote, *the yeas are 62, the nays are 33.* Three-fifths of the Senators--

Mr. Simpson: Aye.

The Presiding Officer: The Chair repeats: *On this vote the yeas are 63, the nays are 33.* Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to. (*Congressional Record* 1982, 1180-81; emphasis added).

This concluded proceedings during the call of the roll.

Metzenbaum felt that he was mistreated by the presiding officer and sought recognition to say so:

> Mr. President, I wish to address myself to the majority leader while he is on the floor....I have great respect for this body and for the rules that we operate under, and I also have tremendous respect for the majority leader and the Presiding Officer whomever that may be at any particular point. But I must confess Mr. President, and Mr. Majority Leader, that I think the procedure that was just followed when the Presiding Officer had in his hand the vote and refused to announce it and delayed it deliberately in order that others might vote is contrary to the procedures we followed in this body in the past. I am well aware of the fact that when the Senators are on their feet demanding recognition the normal procedure is to give them an opportunity to speak in order to change their vote or to ask for their vote to be clarified, but that was not the situation in this instance and the Presiding Officer actually held onto the vote and refused to announce it (*Congressional Record* 1982, 1181).

Metzenbaum continued to try to argue that proper procedure had not been followed:

> I might also point out that subsequent in time to that the Presiding Officer then announced the vote and with no further ado a Member of the Senate was permitted to vote after that time. My understanding is that in the past that has only been permitted with unanimous consent and this Senator would not have objected to granting that unanimous consent, but once the vote is announced we have not permitted anyone to add his vote without unanimous consent in the past (*Ibid.*).

Metzenbaum's claim that he would not have objected had the senator who wished to add his vote after the chair had the tally in hand seems less than credible given his opposition to the Helms amendment, so much so that he was willing to participate in a filibuster of the bill and to oppose cloture. However, this is something that cannot be proven. If supporters already had at least sixty votes, Metzenbaum may not have objected

to the senator's voting, but when Metzenbaum began calling for "regular order" there were not sixty votes.[9] Baker could not allow such criticism to go unchallenged:

> Mr. President, I have only the highest regard for the Senator from Ohio, but I must say in all fairness that I think he is wrong on both points that he has just made. To begin with, it is the unbroken precedent of the Senate, I believe, that when Senators have not yet voted and are in the Chamber and wish to vote the regular order is for those Senators to be given that opportunity. There were two Senators here who had not voted. It was clear that they were still engaged in the question of deciding which way to vote. The Chair twice put the question, 'Are there other Senators wishing to vote?'-and on the second occasion, would they please signify their intention to vote. Keep in mind that it requires the unanimous consent of the Senate to excuse a Senator from voting. So there was a heavy responsibility on these two Senators to vote when they were present *Congressional Record* 1982, 1181).

If that weren't enough to assure Metzenbaum, Baker emphasized that proper precedent had been followed:

> Therefore, I think in that case, without any doubt in my mind at least, the precedent of the Senate dictated and the Chair conducted that situation properly in inquiring of the Senators who had not voted but were in the Chamber if they wished to vote and retaining the tally uncomplete until they responded which they did by casting their votes. I might say parenthetically that another Senator was on his way and had sent word that he would shortly arrive in the Chamber. That would not be, in my judgment, sufficient basis for extending the time for a rollcall vote, a simple message that a Senator was on the way (*Ibid.*).

For emphasis Baker added:

> But in this case, in addressing the second point made by the distinguished Senator from Ohio, the Chair had not pronounced the full effect of rule XXII, that is to say three-fifths of the Senate having voted in the affirmative under the provisions of rule XXII debate shall be brought to a close in keeping with the language of that rule, the Standing Rules of the Senate. Before that full pronouncement was made, which is the judgment of the Chair, before that was done another Senator arrived in the Chamber and sought recognition. It is my opinion that the Chair properly recognized him so that he could be included on this rollcall and that that procedure fuly *(sic)* conformed with the precedent of the Senate as it has been universally applied in the past (*Ibid.*).

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[9] When a senator calls for the "regular order," he is stating that the regular order is not being followed and that the chair should return to the regular procedures.

Stevens remarked that it did not change the outcome either way, but this did not placate Metzenbaum and the following exchange took place:

> Metzenbaum: I might say to the majority leader I am not going to belabor the point, but I do think that it is important that this body follow the rules and that we adjudicate the issues on the basis of those rules regardless of what our personal views may be. I am not going to belabor the point, but I did feel that they were somewhat abused in the last instance.
>
> Baker: Mr. President, I do appreciate that and I do not think the Senator from Ohio is doing it, but I really do not accept at face value the idea that I was abusing the rules.
>
> Metzenbaum: I did not say that the majority leader was abusing the rules.
>
> Baker: I put this parliamentary inquiry to the Chair.
>
> The Presiding Officer: The Senator will state it.
>
> Baker: Mr. President, is it not the precedent of the Senate that when Senators are present in the Chamber and have not yet voted the regular order is to permit them to vote?
>
> The Presiding Officer: The Senator is correct.
>
> Baker: Is there any exception to that precedent of which the Chair is aware.
>
> The Presiding Officer: The Chair is not aware of any such exception.
>
> Baker: The second parliamentary inquiry: Is it not the precedent of the Senate that before the Chair pronounces its final judgment in this case on the application of rule XXII it is the regular order for a Senator seeking recognition to be given recognition in order to vote?
>
> The Presiding Officer: The Senator is correct.
>
> Baker: I thank the Chair.
>
> Metzenbaum: Will the Chair respond to another parliamentary inquiry.
>
> The Presiding Officer: The Senator will state it.
>
> Metzenbaum: Is it not the fact that the rules of the Senate provide that there are 15 minutes permitted for a rollcall vote and that immediately thereafter it is the responsibility of the tally clerk to advise the President of the Senate what the vote is and that he has an obligation then to promptly indicate to the Members of the body what the

vote is regardless of whether or not there were Members in the Senate who have not voted?

The Presiding Officer: The rules do not provide such time on a vote.

Metzenbaum: I am sorry.

The Presiding Officer: The Senate has limited rollcall votes to 15 minutes by unanimous consent.

Metzenbaum: Do I understand the Presiding Officer to say that a rollcall vote is not to be concluded within 15 minutes?

The Presiding Officer: It is customary to go beyond 15 minutes if a Senator is seeking to vote.

Metzenbaum: I understand that, but that is not my question. My question is, Is *(sic)* the customary period provided by the rules 15 minutes and then the voting is concluded unless someone is in the Chamber seeking recognition that he may vote?

The Presiding Officer: There is nothing in the rules limiting one to 15 minutes if there are Senators still wishing to vote (*Congressional Record* 1982, 1181-82).

It seemed important to Baker to settle the dispute amicably without giving into Metzenbaum's position. Particularly noteworthy is that Baker did not just accept the announcement of the vote and move on, but was willing to take additional steps to resolve the misunderstanding to the satisfaction of all senators. He continued:

Baker: Mr. President, a parliamentary inquiry.

The Presiding Officer: The Senator will state it.

Baker: Is it not true that under the precedents of the Senate rollcall votes have been set by unanimous consent--[Moynihan interrupts to have order restored]...And indeed the 15-minute span for roll call vote is set not by the rules but set by unanimous consent; is that correct?

The Presiding Officer: The Senator is correct.

Baker: Is it not also correct that the precedent of the Senate is that notwithstanding that 15-minute period may have expired if Senators who have not voted are in the Chamber and wish to vote the regular order is to permit them to vote even though the time required to do so will extend beyond 15 minutes?

> The Presiding Officer: The Senator is correct. On page 1157 [of the Book of Precedents]:
>
> > 'If a Senator is present who did not vote, he may do so prior to the announcement of the decision; in fact, if a Senator were seeking recognition to vote prior to the announcement by the Chair, he is entitled to cast his vote.'
>
> Baker: Mr. President, I think we have pretty well established the parameters of that procedure. I think it is a fundamental procedure that has not been varied from in my experience in the Senate, and I have nothing further to add to that. I believe under the circumstances the matter is disposed of at this point (*Congressional Record* 1982, 1182).

Through his parliamentary inquiries, Baker made the case that proper procedure was followed. After Metzenbaum vented his frustration, Baker devoted time to convincing him that he was not mistreated, and that precedent was properly interpreted. Despite Metzenbaum's challenge and call for the "regular order," regular order was apparently followed. Whether Metzenbaum was convinced is not known, but he made no further comments on the issue. However, this minor conflagration may have been a precursor to what would occur a bit later on the Senate floor.

Despite the successful cloture vote, a post-cloture filibuster was soon launched, and if Metzenbaum thought he was treated badly on the cloture vote, the manner in which the filibuster to follow would be broken was more vulnerable to charges of mistreatment. Metzenbaum was one of the targets of "Black Monday" in 1977, and a reoccurrence on the DOJ bill in 1982 would surely reopen old wounds.[10] In this case, filibuster by amendment was used against DOJ authorization when Weicker and others filed hundreds

[10] A post-cloture filibuster was possible in that once cloture was invoked, subsequent amendments, motions, and points-of-order did not count against the 100 hours (set in 1979) available for debate. Once cloture was invoked senators each had an hour in which to make remarks (or to yield to others) before final disposition. In 1986, four years after DOJ authorization was debated, Rule XXII was amended to reduce the total time available to thirty hours with no senator allowed to speak more than one hour, except by unanimous consent. Further, motions, amendments and points-of-order would count against the time.

of amendments prior to the successful cloture vote. The rules are that once cloture is invoked, only amendments filed with the clerk of the Senate are in order and then only if germane.

Immediately after the dispute over the cloture vote was settled, Both Senator Roger Jepsen (R-IA) and Senator Alphonse D'Amato (R-NY) yielded their post-cloture time to Weicker, still leading the opposition and the filibuster. Although they yielded their time, they announced that they were "not supporting his position" and "shared the opposite view" (*Congressional Record* 1982, 1182). Senators of whatever philosophical or partisan stripe generally do not like their parliamentary rights infringed. They understood that protecting their long-term parliamentary interests meant protecting every member's parliamentary interests.

Black Monday Revisited

Weicker's general strategy against Helms in 1982 was four-fold. First, he would simply try to debate the amendment to death. Once cloture was invoked, he would then offer dilatory motions to reconsider votes that he lost which were mainly votes on motions to table. Most of these dilatory motions were tabled but Weicker still succeeded in delaying because votes took up time. Weicker then began to challenge the chair's rulings that amendments he opposed were in order and amendments he favored were not in order for whatever reason. Finally, Weicker would resort to the post-cloture strategy of filibustering by amendment. He made sure he had numerous amendments at the desk should cloture be invoked. At the least, each would be entitled to a vote and would be useful as tools for delay.

After cloture was invoked and Baker had attempted to satisfy Metzenbaum as to his procedural challenge, the next day, February 10, the Senate began to take up some of

the hundreds of amendments filed by Weicker to the bill. Most of the amendments were not substantive but merely changed effective dates or made punctuation changes. The purpose of the amendments was only to delay. Some of the amendments had little or nothing to do with the underlying bill. Johnston began to table them successfully and on occasion raised the issue of germaneness (*Congressional Record* 1982, 1523). It is at this point that the real fight began that would eventually lead to a repeat of "Black Monday." However, there are some important differences between how Majority Leader Byrd handled the situation in 1977 and how Baker handled this situation in 1982.

After one Weicker amendment was tabled successfully, that evening, Johnston made a point-of-order that a subsequent motion by Weicker to reconsider the vote was dilatory (*Ibid.*). Recall that rule XXII prohibits dilatory motions. Weicker, who was not a member of the committee, indicated that he did not think his motion was dilatory, because it was the first motion he had offered to reconsider a vote. Baker immediately intervened. Clearly he was aware that a very sensitive point in the process had arrived and did not want precipitous action at that time. He asserted:

> Mr. President, the Senator from Louisiana is entirely within his rights to make the point he just made. Without any prejudice to that point or any prejudice to the position asserted by the Senator from Connecticut, I represented to my colleagues in the Senate that I had discussed informally with the Senator from Connecticut [Weicker] and others that this was the last vote tonight, the one just completed, and a motion to reconsider the previous vote would be the pending question when we resume consideration of this matter tomorrow. That does not cut any ice so far as the procedural issue is concerned, but it causes me some grief, because that is the way I had represented it to the Senator from Connecticut. So, just out of consideration of that- which may or may not have been a wise representation to make and carries no weight other than a simple statement- I wonder whether the Senator from Louisiana will consider leaving the situation in status quo, and perhaps he may wish to make his point of order again tomorrow, or perhaps we could proceed with the motion to reconsider if he does not. But I would prefer not to try to face the point of order or a ruling by the Chair on that point of order at this hour in the evening (*Congressional Record* 1982, 1523).

Baker did not want to go back on his personal assurance to Weicker that the vote just taken would be the last vote that evening and Weicker's motion to reconsider would be the pending business when the Senate resumed consideration the next day. More importantly, he did not take a position on the underlying measure and was working to protect the process rather than seeking to achieve any particular outcome. Although Baker had previously taken positions in opposition to busing and felt that the government was intruding too far with such requirements, his word was more important than taking advantage of opportunities to move the bill in his favor (Howard Baker 1980, 20). Johnston replied to Baker's request stating, "I know the Chair, after thinking about this matter overnight, will rule in my direction, and I will accede to the wish to the majority leader and leave the matter in status quo" (*Congressional Record* 1982, 1523). This effectively concluded the Senate's business for the day. Johnston and Weicker wrangled over amendments until February 22, nearly two weeks later. That day was spent almost entirely on DOJ authorization. Baker reiterated his position of neutrality by stating, "I shall be most cooperative with those who are managing the bill and those who are opposed to it. I have not tried nor will I try to take advantage of any member, nor do I wish to make the legislative process such a physical thing that endurance will determine the outcome" (*Congressional Record* 1982, 1771). Baker would eventually break his promise to remain neutral.

On Tuesday, February 23, activity picked up. A quarrel erupted over Strom Thurmond's attempt to have Baker withdraw all committee amendments on his behalf. Thurmond was absent due to illness and sent his request by letter but gave no reason for the withdrawal (*Congressional Record* 1982, 2079). Weicker challenged this procedure and parliamentary inquiries were made as to whether it was proper procedure for the bill manager to withdraw committee amendments by letter. Weicker argued that such withdrawal, before any action was taken on the amendments, required the committee's

direction, and no individual senator had the capacity to do it. The presiding officer pointed out to Weicker that once a majority leader gets the permission of a majority of the committee with jurisdiction to withdraw amendments, he becomes the bill manager and can withdraw committee amendments on which no action had been taken (*Ibid.*). In this case, Thurmond had the permission of the committee when he informed Baker of his desires. Weicker eventually let go of the issue but would exact a type of revenge.

Johnston had his own amendments at the desk which were similar to the one offered by Helms, to which he was a co-sponsor, that sought to limit the DOJ and federal courts from taking action that led to busing. These were ready just in case the Helms amendment was tabled or defeated. It was clear that Johnston, and Helms for that matter, did not want to accept the DOJ authorization bill without amendments limiting the federal courts and the Department of Justice. As it would turn out, Johnston's amendments were not necessary and ultimately they were withdrawn. It was the handling of these amendments and the floor action related to them that is of interest, however. When Johnston called up one of the amendments and when the clerk began to read it, he asked unanimous consent that further reading be dispensed with. Weicker objected and the post-cloture filibuster was resumed (*Congressional Record* 1982, 2083). Johnston fought back, making a point-of-order that the reading of the amendment was not required. The rules only required reporting of the amendment (meaning the clerk states the amendment by title and its effect). Johnston called up another amendment, nearly identical to the previous one. Weicker asked if the clerk reported the entire amendment, prompting the following exchange:

> Presiding Officer: It is not required that the clerk read the entire amendment. It is required that he report the amendment.
>
> Weicker: I request that the amendment be read.

Presiding Officer: The Senator from Louisiana has objected to the reading of the amendment. The objection was heard.

Weicker: I heard no such objection. How could he object? I heard no such objection.

Presiding Officer: The Senator from Louisiana did object to the reading of the amendment and it was within his power as a Senator to make that objection.

Weicker: Mr. President, even though I think the Parliamentarian is wired into what is going on here, no such objection was made. I was the one who was prepared to object. We are getting a little ahead of ourselves. Here we are being asked to vote on something and nobody knows what we are being asked to vote on.

Johnston: Mr. President--

Presiding Officer: The parliamentary procedure is that the clerk has been requested to report the second amendment offered by the Senator from Louisiana. The clerk will report the amendment (*Congressional Record* 1982, 2085).

After the amendment was reported, Weicker requested that the amendment be read and Johnston objected. Baker stayed out of this squabble for the most part and only offered two motions at different times during the day to have the sergeant-at-arms "invite" the attendance of absent senators. Baker wanted to establish a quorum knowing, according to the precedent he helped establish on "Black Monday" in 1977, that if no other intervening business aside from the pending business took place, another quorum call would not be in order and considered to be dilatory.

Weicker was not deterred. He suggested the absence of a quorum when an amendment by Slade Gorton (R-WA), similar to Johnston's, became the pending business. Johnston objected to the quorum call arguing that there was no intervening business since the last quorum call. Weicker asserted that there had been intervening business in the form of some remarks by Baker threatening to keep the Senate in past midnight if better progress was not made on amendments. The chair sided with Weicker. Baker then announced that the next quorum call would be a "live" quorum (*Congressional Record* 1982, 2241). After the quorum call, Baker made remarks supporting Gorton's

amendment and in opposition to forced busing. Weicker continued to press for quorum calls and Johnston continued to object on the grounds that they were dilatory. The chair continued to side with Weicker.

Weicker then took bolder action and made a point-of-order that the Gorton amendment was not germane (*Congressional Record* 1982, 2245). Since cloture had been invoked, if not germane, the amendment would be out-of-order. The presiding officer this time ruled against Weicker and announced that the amendment was germane. Weicker appealed the ruling and requested a roll-call vote on the appeal (*Ibid.*).

The debate, after Weicker's appeal, now took a different turn. Baker was becoming convinced, if he were not convinced some time previously, that Weicker's purpose was to filibuster and prevent a vote on the authorization bill. After the full Senate upheld the chair's ruling that the Gorton amendment was germane, Baker took stronger measures, matching those of Weicker step for step, and asked for the yeas and nays on the Gorton amendment. Weicker moved to reconsider the vote on the germaneness question, and Johnston made the point-of-order that there was intervening business and thus Weicker's motion was dilatory (*Ibid.*). However, the presiding officer informed Johnston that intervening business did not preclude a motion to reconsider. To make a long story short, Weicker and Johnston were wrestling over amendments and procedures, each trying to get the other's actions ruled out-of-order. This went on for fifteen pages of the *Congressional Record* with occasional episodes involving Metzenbaum and others getting into the squabble.

Baker had finally had enough. The Senate had devoted 24 days to the measure, more than 67 hours of debate time, and a total of seven votes on cloture motions. He took advantage of the majority leader's right of first recognition to address the chair, now occupied by Senator John Warner (R-VA):

Presiding Officer: The majority leader is recognized.

Mr. Baker: Mr. President, I call up amendment No. 428.

The Presiding Officer: The amendment is not in order as not being germane.

Mr. Baker: Mr. President, I call up amendment No. 429.

The Presiding Officer: The amendment is not in order. It is not germane.

Mr. Baker: Mr. President, I call up amendment No. 430.

The Presiding Officer: The amendment is not in order. It is not germane (*Congressional Record* 1982, 2342).[11]

During this exercise of "raw power" by Baker, using his right of first recognition, forty-six amendments were called up by him and ruled out-of-order by the chair for being either dilatory, non-germane, improperly drafted, or for other reasons. Some differences exist between what was occurring at this point in the debate on DOJ and "Black Monday" in 1977.[12]

One of the differences between "Black Monday" in 1977 and this episode in 1982 was that in 1977, no senator was allowed to appeal the chair's rulings. To allow appeals would have defeated the purpose of getting the amendments ruled out-of-order, for it did not matter whether the amendment or an appeal was voted on. Both were equally time-consuming. As subsequent amendments were being called up, an appeal of the chair's ruling on the previous amendment would then be moot (Tiefer 1989, 498). This was how Byrd, with Baker's help, prevented delay so that the Senate could get to a vote. When asked on the floor why no appeals were being allowed, Vice President Mondale responded that he was simply following Senate custom which required the presiding officer to

[11] The basis for the determination of non-germaneness was never made clear in the *Record.* The amendments were not reported due to the chair ruling them out-of-order as Baker called them up. They were not reported by the clerk for this reason. Nor is it clear whose amendments Baker was calling up.
[12] The entire dialog of the event covering Baker's reliance on the precedent set on "Black Monday" to break the filibuster led by Weicker is contained in Appendix D.

recognize party leaders when they are among several senators seeking recognition (*Congressional Record* 1977, 31927-28). This was the understanding worked out in private before the leaders took the floor to break the filibuster in 1977.

When Baker led a similar assault against the DOJ filibuster in 1982, he permitted occasional appeals of the chair's rulings to be made, although 23 amendments were called up and ruled out-of-order before an appeal of the chair's ruling was allowed. Weicker did not make a point-of-order until the first 23 amendments were ruled out-of-order (*Congressional Record* 1982, 2343). Even then, however, the presiding officer was recognizing only Baker to speak. Baker, in an act of generosity, informed the presiding officer that he was "perfectly pleased" to allow the point-of-order. However, Baker quickly moved to table the appeal when offered by Weicker. The Senate sided with Baker and tabled the appeal (*Ibid.*). Baker would permit only periodic interruptions for points-of-order. Weicker took the floor to appeal the chair's ruling ten times, and Baker successfully moved to table each of them. Baker may have allowed appeals to be made because Byrd received heavy criticism in 1977, even from members of his own party, because he had promised during the debate to allow appeals of the chair's rulings, but had not done so.[13]

At 1:15 in the morning Baker "expressed the hope" that senators would no longer give Weicker a sufficient second for a roll-call vote on any of his motions (*Congressional Record* 1982, 2346). Weicker, after being steamrollered on his DOJ filibuster, moved to table the entire bill midway through the episode, but when he asked for the yeas and nays there was no sufficient second.[14] Baker now had the chamber's support but Weicker was not deterred. He was determined to go down fighting. He immediately asked for the yeas

[13] Byrd, in response, would assert that he did keep his promise when he allowed members the opportunity to have a voice-vote *en bloc* on the amendments that had been ruled out-of-order (Berlow 1977, 2127-28).
[14] When a senator asks for the yeas and nays he is requesting a roll-call vote. However, to get a roll-call vote requires a sufficient second, which in the Senate is one-fifth of the membership present.

and nays after Baker called up the next amendment, despite Baker's request that the Senate not give him a sufficient second that would force a roll-call vote (*Ibid.*).

Weicker had yet to see the futility of his resistance and objected when Baker requested unanimous consent that when the Senate completed its business for the day, that it stand in recess until 10:30 that morning (*Congressional Record* 1982, 2352). However, the majority leader, when he had the votes, could not be denied, and Baker had the votes. Baker simply moved that the Senate stand in recess until 10:30 a.m. to which Weicker requested the yeas and nays but again failed to obtain a sufficient second, and the motion was agreed to by voice vote.

Another difference between "Black Monday" and DOJ authorization in 1982 was that Byrd weighed in on the side of Weicker, using his right of recognition as minority leader, asking that the chair recognize Weicker for possible appeals, and asserting that he "is entitled to be recognized." This was not Byrd's position in 1977, when he and Baker were on the same side. In 1982, Byrd was assisting a Republican, albeit a liberal Republican, to filibuster. Fellow Democrat Metzenbaum was also a party to the filibuster, however, and Byrd probably weighed in for the liberal position rather than for a party position, making the dispute more ideological than partisan. This is further indicated by the fact that many Democrats defected and assisted Baker by not providing Weicker or Metzenbaum with sufficient seconds for time-consuming roll-call votes after Baker indicated his hope that they would not.

The next day, February 25, Weicker saw the handwriting on the wall (a la "Black Monday") and realized he could not win, even though he had hundreds more amendments at the desk. He, however, took the floor and demonstrated that he had learned to play the shame game and accused the majority leader of violating the Senate rules:

> Mr. President, in response-and I will try to be brief-to the distinguished majority leader, I have stated all along that, in my opinion the essence of this debate is the circumvention

> of the Constitution of the United States. *Last night, this body, in the tradition of the main issue, chose to circumvent the rules of the Senate.* To go ahead and grant the right to a rollcall vote [to the Johnston amendment by ruling obstructionist amendments out of order], to my way of thinking, might have been proper in terms of the ultimate objective and in terms of expediency but certainly did not conform to the traditions and procedures we have established for ourselves in this body *Congressional Record* 1982, 2452; emphasis added).

If that weren't enough, he tried to shame southern members for their lack of support:

> I supported my Southern brethren several years back in their resistance to changes in rule XXII because I felt it was important to protect the rights of the minority. They were the minority. I am the minority right now. The rules call for 100 hours of debate, after cloture is invoked. Now just as my friends on the issue would like to have a game played on the field without referees, that is, courts, *obviously the leadership here on the floor of the Senate now takes rule XXII that we voted as a procedure and throws it out the window, and we are now playing under no rules.* I do not see where that encourages accommodation and compromise. So, even though again I repeat I know I am in the minority on the issue and ultimately must lose, *at least I will do so in an honorable way* (*Ibid.*; emphasis added).

The clear implication was that Baker and others were not acting honorably. No other senator accused the leader of acting unfairly. Baker, of course, could not let Weicker's accusations go unchallenged, and one can see how the majority leader was sensitive to the rights of the minority, to individuals, and to the traditions and precedents of the Senate, in his rebuttal:

> Mr. President, it is not my purpose to join issue with the Senator from Connecticut. I cannot think of a single consideration that I could have extended the Senator from Connecticut last evening that I did not, even to the point of giving him a list of the amendments remaining with my notations on what position I would take and that I hoped the Chair would take in advance of the time we proceeded to that-I have never seen that done before-even to the point of telling the Senator from Connecticut exactly what I was going to do in each case before I did it, even to the point of advising him that I will ask the Senate to withhold the granting of the yeas and nays which under the rules was, of course, appropriate in the case of the last three amendments, all after 1 a.m. in the morning (*Ibid.*).

Baker tried one last time to mollify Weicker:

> Mr. President, no rules have been circumvented, no honor has been besmirched, no failure of cooperation or consideration has been transgressed, and I intend to try to finish this bill. The Senator from Connecticut is my friend. He will continue to be my friend, I trust, after this is over. Certainly I will be his friend as far as I am concerned.... I have no alternative except to say we are going to finish this bill one way or the other. I am not going to injure any precedent or tradition of the Senate. I will continue to try to tell the Senator from Connecticut in each and every instance what I am going to do in advance, but I have no apology for my urging of the Senate to act in the manner it has (*Ibid.*).

Weicker continued to put up minor resistance but eventually caved in and allowed a unanimous consent agreement propounded by Baker to establish a time certain for a vote on final passage which was set for March 2 (*Congressional Record* 1982, 2465). On this date, the Senate finally passed the DOJ authorization bill, including the Johnston/Helms amendment, by a 57-37 party vote, but only to have the bill defeated in the House of Representatives. Thus, Baker's hard work and determination was all for naught. However, Baker was able to repair his relationship with Weicker when the agreement was reached, mainly through compliments, praise and a stroke of the ego, all done to pay tribute to Weicker's endurance, saying:

> I do not believe I ever have had an adversary who has been as tough and as effective as the Senator from Connecticut....He has handled himself extraordinarily well. He has availed himself of every reasonable and available opportunity to exert his influence on the form of this legislation. He has literally gone the last mile to try to prevail (*Congressional Record* 1982, 2465).

Weicker returned the praise and offered the following by way of apology:

> My good friend from Tennessee knows, being a good sportsman, as I am, that every now and then the referee gets the puck in the teeth; there are times a loose punch catches the referee in the boxing ring; and every now and then the baseball hits the umpire behind home plate in the Adam's apple. Nevertheless, the fact is that in the course of this fight, my eye was on the ball, on the issue that confronted the Senate; and if one of those occurrences happened and I was responsible for it, I want him to know that it was totally inadvertent and unintentional. He is a great friend, a fine majority leader. The next time, I hope he will doff his referee's robe and come over and join me on my side,

> because then I know I will win. Aside from whatever logic I have, whatever reason he has, he has one great advantage-he has the votes, and that is what is important (*Ibid.*).

During the debate on DOJ in 1982 it seemed important to Baker that his opponents not feel that he took advantage of them, so much so that he was willing to take the time to explain his position on the floor and have the parliamentarian back him up.[15] Further, Baker was willing to allow Weicker to make periodic appeals of the chair's rulings when his amendments were ruled out-of-order. Baker could have continued to use his right of first recognition to call up amendments, have them ruled out-of-order, and foreclose any appeals whatsoever. But to do so would have had Howard Baker not be Howard Baker. Still, the episode must be described as a leader using strong tactics. It was the only time on record, however, when Baker used raw power as majority leader.

Debt Limit Increase in 1982

A debt limit increase measure (H. J. Res. 520) came to the Senate floor in August of 1982. Like the DOJ authorization bill, the debt limit measure would be stalled due to social issues, in this case school prayer. The Finance Committee substitute measure would be subject to about five weeks of debate relatively late in the session when time was extremely valuable. The key points in the debate over the temporary debt limit increase are provided in Figure 5-3. The Senate calendar was crowded with, among other

[15] The parliamentarian never addresses the Senate directly. Rather, his pronouncements are made to the floor through the presiding officer.

Figure 5-3. Summary of Key Points in the Debate over H. J. Res. 520, the Temporary Debt Limit Increase.

Date	Action
August 17	Debate begins on the temporary debt limit increase measure.
August 17	Vote on Baker amendment to block further spending on a planned gymnasium in the new Hart Senate Office Building and to close an existing gym in the Dirksen Senate Office Building (adopted 98-0).
August 17	Vote on Dole amendment to make technical changes in a previous Dole amendment to reduce to six months from one year the length of time an investment must be held to qualify for long-term capital gains tax rates. (adopted 77-17).
August 18	Vote on Baker motion to instruct the sergeant-at-arms to require the attendance of absent senators (agreed to 88-7).
August 18	Vote on Helms motion to table the Weicker amendment to make clear that the Justice Department can enforce the Constitution and to make clear that nothing in the debt ceiling bill should be interpreted to modify or diminish the authority of the federal courts to fully enforce the Constitution (rejected 38-59).
September 9	Vote on Baker motion to invoke cloture on the Helms 2nd degree amendment to ban abortion offered to the Helms amendment to strip the Supreme Court of jurisdiction to review any case involving school prayer (rejected 41-47).
September 13	Vote on Helms motion to invoke cloture on the Helms 1st degree school prayer amendment (rejected 45-35).
September 15	Vote on Helms motion to invoke cloture on Helms 2nd degree abortion amendment (rejected 50-44).
September 15	Vote on Hayakawa motion to table the Helms 2nd degree abortion amendment (agreed to 47-46).
September 20	Vote on Helms motion to invoke cloture on his 1st degree school prayer amendment (rejected 50-39).
September 21	Vote on Helms motion to invoke cloture on his 1st degree school prayer amendment (rejected 53-47).
September 22	Vote on Helms motion to invoke cloture on his 1st degree school prayer amendment (rejected 54-46).
September 22	Vote on Goldwater motion to table the Helms 1st degree school prayer amendment (rejected 47-53).
September 23	Vote on Helms motion to invoke cloture on his 1st degree school prayer amendment (rejected 53-45).
September 23	Vote on Goldwater motion to table the Helms motion to recommit the Finance Committee substitute bill (to which Helms offered his amendments) back to the Finance Committee with instructions that it report the bill back to the Senate with the Helms school prayer amendment attached (agreed to 51-48).
September 23	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 93-4).
September 23	Vote on Baker motion to recommit the Finance Committee substitute to that committee with instruction to send it back to the Senate stripped of all amendments (agreed to 79-16).
September 23	Vote on Dole motion to table the Quayle amendment to lower sugar price supports for the 1982 crop year from 17 cents per pound to 14 cents (agreed to 60-31).
September 23	Vote on passage of the joint resolution temporarily increasing the federal debt limit to $1.29 trillion and extending through September 30, 1982 (Passed 50-41).

measures, the Department of Defense authorization bill, a conference report on a bill to ease government regulation of the inter-city bus industry, and a supplemental appropriations bill. However, the Senate would stay on the debt limit bill continuously from September 13, when a second cloture motion failed, until its passage on September 23, interrupted for the most part only by periods of morning business and speeches on other matters. No other bills were subject to floor action in that span.

The bill was on the Senate floor on August 17 when Baker offered the first amendment that produced a roll-call vote. It passed 98-0 (*Congressional Record* 1982, 21690). The amendment blocked further spending on a gymnasium planned for the new Hart Senate Office building and also closed a gymnasium in the Dirksen Senate Office building. The only other amendment to be adopted to the resolution, by roll call vote anyway, was a technical amendment offered by Dole, the bill manager.

Solidarity would soon dissolve as the quarrel between Helms and Weicker over their respective social agendas began to spill over onto this bill. Baker had promised Helms the previous year a debate on social issues in exchange for cooperation from Helms on the Reagan economic agenda. A part of the commitment had been fulfilled reluctantly on the DOJ authorization bill. Now it was time for another round. The leader addressed the Senate to outline his plans:

> I must say that I had hoped we could do this in a minimum of time. My first commitment is to have a week of debate on the social issues-abortion, particularly. I was reluctant to do this, in any event, because we will have to keep the Senate here until 8 o'clock in order to get in any meaningful and significant debate on the Helms amendment, as it is....What I intend to do is to try to get the abortion debate out of the way, up front. That may be a vain hope. We may not do that until our next incarnation [Laughter] (*Congressional Record* 1982, 21760).

Helms liked to use riders to put his social agenda onto money bills which increased the likelihood of passage. Something as urgent as a debt ceiling bill meant the Congress dare not refuse to pass it and the president could not or would not veto it. If either of these events happened, the government would run out of money and be forced to shut down. Helms had an amendment he wished to offer that banned abortion, and he intended to offer it to his amendment that stripped the Supreme Court of jurisdiction to review any case involving voluntary prayers in school. Baker was unable to provide for consideration of Helms' or any other amendment, and at 7:50 p.m. he recessed the Senate until 10:00 a.m. the next day.

When the Senate reconvened on August 18, and after a brief period of morning business, the Helms school prayer amendment became the pending business, to which he promptly called up his second-degree abortion amendment. Weicker began filibustering it and Helms was unable to get a quick disposition. Weicker then quickly sent an amendment to the desk, offered to the bill in response to Helms' amendments, that would "make clear" that the Justice Department could enforce the Constitution and that nothing in the debt ceiling bill should be interpreted to modify or diminish the authority of the federal courts to fully enforce the Constitution, at least as Weicker viewed it (*Congressional Record* 1982, 21840). Helms objected when Weicker tried to have the reading of the amendment dispensed with and then promptly moved to table the Weicker amendment, but the motion to table failed 38-59 on a party vote (*Congressional Record*

1982, 21840-41). Weicker, although victorious in holding off a tabling attempt, was irritated at Helms move and said so after the vote:

> Mr. President, I first want to thank my colleagues for the courtesy that they have extended to me to speak on matters before this Chamber. I thought that the tabling motion, although in order, was a little premature, considering that I had not had an opportunity to address myself to the subject matter which has occupied the Chamber for the last several days, or the new matter introduced by the distinguished Senator from North Carolina, or the amendment of the Senator from Connecticut (*Congressional Record* 1982, 21841).

Weicker then went on to criticize Helms "court-stripping" amendment. In fact, he expected only an abortion amendment. He knew it was not likely to gain passage. But when Helms offered the abortion amendment to his prayer amendment as a means of attracting support, Weicker then decided to go all out to prevent passage of the amendment by filibuster and by offering his own amendment. The Helms prayer amendment had twice passed the Senate on previous occasions and thus posed a threat to Weicker's position (*Congressional Record* 1982, 23088-89). Weicker's amendment remained the subject of a counter-filibuster by Helms and never got an up-or-down vote. Yet, with the failed tabling move, a logjam of opposing amendments were in place and the stage for a dual filibuster was set. The two long-standing antagonists settled in for their battle. Baker was content to let the filibusters go on a while and he, upon occasion, occupied the Senate's time with other matters.

Helms abortion amendment was pending again when Baker decided to make his move. After there had been ample time for debate, Baker moved for cloture on the Helms amendment. When the vote was taken on September 9, Baker came up 19 votes short on a 41-47 party vote (*Congressional Record* 1982, 23092). The next move belonged to

Helms who also moved to invoke cloture on his amendment. The September 13 vote came up fifteen votes short, 45-35, but some progress was being made in moving the Senate closer to a substantive vote (*Congressional Record* 1982, 23255).

Two days later, Helms tried cloture again. This time he got 50 votes, signifying still more progress (*Congressional Record* 1982, 23617). Only ten more votes were needed, and some of them might come from absent senators. Yet, if Helms got all of the absent member's votes, he would still have to convince four members who voted in the negative on the last vote to switch and vote in favor of cloture.

S. I. "Sam" Hayakawa (R-CA) decided to get into the fight and moved to table Helms' contentious second-degree abortion amendment immediately after the cloture vote. The logjam was resolved when Hayakawa's motion was agreed to on a 47-46 party vote (*Congressional Record* 1982, 23618). Baker paired against Hayakawa's motion.[16] One obstacle was now out of the way. This left as the pending business the first-degree school prayer amendment which was also the focus of a filibuster. On September 20, when Helms moved to invoke cloture on that amendment, he again attracted only 50 votes (*Congressional Record* 1982, 24169). The next day, he tried again and got 53 votes (*Congressional Record* 1982, 24471). A day later, Helms made another try at it and received an additional vote for his efforts (*Congressional Record* 1982, 24583).

[16] If a Senator is going to be absent, but does not wish his absence from the vote to be used against him as a campaign tactic, he will pair with another Senator who intends to vote the opposite way. In this manner, his absence will not affect the outcome of the vote.

Growing weary of the obstruction, fellow Republican Barry Goldwater tried to remove the obstacle with a motion to table the first-degree Helms school prayer amendment, despite an earlier comment to Helms on another measure that a tabling motion was a "chicken maneuver." Goldwater's motion failed on a 47-53 vote (*Congressional Record* 1982, 24585). Baker voted against this motion to table. On September 23, Helms tried again to break the logjam, but this cloture motion, too, came up short on a 53-45 vote, losing a supporter in the process (*Congressional Record* 1982, 24776). Baker again voted with him. Helms then attempted an end run around the floor by offering a motion to recommit the bill to the Finance Committee with instructions to report it back to the floor with his amendment attached. Goldwater, angered at Helms obstinance and the audacity of this tactic, immediately moved to table Helms motion. Goldwater was more successful with this maneuver as his motion was agreed to by a 51-48 party vote (*Congressional Record* 1982, 24777). Baker abandoned Helms and voted for this motion to table.

It is at this point that Baker reemerged at the center of the action, at least procedurally, with a motion to instruct the sergeant-at-arms to request the attendance of absent senators. Then he moved to recommit the Finance Committee substitute back to that committee with instructions to report it back to the Senate stripped of all amendments. The only amendment to be stripped was Baker's own amendment to block further spending on the Dirksen and Hart Senate office buildings and non-controversial amendments that did not require a roll-call vote. This effectively put the chamber back to square one on the bill. Baker's move was not surprising given his interest in keeping bills

"clean" and devoid of unrelated legislative riders, despite whatever sympathy he might have for particular amendments, but the specific reason for the move was not clear since no controversial amendments were adopted that threatened passage of the bill. He felt he had kept his promise to Helms to help him get freestanding votes on social issues, but, when no further progress was possible, Baker felt he could move on and do whatever was necessary to get the Senate moving forward again. Baker's motion to recommit was agreed to 79-16 (*Congressional Record* 1982, 24792). This proved once again that Baker had the votes or could at least obtain them.[17] Dole, as floor manager, performed a clean-up role by successfully moving to table an amendment by Quayle to lower sugar price supports from 17 cents to 14 cents (*Congressional Record* 1982, 24813). The bill then passed 50-41 in a clean form with no amendments (*Congressional Record* 1982, 24814). The logjam was ended.

Helms could not have been happy with the outcome, because he did not get the policy changes he sought. However, he did not lose ground either, and the same can be said of Weicker. Baker, in characteristic form, allowed others to exercise floor management responsibility via cloture motions and motions to table. Baker initially offered a perhaps perfunctory motion to invoke cloture. After that, he stayed out of the squabble until what turned out to be the end stage of debate over the bill. This was when, after all the Republican bloodletting had ended, he seized the opportunity to remove the obstacles to final passage and get a clean bill in the process.[18]

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[17] The resolution went on to pass the full Senate on September 23rd, by a 50-41 party vote.
[18] Baker, Helms, Weicker, Hayakawa, and Goldwater were all Republicans.

The Transportation Assistance Act of 1982

The last two or three weeks of a Senate session is a very dangerous time for important bills. Filibusters launched during this period are more potent than others, because senators wish to go home, particularly those seeking reelection, and there is added pressure for proponents of filibustered bills to take them down in order to prevent a delayed adjournment. Proponents often find themselves the object of other members' wrath if they do not take the bill down. At the same time, that wrath can be turned around onto the filibusterers. The side that usually bears the brunt of bitter criticism is the side perceived to be the more unreasonable.

In December, 1982, the Congress was in a lame duck session at the request of President Reagan who wanted certain appropriation bills passed. A lame duck session occurs when a Congress is brought back into session after the election and is composed of the same members as before the election; that is, without the newly elected members who will take their seats at the start of the new Congress. The usual reason for a lame duck session is that important must-pass bills are still pending in Congress. In addition, lame duck sessions can occur because of some emergency that must be dealt with. In 1982, the must-pass bills were a continuing budget resolution, H J Res. 631, and a bill to raise the gasoline tax to pay for highway repair, HR 6211.

Howard Baker wanted both of the bills passed. He had already gotten a scaled-down version of the transportation bill passed and signed on October 13, but, on November 23, President Reagan endorsed the gas tax increase after initial opposition. This was after House Speaker Thomas "Tip" O'Neill (D-MA) and Baker announced that they would work together for the gas tax. After the election, a comprehensive bill emerged that included the gas tax increase and other provisions. It was this bill that attracted opposition from members opposed to the gas tax increase.

The Transportation Assistance Act of 1982 was brought up on the Senate floor on December 10. The major problem with this bill was opposition by a small number of Republicans to an increase in the gas tax and other highway related taxes. The obstruction endangered both the transportation bill and the budget resolution. The Senate also was dealing with a Department of Interior appropriations bill and natural gas price relief. The continuing budget resolution was the hostage held in exchange for killing the gas tax elements of the transportation bill.

Adjournment had been tentatively scheduled for December 15. If that could not be obtained, perhaps December 17. The highway bill passed on December 20, but even passage did not end the fight, because the conference report on that bill also would be the target of a filibuster. Baker eventually succeeded in getting the bill and its conference report passed, but only after a great deal of procedural wrangling. That is the focus of this section. Figure 5-4 contains a summary of the key points in the debate over the highway bill.

Figure 5-4. Summary of Key Points in the Debate over the Transportation Assistance Act of 1982.

Date	Action
December 10	Bill to authorize funds for highway construction and repairs, mass transit, and increase gasoline and other highway taxes is taken up on the Senate floor.
December 10	Vote on Baker motion to table the Nickles motion to postpone the Baker motion to proceed to consideration of the bill (agreed to 79-10).
December 13	Vote on Baker motion to invoke cloture on his motion to proceed to consideration of the bill (agreed to 75-13).
December 13	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 79-7).
December 13	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 81-6).
December 14	The bill is brought up on the Senate floor.
December 14	Vote on Byrd amendment to establish a job creation and extended unemployment compensation program for fiscal 1983; delay the scheduled July 1983 income tax cut for upper-income taxpayers and eliminate the 5 cent per gallon tax increase contained in the bill (rejected 44-53).
December 14	Vote on Bentsen amendment to advance the effective date of the 1983 income tax cut from July 1 to April 1, and to defer 5 percent of the cut until there is no deficit in the annual federal budget (rejected 40-54).
December 14	Vote on Baker motion to table division 1 of the Kassebaum amendment to authorize the Federal Energy Regulatory Commission to allow natural gas pipelines to modify their contractual obligations to buy higher cost gas when lower cost gas is available (agreed to 56-38).
December 14	Vote on Baker motion to table division 2 of the Kassebaum amendment to freeze the wellhead price of natural gas at October 1 levels for a two-year period (agreed to 62-33).
December 15	Vote on Baker motion to table the Metzenbaum amendment to require that only steel and cement manufactured in the United States be used in construction and repair of highways and bridges (agreed to 51-47).
December 15	Vote on Tsongas amendment to transfer $16 billion from the bill's authorization for new interstate highway construction to interstate and bridge repair (rejected 17-74).
December 15	Vote on Baker motion to table the Pryor amendment to eliminate the increase in non-fuel truck taxes and to maintain current gross weight, length and width limitations for vehicles using the interstate system (agreed to 48-37).
December 16	Vote on Dole motion to table the Levin amendment to provide for an additional two to five weeks of federal unemployment compensation (rejected 47-50).
December 16	Vote on Baker motion to invoke cloture on the Baker substitute for the bill (rejected 48-50).
December 16	Vote on Baker motion to invoke cloture on the bill (rejected 5-93).
December 16	Vote on Humphrey motion to table the Domenici motion to waive provisions of the Congressional Budget Act of 1974 that would bar consideration of the Dole amendment to provide for an additional 6 weeks of federal supplemental unemployment compensation (rejected 5-92).
December 16	Vote on Domenici motion to waive provisions of the Congressional Budget Act of 1974 that would bar consideration of the Dole amendment on unemployment compensation because it would the budget levels set in the fiscal 1983 budget resolution (agreed to 87-9).

December 16	Vote on Dole unemployment compensation amendment (adopted 93-4).
December 16	Vote on Boschwitz amendment to the Baker substitute to reduce heavy-truck taxes from the substitutes' level of $1,600 to $1,200 (adopted 96-1).
December 16	Transportation bill is laid aside to deal with continuing resolution.
December 18	East begins filibuster of continuing resolution as a tactic to keep highway bill from coming back to Senate floor. At 2:00 a.m. the next morning, East loses his right to floor.
December 19	Continuing resolution passes on a 63-31 vote.
December 19	Vote on Baker motion to invoke cloture on the Baker substitute bill (agreed to 89-5).
December 19	Vote on Stafford motion to table the Nickles amendment to the Baker substitute to remove the section of the bill relating to the Davis-Bacon Act requirement that an area's prevailing wage rate be paid on federal highway projects (agreed to 48-46).
December 19	Vote on Dole motion to table the Riegle amendment to the Baker substitute to exempt families earning $10,000 or less a year from the gasoline tax increase (agreed to 50-42).
December 20	Vote on Garn motion to table the Bumpers amendment to the Baker substitute to require that every state receive 85 percent of the transit revenues derived from 1 cent-a-gallon of the tax increase that its motorists pay (agreed to 52-44).
December 20	Vote on Baker substitute for the bill to authorize highway funds through fiscal 1987 and transit funds through fiscal 1985, as well as increase highway taxes (rejected 71-25).
December 20	Vote on Baker motion to table Helms point of order against the bill because it violated a law (PL 95-435) that prohibited federal expenditures from exceeding revenues (agreed to 73-22).
December 20	Vote on Baker motion to waive provisions of the 1974 congressional budget act that would bar consideration of the bill (agreed to 81-14).
December 20	Vote on Baker motion to proceed to the Baker motion to reconsider the vote by which the Baker motion to invoke cloture on the bill was rejected (agreed to 86-7).
December 20	Vote on Baker motion to reconsider the vote on the Baker motion to invoke cloture on the bill (agreed to 87-8).
December 20	Vote on Baker motion to invoke cloture on the bill (agreed to 87-8).
December 20	Vote on passage of the bill (passed 56-34).
December 23	Vote on Baker motion to invoke cloture on the conference report on the highway bill (agreed to 81-5).
December 23	Vote on adoption of the conference report on the transportation bill (adopted 54-33).

As the end of a session of Congress draws near, leaders are presented with hazards, as previously mentioned, but they are also presented with opportunities. The opportunities lie in the tendency of members to forego lengthening proceedings and push through even important measures in order to go home. In other words, it can actually be easier to move the Senate during this period under the right circumstances. The hazards,

of course, are in the capacity of a few senators in opposition to a measure to exercise their rights to drive it from the floor. In the case of the transportation bill, opponents filibustered. They did more than just filibuster, however. There was a continuing budget resolution that had to be passed. The challenges to Baker, then, were to get the continuing resolution through, then pass the transportation bill.

Don Nickles (R-OK) led the opposition to the gas tax, though Senator East took up the cause on December 18 to help the opposition hold the Senate at bay; that is until he made parliamentary mistake that cost his side the right to the floor. Baker was leading the charge to get the two must-pass bills through the Senate intact.

On December 10, the same day the bill was brought to the floor, the filibuster began. No one was caught off guard by it, especially Baker, who, when trying to bring the bill to the floor stated:

> Mr. President, as I indicated previously, I will ask the Senate to turn to the consideration of the highway bill, Calendar no. 987, H.R. 6211. I rather expect that I might not be able to do that by unanimous consent, but I never know until I try. I ask unanimous consent that the Senate turn to the consideration of Calendar No. 987, H.R. 6211.
>
> Nickles: I object, Mr. President (*Congressional Record* 1982, 29910).

Baker would have to use a motion to proceed to the bill's consideration. He immediately did so, and the presiding officer called on the clerk to state the bill by title. Senator Humphrey, who allied himself with Nickles, asked that the bill be read aloud, signaling that he and others were going to pull out all the stops to prevent passage (*Ibid.*).

Baker, remaining congenial and respectful of the right of members to oppose, addressed the chair to say:

> Mr. President, if the Senator will yield, is it customary that a bill can be reported by title in response to a motion of this sort?
>
> Presiding officer: The Senator is correct.
>
> Baker: The motion itself is debatable, is it not?
>
> Presiding officer: It is.
>
> Baker: Mr. President, I think no one would be surprised when I say I anticipate there will be an extensive debate on the motion to proceed. No one would be surprised to know that we have consulted on that. No one will be taken by surprise. If the Senator will permit me, I will go ahead at this time and file a cloture motion on the motion to proceed and we will have that out of the way. Will the Senator [Humphrey] yield to me so that I may do that?
>
> Presiding officer: The Senator does not have to yield for a cloture motion.
>
> Baker: Very well, Mr. President, I send a cloture motion to the desk (*Congressional Record* 1982, 29910).

Baker felt comfortable moving for cloture even though the bill had been on the floor for less than a day, when ordinarily a week was the minimum wait, because, as he stated:

> Mr. President, the motion is debatable and, as I said earlier, the rapidity with which I have filed this is prompted by two reasons: one, because we have to deal with must legislation; the other, extensive conversations have been carried on for some days now and I believe all parties understand that there will be extensive debate on the motion to proceed, which I acknowledge, and that I would file a cloture motion. That has been done.

Humphrey then took the floor to position his side as the more reasonable and to portray the other as the unreasonable:

> Mr. President, speaking for myself, it is not my wish to block further pressing business of the Senate, nor is it my wish to inconvenience Senators in any way, especially with respect to the target date for adjournment. Some might suggest that I and those who are resorting to extended debate are being unreasonable in this respect. I would suggest that we turn to those who are trying to ramrod this piece of legislation through in the waning days of the 97th Congress as being unreasonable because the highways surely will not

> critically deteriorate in the next month's time. There is time in the next Congress to consider this with the usual due process and deliberation. For some reason unfathomable by this Senator, there is a great deal of haste attached to this bill (*Congressional Record* 1982, 29911).

Nickles subsequently moved to postpone Baker's motion to proceed to the bill. Baker took charge immediately by moving to table the Nickles motion. Baker's motion passed by a 79-10 vote (*Congressional Record* 1982, 29938).

Extended debate proceeded for three days when, on December 13, Baker threatened the Senate with a late session every night of that week so that the Senate could dispose of the must-pass legislation (*Congressional Record* 1982, 30123). Baker subsequently opened negotiations on the floor for getting the bill before the Senate:

> May I inquire of the Senator from Oklahoma [Nickles] and the Senator from New Hampshire [Humphrey] if they would perhaps be prepared to let us go ahead and dispose of the motion to proceed to the consideration of this measure if consent was granted and if I assure them that if that motion passes we would schedule this debate to start in earnest sometime during the day tomorrow?
>
> Humphrey: I think I can speak on behalf of the Senator from Oklahoma and the Senator from North Carolina. It is not our wish to hold up other important business. We are perfectly amenable to any reasonable agreement to expedite other items of business.
>
> Baker: Mr. President, I ask unanimous consent that, if the motion to proceed prevails, debate on this bill begin at 2 p.m. tomorrow (*Congressional Record* 1982, 30132-33).

There was no objection. At 1:40 p.m. the vote was taken on Baker's cloture motion to proceed to consideration of the bill. This motion passed easily 75-13 (*Congressional Record* 1982, 30128). At this point, Baker had twice demonstrated that he had the votes to get the measure before the Senate, and by large margins, usually an indication that the bill had majority support. Baker also proved he was willing to resort to a cloture motion relatively early in the consideration of the bill. However, a motion to invoke cloture on a

motion to proceed is far different that a cloture motion on a bill. At least he did not have to run out the 100 hours of debate available on the motion to proceed, according to rule XXII, in order to get to debate on the actual bill. Baker, that same day, wanted to insure that members remained near by moving twice that the sergeant-at-arms be instructed to request the attendance of absent senators.

The next day, December 14, the bill finally came to the floor. Byrd offered an amendment that established a job creation and extended unemployment compensation program; delayed the scheduled July 1983 income tax cut for upper income taxpayers, and, importantly, eliminated the five cent a gallon tax increase. The amendment was rejected 44-53 on a party vote that included only one Republican voting for and only two Democrats voting against (*Congressional Record* 1982, 30765). Baker, of course, voted against. He was keeping the Republicans together for the president's position, even though Reagan was initially opposed to the tax increase.

Later that day, Baker exercised bill management duties by tabling two amendments by Nancy Kassebaum (R-KS) that authorized the Federal Energy Regulatory Commission to allow natural gas pipelines to modify their contractual obligations to buy higher cost gas when lower cost gas is available. The amendment also would freeze the wellhead price of natural gas at October 1 levels for a two-year period (*Congressional Record* 1982, 30793; 30798).[19] Baker then sent multiple cloture motions to the desk.

[19] The Kassebaum amendment was divided into two divisions and Baker tabled both.

Baker continued bill management duties the next day when he tabled a Metzenbaum amendment to require that only steel and cement manufactured in the United States be used in construction and repair of highways and bridges and an amendment offered by David Pryor (D-AR) to eliminate the increase in non-fuel truck taxes and to retain current gross weight, length, and width, limitations for vehicles using the interstate system (*Congressional Record* 1982, 31146). Baker clearly wanted to get amendments out of the way quickly.

On December 16, after an intervening day of business, the first cloture vote was attempted on a Baker substitute that authorized funds for highway transit programs and increased gasoline and other highway taxes. The motion was rejected by a 48-50 party vote. Baker lost twelve Republican defectors while gaining seven Democratic allies. Anticipating that his first attempt would fail, Baker had another cloture petition to the original bill at the desk awaiting a vote. On Baker's second attempt at cloture, he lost 5-93. However, the difference between this cloture vote and the first one was that the first one was related to the Baker substitute, while the second attempt was on the bill that Baker would modify by his substitute amendment. Opponents of the gas tax found both measures equally objectionable.

Senator Boschwitz tried to make the Baker substitute more palatable by offering a "saving" amendment to it. That amendment, among other things, reduced the level of heavy truck taxes from $1,600 for an 80,000 pound truck to $1,200. It was intended to mollify opponents of the bill. Boschwitz amendment was adopted by an overwhelming 96-1 vote with Baker voting in favor (*Congressional Record* 1982, 31296). The only

negative vote came from Hayakawa. Opponents engaged in the filibuster voted "yes" strategically, in that it made the bill better as far as they were concerned, but not enough to abandon their filibuster.

One thing that can help a majority leader to move the Senate is to be able to exploit the rules and the parliamentary mistakes of others. Baker was forced, at this point in the debate, to pull the transportation bill from the floor so that the Senate could consider a more urgent measure, a continuing budget appropriations resolution that was needed to keep the government operating after midnight the next day. If the resolution was not passed by both houses and sent to the president in time, the government would have to start shutting down and federal workers would have to be furloughed.

East tried to exploit that situation by filibustering the continuing resolution with "extended remarks." As long as he had the floor, he could keep the continuing resolution before the Senate and prevent the transportation bill from again becoming pending business. He hoped this would induce proponents to take down the transportation bill.

In response, Baker first tried to wear down East's resistance by having the Senate remain in session for thirty-eight straight hours. East and his allies had the stamina to stave off that particular tactic. Nor did Baker's warning of Reagan's ire move the opponents (see Annis 1995, 182).

East was also very well aware of the two speech rule in the Senate. A senator is only allowed to speak twice on any one matter on the same legislative day. He knew that a quorum call would interrupt debate and thus end one of two permissible speeches. He also knew he was on his second speech on the continuing resolution for that legislative

day. Further, he knew that if he initiated a quorum call, he would not be automatically recognized once the quorum call was completed. Thus, he thought he had devised an ingenious way around that predicament, since any call of the roll would consume valuable time and assist in his filibuster. At about 2:00 a.m., East asked the presiding officer to rule that a quorum was not present. However, the parliamentarian immediately recognized the opportunity and counseled Senator Murkowski, the presiding officer, to have the clerk call the roll as if the absence of a quorum was suggested. East objected and said that was not his request. His request, he reiterated, was to have the chair simply rule that a quorum was not present. East protested to no avail. The clerk began to call the roll and, once the quorum call came to an end, the presiding officer recognized Warren Rudman (R-NH) who was allied with Baker and against the filibuster (*Congressional Record* 1982, 32330-43; 32347-51). From there, it was a simple task to get the continuing resolution passed. That was done by a 63-31 vote, and it was sent to the president's desk before any furloughs were necessary.

Now that the transportation bill was once again the pending business, the test for Baker came on the next roll-call vote which was on another Baker motion to invoke cloture on the Baker substitute. Although the motion was agreed to 89-5, Republican opponents East, Helms, and Nickels all voted "no." Hence, the saving amendment did not make the underlying bill acceptable to them. Baker now knew that only 100 hours at most remained for debate on the bill.

The next day, December 20, Baker's substitute bill was adopted as an amendment to the original bill by a 71-24 vote (*Congressional Record* 1982, 32646-47). The full 100

hours of available debate to the Baker substitute was not needed because opponents decided to focus their efforts toward derailing the original bill to which Baker's substitute was now attached. Following adoption of the Baker substitute, Helms raised a point-of-order against the original bill, asserting that it violated the 1974 budget act, a law that prohibited federal expenditures from exceeding revenues. Baker promptly had the point-of-order tabled 73-22 (*Congressional Record* 1982, 32647). To make resolution of the issue certain, he then moved to waive provisions of the budget act that barred the consideration of the original bill since Helms point-of-order did, in fact, have merit. Although Baker denied that any law was being violated, he was taking no chances. Baker's motion was agreed to by an 81-14 vote (*Congressional Record* 1982, 32648). Next he moved to proceed to the Baker motion to reconsider the vote by which the Baker motion to invoke cloture on the original bill was rejected. The motion to proceed to reconsideration of the Baker cloture vote was necessary because opponents were not giving any ground. The motion to proceed was agreed to 86-7 (*Ibid.*). Having accomplished that, Baker then moved to reconsider his motion to invoke cloture on the original bill. This motion was agreed to 87-8 (*Congressional Record* 1982, 32649).

The reason that Baker wanted to reconsider the previously rejected cloture vote was because a new cloture vote would have to lie over for an entire day before it could be voted on. Senate rule XXII requires and intervening day of business between the time a cloture motion is filed and a vote is taken on it.

Baker knew that the impending adjournment, since this was an end of the session filibuster, was now his ally, because members wanted to get the bill out of the way and get

home for the Christmas holidays. They were beginning to blame the opponent's for unreasonable delays. Now that he had a large number of the members on his side, he wanted to move forward as quickly as possible.

Since the Senate agreed to reconsider the earlier cloture vote, all that was left was the actual re-vote on the cloture motion which, predictably, passed by the same margin as did the motion to reconsider, 87-8 (*Congressional Record* 1982, 32649). This was enough to break the filibuster and allow a vote on final passage of the bill, as amended by the Baker substitute, which passed on a 56-34, yet bipartisan, vote (*Congressional Record* 1982, 32696).

Baker's troubles were not over. On Thursday, December 23, two days before Christmas, a new filibuster was waged over the conference report on the transportation bill. It was initiated by a Helms objection to a Baker request for unanimous consent to set the vote for passage shortly after midnight. Baker wanted the conference report passed as quickly as possible. Baker was able to get the vote on passage of the conference report set for 11:30 a.m., if cloture were invoked, but Helms' objection to the earlier request annoyed many senators and had the effect of winning votes for Baker who succeeded in getting cloture invoked on his first attempt by an overwhelming 81-5 vote. East, Helms, Nickels, William Proxmire (D-WI), and Exon were the only dissenters on the vote. Before the cloture vote, and to placate senators who may have been alienated by their continued obstruction, opponents of the bill offered to allow a vote on the conference report immediately after the cloture vote, so Baker would not have to wait until 11:30. Helms, speaking on behalf of his allies, took the floor shortly before the cloture vote and

asked if Baker would be interested in vitiating the time certain at 11:30 a.m. and going right to a vote on final passage if cloture was invoked. Of course, he knew Baker would like to do that, but Baker wanted to see how that would affect other member's plans before he would agree (*Congressional Record* 1982, 33542). The offer, however, was made due to the opponents recognition that they had upset many senators and also that they needed to do something to prevent the backlash from harming them in the future.

After the cloture vote, Baker tried to get the vote time moved up to 11:00 a.m., but Byrd, although agreeable, wanted to wait a while before attempting to change the previous unanimous consent order (*Congressional Record* 1982, 33549). Baker and Byrd were not able to move the vote time forward when the conference report was finally passed by a bipartisan coalition on a 54-33 vote (*Congressional Record* 1982, 33572). This would be the last roll-call vote of that Congress as the Senate shortly thereafter adjourned *sine die* per a previous agreement (see *Congressional Record* 1982, 32696).

Baker had successfully steered the Senate toward passage a must-pass bill and another of major policy importance during the most dangerous time of the session, the final few days. Although he had to align himself against fellow Republicans, he accomplished his goal apparently without any residual negative feelings for anyone or from anyone.

Majority Cloture and Grove City College: 1984

In 1984, Baker was confronted with a situation that, if not resolved satisfactorily, would have established a dangerous precedent: majority cloture. The major problem for Baker was that he had to fend off a civil rights measure pushed by Democrats and some Republicans that was unacceptable to the administration. In the process, he had to protect Senate rules and precedents.

In this case, the precedent of majority cloture would be established if cloture were invoked on a first-degree civil rights amendment and if the chair ruled that, pursuant to the requirements of Rule XXII, a subsequent second-degree amendment was non-germane, if, subsequently to that, the chair's ruling was appealed and overturned, making the amendment in order. It only takes a simple majority vote to overturn the chair's ruling that an amendment is not germane. Should that occur, debate on the second-degree amendment would be subject to the provisions of cloture that had been invoked on the first-degree amendment. That is to say, if the second-degree amendment was made in order by a successful appeal of the chair's ruling, a member wanting to filibuster that amendment could not do so due to the successful cloture vote on the first-degree amendment establishing a limit on the time before the final vote was to occur on it. Amendments pending to the first-degree amendment would still get a vote, but they could not be debated beyond the time set for final vote on the underlying amendment, thus majority cloture. This is what happened on the continuing resolution in 1984.[20]

An additional consequence of majority cloture would be that no one likely would vote for cloture on any measure in the future if other measures could be brought under its

[20] This can happen with a bill as well. According to provisions of Rule XXII, if cloture is invoked on a bill and a subsequent amendment was ruled out-of-order, but that ruling overturned by the full chamber, then the amendment could not be debated beyond the time set for final vote on the bill.

umbrella at a later time by overturning the chair's rulings. A final consequence of overturning the chair's ruling on germaneness grounds is that, once cloture is invoked, hundreds of amendments could be sent to the desk, the chair's ruling that they were out-of-order overturned, thus arming filibusterers with ammunition for their efforts. In other words, a majority cloture precedent would weaken the effect of Rule XXII in bringing a matter to a final vote. This is so because each amendment would be entitled to a time-consuming vote, if not debate.

Both Byrd and Baker were known for not breaking the rules and not establishing new precedents until the legislative process was in danger of breaking down entirely. This is why one did not witness new precedents established very often during the 1977-1985 period. The episode that posed the danger in 1984 was the FY 1985 continuing resolution (H. J. Res. 648). Before describing the specific controversy that would test Baker's leadership yet again, some exposition is necessary.

Important bills often attract "riders." Riders, it will be recalled, are amendments having little or nothing to do with the topic of the bill, but if the bill is one that must be passed, such as an appropriations bill, then it will attract amendments that might be defeated on a freestanding vote. In this case, a civil rights bill was made into an amendment and offered to the appropriations bill. Riders, if adopted, are more likely to become law due to the fact they are attached to a "must-pass" bill such as a debt ceiling increase. Majority support is easier to obtain for important bills and particular amendments are less likely to cause the bill's defeat on a final vote. In the Congress there are distinctions drawn between ordinary legislation and budget or appropriations measures. Amendments that do not involve money are legislative amendments and cannot be offered to budget measures under the 1974 budget act. In other words, amendments offered to appropriations bills that would change current law rather than the level of appropriations are subject to points-of-order. This is especially true for amendments that

seek to change, say, defense policy offered to an education appropriations measure, for example. Budget resolutions, which are measures setting the overall spending levels, are not subject to legislative amendments under the rules. This does not mean, of course, that legislation never occurs in appropriations measures. Sometimes, riders are adopted on the floor and survive points-of-orders raised against them. "Money" amendments, those not legislative in character, may be offered that seek to change the level of appropriations. Sometimes, these amendments violate the 1974 budget act by elevating spending above the established ceiling, or lowers revenue below the established floor. This prohibition also can be circumvented. Usually, waivers seek to set aside the requirement that amendments not raise spending beyond the ceiling established in a budget resolution, or lower revenue below the floor set by the same or similar resolution. This is done by a member offering a resolution to waive the appropriate sections of the budget act that would be violated by the amendment. The presiding officer is responsible for ruling amendments out-of-order that violate the 1974 budget act when a point-of-order is raised against the amendment. Similarly, when a member offers a legislative amendment to a spending bill, the chair is required by the rules to rule it out of order as non-germane. The presiding officer's determination of non-germaneness, however, can be appealed and overruled by a simple majority. Points-of-order raised against amendments that raise spending above the ceiling or revenue below the minimum, in other words violate the budget act, must obtain 60 votes in order for consideration of the amendment to continue. In addition, clotured items are protected from non-germane amendments. That is, once cloture is invoked, non-germane amendments are required to fall, which can be overruled by the full body by a simple majority vote. In this sense, an amendment can be put back in order by a simple majority, even when they are offered to a clotured item.

The Appropriations Bill on the Floor

When the Fiscal 1985 continuing appropriations measure was brought up on September 27, 1984, only 4 of 13 annual appropriations bills had been passed, and the end of the fiscal year was coming up. The continuing appropriations bill was the only item to occupy the Senate floor, other than periods of routine morning business and other necessary housekeeping affairs, until it passed in the early hours of October 3, except for a resolution, eventually adopted, that called on the U.S. to support the people of Afghanistan in their struggle against Soviet occupation. The conference report on the continuing resolution passed on October 11. The Senate then finished action on another debt limit increase bill, taken up in the interim between passage of the appropriations bill and its conference report. This completed its business for the session and for the 98th Congress. The appropriations bill, however, did not have a smooth ride toward passage.

A major problem with H. J. Res. 648, after Baker called it up, was a non-germane civil rights amendment offered to the bill that, in effect, overturned the Supreme Court's decision in *Grove City College v. Bell* (104 S. Ct. 1211, 1984). This decision narrowed the scope of Title IX of the 1972 Education Act amendments that restricted sex discrimination in educational institutions receiving federal aid. The Court ruled that only the specific programs at an educational institution that received the federal money were subject to the law and not the entire educational institution. In this sense, the amendment was a legislative amendment to a spending bill, which was in violation of the rules.

Lengthy negotiations behind the scenes had not produced agreement. The majority cloture matter was a by-product of an ideological struggle between those who wanted to overturn the Court's interpretation and those who did not. As on most ideological issues, both sides felt victory was crucial and neither side wished to give in.

Contentious wrangling immediately began to occur over the amendment. The amendment to overturn the *Grove City College v. Bell* decision was offered by Byrd, on behalf of Kennedy, using his right of first recognition as minority leader, on September 27 (*Congressional Record* 1984, 27452). He then immediately offered a second *Grove City* amendment and sent two motions to invoke cloture on his amendments to the desk. Byrd, interestingly, was not a signator of either motion. Byrd's first-degree amendment was the pending business when the chair pointed out that it was not-in order, and subsequently ruled it so (*Congressional Record* 1984, 27456-57).

Although it constituted legislation on an appropriation bill making it technically out-of-order, the Senate overturned the chair and ruled the Byrd amendment germane on a 51-48 party vote (*Congressional Record* 1984, 27487). On September 29, cloture was invoked on the Byrd first-degree amendment by a vote of 92-4 (*Congressional Record* 1984, 27825). It was not made clear why there was overwhelming bipartisan support for cloture unless opponents decided to use cloture as leverage for their own amendments and against the Byrd amendment by bringing their own amendments under the umbrella of cloture. However, it is not likely that Baker would go along with that if he was aware of the consequences for the rules and precedents.

The trouble started when the Senate overruled the chair on the germaneness issue. The real problem was that opponents of Byrd's amendment wanted to offer technically non-germane amendments of their own to it in order to scare off support for Byrd's amendment, or from the bill should the Byrd amendment be adopted. It was these amendments offered that day by Baker for Hatch, that, if ruled germane, would be subject to already established limits on debate due to the successful cloture vote on Byrd's amendment. Since a bare majority can get amendments ruled in order to clotured items, notwithstanding the chair's ruling, majority cloture would be established as a precedent. It was the Byrd amendment that was the root of the logjam. It would have to be taken down or tabled before opponents would be mollified.

After cloture was invoked on the Byrd amendment, Baker was unsure about how to proceed. As was his custom, he wanted the combatants to work something out. Baker addressed the Senate at 1:00 p.m. immediately after the cloture vote:

> Mr. President, we have had a very decisive vote on cloture, which had been invoked. We are in the very special set of circumstances that rule XXII provides for the disposition of this amendment under post-cloture circumstances. I have checked and, believe me, there are enough amendments at the desk which appear to qualify so that we could be voting very constantly, very steadily, and very often for the rest of this afternoon, and maybe into the night. I do not know how we should best try to arrange the affairs of the Senate for today, but I think we ought to give some thought to that question, to confer with each other on how best to arrange it. What I would propose, if the minority leader and other Senators would agree, is that we now have a recess of 30 minutes, with the time being charged against the post-cloture time, so that we can confer, each side with its own supporters and then with each other, to see if we can arrange an orderly way to dispose of this amendment and this bill (Congressional Record 1984, 27825).

There was no objection to Baker's request, and there was no resolution of the problem forthcoming after the time-out period. The amendments that Baker referred to in

his remarks, among others, were the amendments he offered for Hatch on September 27 using his right of first recognition. When the chair's assertion of non-germaneness on the "Baker for Hatch" amendments was overruled, they came under the umbrella of cloture that was invoked on the Byrd amendment, probably without Baker realizing it at that point. Byrd, who was renowned for his thorough knowledge of the rules and precedents of the Senate, had to know that by offering the *Grove City* amendment, and then successfully moving for cloture on it, the effect would be to invoke cloture on other amendments that would be offered to his amendment, especially if the amendments subsequently were put in order by overturning the chair's ruling that they were non-germane. Byrd, however, could not have expected that to occur, for it would set a new precedent. Adding to the problem was the fact that other members might not be aware of the substance of post-cloture amendments until they had been offered and perhaps ruled germane.

Figure 5-5 contains a summary of the key points in the debate over the continuing resolution. Following that is a discussion of the specific events that took place on the Senate floor and Baker's attempt to regain control of the floor and prevent the establishment of the dangerous precedent of majority cloture.

Before moving to that, what was perhaps unique about this bill was that it caused a majority leader's worst nightmare: both sides would eventually get locked into battle over each other's amendments. Despite cloture being invoked on the Byrd amendment, opponents continued to filibuster. A filibuster does not come in the form of debate only. Each side can arm themselves with amendments considered anathema by the other side but

Figure 5-5. Key Points in the Debate over H. J. Res. 648, the FY 1985 Continuing Appropriations Bill.

Date	Action
September 27	H. J. Res. 648, the Continuing Appropriations Resolution taken up on Senate floor.
September 27	Vote on Chair's ruling that the Byrd amendment to attach S. 2568, civil rights legislation overturning the Supreme Court's ruling in *Grove City College v. Bell,* to the continuing appropriations resolution was germane (ruled germane 51-48).
September 28	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 91-5).
September 29	Vote on Byrd (for Riegle) motion to invoke cloture on the Byrd amendment to overturn the *Grove City College v. Bell* Supreme Court decision (agreed to 92-4).
September 29	Vote on Baker motion to table the Hatch appeal of the chair's ruling that the Baker (for Hatch) amendment to restrict the right of federal courts to order busing of schoolchildren to achieve desegregation was non-germane (agreed to 55-39).
September 29	Vote on Baker motion to table the McClure appeal of the chair's ruling that the Baker (for Hatch) amendment to ease restrictions on the sale of shotguns, rifles, and some handguns was non-germane (rejected 31-63).
October 1	Vote on Baker motion to reconsider the vote by which the Baker motion to table the Hatch appeal of the chair's ruling on the Baker (for Hatch) amendment was agreed to (agreed to 60-37).
October 1	Vote on Baker motion to table the Hatch appeal of the Chair's ruling that the Baker (for Hatch) busing amendment was non-germane (rejected 41-56).
October 1	Vote on Baker motion to reconsider the vote by which the Baker motion to table the McClure appeal of the chair's ruling on the Baker (for Hatch) gun amendment was rejected (rejected 20-77).
October 2	Vote on Baker motion to instruct the sergeant-at-arms to request the attendance of absent senators (agreed to 96-3).
October 2	Vote on Packwood motion to table the Byrd amendment to overturn the *Grove City College v. Bell* decision (agreed to 53-45).
October 2	Vote on chair's ruling that the DeConcini amendment to provide antitrust exemptions to arrangements between breweries and beer distributors allowing distributors exclusive distribution rights in particular territories was germane (held non-germane 28-67).
October 2	Vote on chair's ruling that the Bradley amendment to establish a $6 billion "superfund" toxic waste program for fiscal years 1986-90 was germane (held non-germane 38-59).
October 2	Vote on chair's ruling that the Bumpers amendment to require the government to use competitive bidding for leasing onshore land for oil and gas development was germane (held non-germane 33-63).
October 2	Vote on Kasten motion to table Melcher amendment to earmark 5 percent of the funds in the foreign aid appropriation bill's Economic Support Fund for health programs abroad (agreed to 51-46).
October 3	Vote on Kasten motion to table the Zorinsky amendment to prohibit US participation in the Inter-American Investment Corporation (agreed to 50-49).
October 3	Vote on Pryor amendment to reduce the funds appropriated in the bill for military grants to foreign nations under the Military Assistance Program from $917 million to $705.5 million (rejected 46-54).

October 3	Vote on Inouye amendment to prohibit the expenditure of government intelligence agencies' funds on activities directed against the government of Nicaragua and to provide $6 million for the withdrawal and resettlement of guerrillas opposing the Nicaraguan government (rejected 42-57).
October 3	Vote on Dodd amendment to bar the use of US aid to rebels fighting the Nicaraguan government for "terrorist" activities (rejected 45-53).
October 3	Vote on chair's ruling that the Moynihan amendment to regulate the sale of armor piercing ammunition, so-called "cop-killer' bullets, was germane (ruled non-germane 24-74).
October 3	Vote on chair's ruling that the Cranston amendment to require the federal government to study its pay and classification system t determine if wage differences are caused by sex discrimination was germane (ruled non-germane 41-57).
October 3	Vote on Baker motion to table the Weicker amendment to allow for Medicaid payments for abortion in saxes of rape or incest (agreed to 54-44).
October 3	Vote on Rudman motion to table the Biden amendment to require that the president certify that funds provided were sufficient to secure US embassies abroad (agreed to 61-37).
October 3	Vote on Rudman amendment to restore the Federal Trade Commission's authority to bring injunctive antitrust actions against municipalities (adopted 56-42).
October 3	Vote on Packwood motion to table the Chiles amendment to provide an extension for compliance with noise standards for foreign carriers that operate international services at Miami International Airport and Bangor, Maine airport (rejected 47-50).
October 3	Vote on Baker motion to table the Pressler amendment to bar military aid to Turkey until Turkey relinquished control of the town of Varosha on Cyprus (agreed to 51-46).
October 3	Vote on Bradley amendment to rescind funding for the Synthetic Fuels Corporation by $9 billion (rejected 37-60).
October 3	Vote on chair's ruling that the Abdnor amendment to authorize about $11 billion in water projects was germane (held non-germane 36-60).
October 3	Vote on Thurmond motion to kill division 1 of a committee amendment (agreed to 97-0).
October 11	Vote on adoption of the conference report on FY 1985 continuing appropriations resolution (adopted 78-11).

perhaps have majority support. This is the primary tactic in a post-cloture filibuster. Sometimes it is the sheer volume of amendments that arm opponents and sometimes it is the substance of those amendments, if they have majority support. Adding to the problem was the fact that, despite Baker's impassioned explanation of the consequences of majority cloture for both sides of the aisle, both sides would refuse to budge when Baker proposed solutions to the legislative stalemate that occurred when non-germane

amendments were ruled out-of-order to a clotured item, but for which the chair's ruling was subsequently overturned. The legislative stalemate continued for days as neither side backed down when offered repeated opportunities to reconsider their actions overturning the chair's rulings. Eventually, Baker was able to get the sides to agree to do so.

Due to Baker's leadership, Byrd's amendment, offered on behalf of Kennedy, would not reach a vote on final passage. It was Baker's handling of the situation, and not just the outcome, however, that is of interest and the focus of this section. Baker found his persuasive powers initially failing him as he tried to convince senators not to establish a new and dangerous precedent. Baker also often utilized his right of first recognition to offer amendments, motions to table, and motions to reconsider as a means of extricating himself and the Senate from their dilemma. Not only were Baker's arguments against establishing majority cloture ignored, his motions to resolve the conflict initially were rejected as well. However, Baker would not give up and continued to push the Senate with persuasion, prerogatives, and procedure in the correct direction so as to not create the precedent of majority cloture and also keep the bill relatively clean and, in the process, defeat Kennedy and others on *Grove City*.

This case illustrates the strategic use of first recognition, among other things, because the Byrd amendment was offered by Byrd on behalf of Kennedy. He felt that this was the only way to get the civil rights bill to the floor since Baker had to that point refused to call it up. Baker subsequently used his right of first recognition to offer Hatch amendments on busing and gun-control. Further, Byrd offered his amendment, and then offered a substitute amendment for the original one that was just different enough to

qualify as a substitute amendment. This action would guarantee that there would be a vote on the amendment, or so he thought, and all opponents could do would be to offer "perfecting" amendments to the Byrd amendments and to the appropriations bill. This placed severe restrictions on opponent's ability to maneuver.

Although there were behind-the-scenes negotiations, the battle continued on the floor. In response to Byrd's strategic maneuvers, Baker then made his offer to senators opposed to the *Grove City* amendment to offer their amendments for them using his right of first recognition. The stage now was set for another great floor battle.

Picking up here with action on the floor, some took Baker up on his offer, including Hatch who had Baker file hundreds of amendments that would eliminate hiring quotas from the bill, prohibit busing, and eliminate many provisions in current law related to gun-control. These amendments would draw opposition from those who favored Byrd's amendment. Thus, Hatch's amendments were killer amendments. That is, they potentially had majority support but in effect split the presumed majority on the *Grove City* amendment. Further, the chair's rulings on them were appealed by Hatch and had the potential of being overturned.

At several points the Senate came close to abandoning its requirement that amendments be considered germane after cloture was invoked (see also Sinclair 1989, 171). The chair's ruling on non-germaneness had already been overturned on the Byrd amendment. However, Baker was hoping that if he removed the obstacles of Hatch's controversial amendments, the opposition would return the favor and take down the Byrd amendment, then still pending, or support a motion to table it. This simple act would end

the dispute before things got nasty or irretrievably out-of-control. Thus, on September 29, with Byrd's amendment still pending, Baker reneged on the spirit of his earlier offer to use his right of first recognition to offer strategic amendments for others by successfully moving to table the Hatch appeal of the chair's ruling that the "Baker for Hatch" amendment restricting the right of federal courts to order busing of schoolchildren to achieve desegregation as non-germane (*Congressional Record* 1984, 27826). This came on a 55-39 party vote. One amendment was removed. Baker then moved to table a James McClure (R-ID) appeal of the chair's ruling that the 'Baker for Hatch' amendment to ease restrictions on the sale of shotguns, rifles and some handguns was non-germane. If he could get this amendment out of the way, then possibly the way was clear to end the dilemma. This motion, however, was unsuccessful on a 31-63 vote with a majority of Republicans voting against (*Congressional Record* 1984, 27834). Hatch's gun amendment was still eligible for consideration and the road was not cleared toward a permanent resolution.

On October 1, after proponents of the *Grove City* amendment refused to go along with Baker's proposed solution, he moved to reconsider the vote that tabled the Hatch appeal of the chair's ruling that his busing amendment was non-germane. Baker's motion was agreed to 60-37 (*Congressional Record* 1984, 27938). Hatch's busing amendment was again in order. Baker's purpose in so doing was to put added pressure on the proponents of the *Grove City* amendment to take it down. The *Grove City* proponents still would not succumb to the pressure. The danger was still that, should one of the "Baker for Hatch" amendments be ruled germane and voted on, the precedent of majority

cloture would be established. But things are not always as they appear: the pressure was turned back on Baker. Although they opposed Hatch's amendments, proponents of the *Grove City* amendment knew Baker would not allow Hatch's amendments to remain in order permanently and receive an up-or-down vote, because it would establish majority cloture. This also put Byrd in a quandary because of his long-standing respect for Senate rules and precedents. Thus the plot thickened.

Attempting to renew the strategy of getting the Hatch amendments out of the way once again, so that possibly the liberals would then remove the Byrd obstacle, Baker next had the presiding officer again rule the Hatch busing amendment non-germane. This put the Senate back to square one on the busing amendment. Hatch would not give away this amendment so easily and again appealed the chair's ruling. Baker then moved to again table the Hatch appeal on non-germaneness. Baker voted "no." Although he wanted the Hatch amendment gone so as to clear the way for Byrd to take down his amendment, he did not want to get caught in the crossfire for his voting record. He took the time to explain that the first vote to table Hatch's appeal, and his subsequent vote, should be interpreted properly as indicated by his explanation:

> Mr. President, I did something a moment ago that I have not done in 18 years, or at least not since the Supreme Court got into the business of busing schoolchildren, and that is, I cast a vote that somebody, sometime is going to interpret as being a vote in favor of busing. That is not the case, and I think every person in this Chamber must understand that is not the case. What I voted for was to uphold the ruling of the Chair, based on the precedents and rules of the Senate, and the consequences of overturning it would be to establish majority cloture in this body. If you want to establish majority cloture, we will lose more often than the Democrats will.... Mr. President, we have to decide whether we are going to live by the rules or not. We have to decide whether we want to live by the spirit of those rules or not.... I want to tell Senators [that by voting to table Hatch's appeal] they are not voting for busing; they are going to uphold the spirit of the rules of the Senate. I want to tell Senators something. If we go on with this, if we keep

> trivializing, if we keep distorting the rules of the Senate and their spirit by doing this, we are going to go back to square 1 (*Congressional Record* 1984, 27827-28).

The motion to table the Hatch appeal a second time was rejected 41-56 on a party vote, which is in one sense what Baker wanted because he knew he was not persuading the *Grove City* proponents to back down. He needed the leverage that Hatch's amendment gave him. The Hatch appeal was again in order, although no vote was taken on it. Baker continued to try and gain leverage over the proponents of Byrd's amendment but seemed to be making little progress.

Baker then switched gears and again tried to lure the proponents of the *Grove City* amendment into a resolution. He moved to reconsider the vote by which the Baker motion to table the McClure appeal of the chair's ruling on the "Baker for Hatch" gun related amendment was rejected. This motion was rejected 20-77, with Baker voting against. So, again, Baker's position won out, but the McClure appeal was still alive. By offering the motion, he again was signaling that a new opportunity for the *Grove City* proponents to end the stalemate was being made available. By voting against, and by the motion's failure, he was signaling that the proponents of the Byrd amendment would have to make concessions before the Hatch amendments would be taken down, and there was only one concession that would remove the Hatch amendments. The size of the margin of victory on the last vote indicated that Baker was beginning to forge a majority coalition.

Baker continued to cajole members into doing the right thing so the Senate could get on with its business. By the next day, October 2, a breakthrough occurred. The big test for Baker's solution to the problem came when Packwood, a Republican co-sponsor

of the *Grove City* amendment, moved to table the controversial Byrd amendment. The motion was agreed to 53-45 (*Congressional Record* 1984, 28290). The logjam came to an end. Clearly, Baker was the ultimate victor. He had gotten the amendment that was the basis for the logjam removed and at the same time protected Senate rules and precedents.

The problem was finally resolved but only after some confusing and contentious maneuvers by all sides. Baker had reestablished his party as a majority. Republicans voted 51-4 and Democrats voted 2-41 on the Packwood motion to table Byrd's amendment. Baker, through it all, demonstrated superior leadership and negotiating skills. It was his perseverence, however, that truly carried the day. Packwood and other supporters of the *Grove City* amendment saw the determination of Baker to not give up. Although Byrd voted against tabling his amendment, he changed the basis of his debate late in the game and expressed the hope, on more than one occasion, that the Senate would vote to uphold the chair's rulings on the issue of germaneness, because not to do so would disturb Senate rules and precedent by establishing majority cloture (*Congressional Record* 1984, 27937).

Baker was also successful in keeping the bill relatively clean by getting the controversial non-germane legislative amendments removed as a threat. After the vote which finally tabled the first-degree Byrd amendment, McClure tabled, by voice vote, the "Baker for Hatch" busing amendment. This had the effect of taking it down and the other amendments offered to it. The Byrd amendments, the Hatch amendments to it, and the Hatch first-degree amendments were gone. After The Byrd and Hatch amendments were

cleared out of the way, the chair was upheld by the Senate each time an appeal was made of the chair's ruling that particular amendments offered by senators DeConcini, Bradley, Bumpers, Moynihan, Alan Cranston (D-CA), and James Abdnor (R-SD) were non-germane. There would be no majority cloture. The Senate then had a clear and quick path to passage of the bill which came on the following day, October 3. No doubt the solution was worked out off the floor via negotiations with most of the relevant participants, but it brought to an end one of the most dramatic situations on the Senate floor in recent years.

Lessons Learned

It was just as difficult, if not more so, for Baker to work his way out of the legislative logjams discussed in this chapter as it was to negotiate the parent unanimous consent agreement that finally allowed the Senate to get to a final vote on the 1981 tax bill discussed in chapters three and four. The difference between the tax bill and the cases discussed in this chapter was that Baker, in the latter instances, primarily relied on procedural strategies (i.e. motions to reconsider, etc.) to accomplish his goals, such as on the FY 1985 appropriations bill debate in 1984 when Baker tried to back the Senate up and correct the "mistake" that it had made in overturning the chair's ruling on the issue of germaneness. Although there was some basic pleading on Baker's part, and no doubt

some attempted persuasion, it was the prerogatives and procedures and the fact that he was eventually able to get the necessary votes, that allowed Baker to accomplish his goals.

In all cases, Baker sought to advance the policy interests of the Republican party and underscore differences with Democrats. In addition, he wished to protect Republicans from actions that would harm them procedurally in their floor battles. In other words, Baker wanted to protect them from the tyranny of the majority. Finally, he wanted to make the Senate work. That was true whether Baker was the minority or majority leader.

The campaign finance reform bill in 1977 illustrated how Baker was willing to set aside his desire to make the Senate work in order to prevent a bill from becoming law that would harm Republicans in efforts to become the majority, despite the fact the he and the other Republican incumbents would be helped if the bill became law. Baker was so confident in his party's electoral prospects long-term and grass-roots appeal that he favored, and advanced, an alternative that would expand a series of tax credits for contributors to campaings which, he believed, would encourage small contributors to participate in elections at greater levels. When the dust had settled, Baker was successful in getting the public financing part of the bill removed, although he could not get a bill that provided tax credits for campaign contributions, a small defeat given his success in eliminating public financing.

"Black Monday" showed how Baker helped, as minority leader, to move the Senate and get a bill to deregulate natural gas prices, a policy goal he favored. In so doing, he would not set aside his concern for protecting Republicans from rules changes that would hurt them long-term. In no case did Baker put short-term policy goals ahead

of the Republican party's long-term interests. On "Black Monday," his assistance to Byrd was to break a Democratic filibuster. It can be argued, however, that the new precedents established that day could hurt Republican efforts to filibuster. In fact, in 1982, the precedents were used against fellow Republican Lowell Weicker and Baker himself led the assault on Weicker's amendments. In only two cases did Baker use raw power to accomplish a short term goal.

The fight over labor law revision in 1978 probably taught Baker a lesson. That lesson is that sometimes one should hold out even though the situation appears hopeless. That hopelessness led Baker to try to persuade Hatch to cut his losses and accept defeat. Hatch had to decide whether it was worth the risk of alienating his colleagues by continuing obstruction when defeat was apparently imminent. If he continued his obstruction and went down to defeat anyway, he might have to live with the negative sanctions that members would undoubtably impose on him for months, if not his entire career, for his obstinance. Hatch decided to risk it and came out victorious due in no small part to the help of some friends in the other party, most notably James Allen and Ernest Hollings. Baker's attempt to end the filibuster was no doubt motivated by his desire to keep the Senate moving.

The fight over windfall profits in 1979 was one of those issues that contributed to Baker's reputation as a moderate. Baker did not oppose a windfall profits tax in principle as many other Republicans did. His goal on this issue was to make sure the tax did not go too far. In this sense, he sought to advance Republican policy interests but unfortunately in a way that would alienate him from some members of his party, from most Democrats,

and the president. Baker was absent from much of the debate due his campaign for the Republican presidential nomination. Republican interests carried the day nonetheless when the Senate passed a windfall profits tax significantly less than what the House and the president initially asked for. Throughout negotiations Baker consistently tried to convince proponents to weaken the tax in exchange for an end to the filibuster.

The fight over Department of Justice authorization in 1981 and 1982 illustrated that there is a limit to the patience of even the most patient of men. Baker failed to get the bill through the Senate in 1981 due to the wrangling between Helms and Weicker over social issues. Baker always understood the threat that social issues posed to legislation and in 1981, he had to learn that bitter lesson once again. Weicker and Helms fight over social issues spilled over into the debate on the debt limit bill in 1982. The failure to get DOJ through the Senate in 1981, however, led to eventual success when Baker set aside his desire to allow full deliberation and, instead, took up the banner of moving the Senate forward, even if that meant he had to do it by any means necessary. Early in 1982, Baker utilized the precedents that he helped establish in 1977 to break the filibuster. In a repeat of "Black Monday," he had the chair systematically eliminate amendments to the bill. This was done to accomplish the goal of moving the Senate forward, but also to teach members that the majority will not long be denied. The episode was one of the few in which Baker's persuasive powers failed him forcing him to resort to raw power.

The 1982 debt limit bill was a situation in which Baker set aside his opposition to amendments on social issues and allow them to be offered to other legislation. He initally sided with Helms by moving for cloture on the abortion amendment. After doing so and

failing, Baker left the remaining cloture attempts to Helms, thus protecting his reputation of impartiality, although Baker continued to side with Helms by voting against a Goldwater motion attempted to table the school-prayer amendment. The fight over the debt limit bill illustrated, as did most others, the degree of deference Baker paid to bill managers. He mostly stayed out of the floor battle until he moved to recommit the bill to the Finance Committee. That move seemed to eliminate the obstacles to final passage.

The battles over the transportation bill in 1982 illustrated Baker's ability to keep the Senate moving at a time in which filibusters are likely and tend to be more effective. The episode points out the urgency leaders display for getting must-pass bills out of the way long before Congress reaches the final few days of its session, although they do not always succeed. When leaders do have to face those situations, it is important that they know how to use the calendar to their advantage. In other words, the final few days of session does not have to be a bane to leaders. The fact that members want to go home for the Christmas holidays can help a leader put pressure on obstucting members. The leader and the impatient members need only remind the obstructionists of the negative sanctions that can, and most likely will, be imposed if recalcitrant members continue to threaten adjournment. The episode also illustrated how a leader that is aware of parliamentary opportunities can use them to end a filibuster. In this case, East's parliamentary mistake cost his side the floor and allowed the continuing resolution to pass and the transportation bill to return to the floor and subsequently pass with the gas tax included.

Essentially, the Grove City episode can be described as numerous failures leading to eventual success. This is often the way leaders conduct business, react to setbacks and

keep the train moving. The small failures refer to the fact that Baker had to attempt the procedural devices numerous times in the Grove City episode before the Senate would go along. The majority coalition that had formed around Hatch's amendments had to be persuaded to allow them to be taken down if establishment of majority cloture was to be prevented. They were unwilling to do that unless Byrd's amendments were taken down.

The *Grove City* episode must be considered a success for Baker because he prevented the precedent of majority cloture, his primary goal, and also got Byrd's amendment taken down, as well as those of Hatch, thus keeping the bill "clean." Baker opposed the contentious amendments, despite his disposition in favor of anti-gun control measures, because they were non-germane and were riders to appropriations legislation. Baker was eventually victorious on all major goals. He got the amendments taken down, prevented majority cloture, and got the bill passed.

The point in describing the situations related in this chapter so thoroughly is to reveal the scope of the difficulties a majority leader faces in maintaining, or in the Grove City case regaining, control of the Senate floor. When a filibuster threatens or is underway, the distinction blurs between floor management and bill management. In the cases discussed in this chapter, Baker was more involved in floor activities than usual, except when he was absent from the Senate due to his campaign for the Republican nomination. When the threat of filibusters loomed, Baker did not and could not leave it purely to the bill managers to straighten the problems out. In terms of the number of filibusters that Baker had to deal with, he had more problems with them than other leaders. He certainly did not have an easier time of it. Yet, he was reasonably successful

in the end. He did not win on every cloture vote, but that would be too high an expectation of any leader. Further, when Baker could not get cloture invoked, he often went on to get the bill passed anyway through negotiations, persuasion, procedural, and other resources. Procedural strategies were helpful but only because Baker was able to get the necessary votes which required, no doubt, much persuasion.

Thus, even the failure to invoke cloture on the debt limit bill was eventually placed in Baker's success column. It is for getting the party's, the president's, or one's own preferred legislation through the Senate for which majority leaders are judged. On this count, Baker must be considered one of the most successful Senate majority leaders of the twentieth century, one whose effectiveness places him in the company of giants like Lyndon Johnson.

It is the achievement of final victory for which leaders are judged. In order to be successful, it is often necessary for leaders to understand which strategies are more likely to produce success. That, in turn, requires that a majority leader allow the situation to govern the choice of strategy. Observers may remember the difficulties in achieving final victory, but that only adds to the respect that they may have for the leader, for easy victories never truly test the abilities of a leader. Thus, it may be for the very reason that Baker had a difficult time as majority leader that puts him in the same company of other leaders who are generally considered to be effective leaders. Managing the floor in the Senate is no easy task at any time. Successfully managing the floor during legislative chaos, with success measured by the ability to get or keep the Senate moving toward passage of the majority party's programs, must be the standard by which majority leaders

are judged. If the episodes discussed in this study are any indication, then a major conclusion of the whole project can be stated at this point: Howard Baker was one of the most skillful, articulate, and effective majority leaders of the twentieth century. That is particularly true when discussing Baker's success in managing obstruction. However, the primary goal of the whole project was to show that there are effective resources at the disposal of a majority leader, namely prerogatives, rules and precedents, and persuasion. Thus, the proposition that a neo-institutionalist perspective is the most appropriate for exploring Senate leadership is again confirmed. If used cleverly, institutional resources, in conjuction with persuasion, can assist in leading the most deliberative and individualistic body in the world: the United States Senate.

Chapter Six

Majority Party Leadership: Lessons Learned

A review of the previous chapters forces one to conclude that Howard Baker was an effective Senate majority leader. That already seems to be the consensus of congressional scholars. The reason for his success has to do with the approach utilized to accomplish objectives. That approach was situational in character. Most of the time the situation called for a deferential leader content to let the Senate work its will as it sees fit. When the situation began to deteriorate, Baker felt the need to interject and reinforce control over the floor. Sometimes, simple ego-stroking or shame would do the trick. At other times, something like "raw power" was used, but, in Baker's case, only as a last resort when the Senate had ground to a halt and the only way to get it moving again was to step on some members' toes, procedurally speaking. The situation determined Baker's response. That is why is is necessary to reconceptualize our thinking about Senate party leadership and adjust Ripley's models of leadership that captures and accounts for Baker's actions on the Senate floor.

It is clear that Baker, as majority leader, was most responsible for floor management. Again, floor management is distinct from bill management. The latter includes making decisions as to whether amendments will be accepted by the majority and minority bill managers and without a roll-call vote. Baker, though primarily responsible for overall scheduling, recesses, and adjournment, often consulted with the bill managers

on how long they wanted to continue, in addition to consulting with the minority leader before offering UCRs related to those matters, basic floor management duties. Deference was the core of Baker's leadership style.

Since the 1950s, leaders have relied more frequently on unanimous consent agreements. They increasingly contain amendment-specific debate limits and specified times for votes. They also increasingly contain provisions related to individual senators and individual amendments. This is due to the fact that more and more amendments are being offered to complex legislation in the contemporary Senate. Moreover, unanimous consent agreements increasingly require mid-debate adjustment (Smith and Flathman 1989, 349).

Baker generally waited until the bill was brought up on the floor to negotiate time-limitation agreements, while other leaders often negotiated them in advance of a bill's appearance on the floor. Baker wanted to see what the lay-of-the land was going to be before moving to establish limits on debate. He also wanted to see how many amendments were going to be offered to the bill and to get a preliminary idea of how long they were going to take. Before raising the prospect of an ad hoc rule, in the form of a UCA that would limit debate and amendments, Baker would signal what he had in mind and thus put all members on notice. When attempting to negotiate, Baker had to sort members with serious objections, reservations he felt would become a formal objection if he pushed too far, from members who had reservations that were not serious or where Baker could perhaps induce a retreat by the objecting senator.

Upon occasion, when someone asked for an "adjustment" in an agreement, Baker would simply say no. As the debate on the 1981 tax bill demonstrated, Baker did not say no very often when asked to make an accommodation. After the agreement was reached and implemented, Baker could refuse any requests for modification by lodging his own objection. Baker knew, however, that he would have to work with other members in the future and thus saved his refusals for important and special occasions. In sum, majority leaders, if they are to be effective, must develop the ability to sort Senators according to the firmness of their potential objection (Smith and Flathman 1989). Here, again, the situational model comes into play. The Senate cannot be said to be centralized or decentralized. A case can be made that it is individualistic, but a better description is that the Senate is situational. The situation dictates whether leaders will act as if in a centralized institution or in a decentralized one.

On the other hand, there are costs for members who object to UCRs. In these situations Baker could often induce concessions. In chapter two there was discussion of how Baker used his ability to alter one particular member's cost-of-delay related to the Martin Luther King federal holiday bill. In that case, Baker successfully altered Helm's costs for delaying a vote. Baker, in sum, acquiesced in most situations for which adjustments were requested that did not put the Senate in a difficult position or endanger passage of the bill. This acquiescence had the benefit of engendering good will toward Baker that could be used by him in the future.

Negotiation between a leader and another member usually occurred on a one-to-one basis. Often, Baker could not accommodate members who wanted some provision

added to the request because he had already given his word to another member that he would not add such a provision, or the suggested provision contradicted a provision which Baker promised would be in the agreement. This did not always satisfy the member offering the suggested provision. Baker often had to withdraw the request to allow further negotiation.

Baker's record on negotiating unanimous consent should be judged a successful one. Most literature on Senate leadership has little to say about the difficulty of negotiating unanimous consent agreements, as demonstrated by Baker's travails in getting unanimous consent for the 1981 tax bill described in detail in chapter four. In that case, Baker was successful, but had to negotiate quite extensively, at times modifying the proposal to obtain unanimous consent. Despite this fact, he had better than expected success given that it requires the consent of every member to get an agreement at all.

A question that seems to have plagued congressional scholars, especially ones devoted to the Senate, concerns the issue of what allows for effective leadership. Why are some leaders more effective than others? Why are some leaders unable to perform the tasks that are important to any leader: assert the policy interests of their party, underscore differences with the opposition party, protect one's party from rules changes or legislation that may harm them in floor debates or in the electoral process, and, finally, make the Senate work.

Contemporary congressional literature has left the impression that party leadership has become virtually impossible, particularly in the Senate. There are a few works that argue the opposite. Cox and McCubbins' (1993) book entitled *Legislative Leviathan* is

particularly noteworthy. The Leviathan of which they speak is the party machinery in the House of Representatives. The party in the House, in their view, is perfectly capable of leading what has become an increasingly individualistic institution composed of 435 members. The Senate, however, is even more individualistic than the House. Few voices have been raised recently for the proposition that party leaders in the Senate have the resources that allow or even assist them to keep the Senate moving and in the direction of the party's goals. In the view of many, Senate majority leaders have been relegated to the role of a servant. At times, that may be true. At other times, he may be a "majority pleader." However, much of the time a leader with Baker's skills and available resources can effectively lead the Senate and maintain control over the floor. It is not an easy task, but if the leader approaches a situation with the right strategy or combination of strategies, his task becomes easier.

It is the purpose of this study that the reader comes away with the conclusion firmly in mind that a majority leader can effectively lead the Senate. Although the Senate is a more difficult legislative arena than the House where the majority party, in conjunction with the Rules Committee, can work its will with relative ease, a Senate majority leader has more in the way of resources than current Senate literature acknowledges. These resources come in the form of persuasion and procedure and they are often used together.

It is true that a Senate majority leader, at least the one that is the subject of this study, spends most of his time utilizing persuasion as the desired or perhaps the most effective set of strategies. Howard Baker was already considered to be a very persuasive individual long before this study was undertaken (Adams 1973; Myers 1973; Annis 1985).

Annis noted that between 1980 and 1984, whenever senators, staffers, and congressional reporters were polled as to who they believed the most influential, effective, and most persuasive, "Baker...invariably finished first" (Annis 1985, 8).

The substantive contribution of this dissertation is to not only confirm the proposition that Baker was an effective leader, but that he could and did use various resources to greatly affect legislative outcome. That is, *why* Baker was an effective leader. Here, the neo-institutional approach is especially useful for exploring leadership on the Senate floor, and in the Congress generally. A part of any neo-institutional discussion of Senate party leadership must include, not just the institutional tools available to do battle, but also a leader's inherent abilities to persuade. Baker could never have negotiated the parent unanimous consent agreement on the 1981 tax bill discussed in chapter four if not for his persuasive prowess. Further, he could not have convinced numerous members to withdraw their amendments to the tax bill if not also for his powers of persuasion. Perhaps Neustadt was on to something when he suggested that the power of a president was primarily the power to persuade. He should have broadened his thesis to say that the power of a *leader* is the power to persuade. Much of Baker's persuasive prowess was due to the genuine feelings of affection that members of both parties had for him. To demonstrate both Baker's ability to stroke another member's ego, which serves to maintain a collegial atmosphere in the Senate, and of other members' personal affection for Howard Baker, a brief colloquy between Baker and Proxmire that occurred on the Senate floor is included in Appendix E. The colloquy related to the debt limit increase measure in 1981 to which Proxmire engaged in an overnight filibuster. Specifically,

Proxmire's talkathon was aimed at keeping the debt limit below $1 trillion and lasted 16 hours and 12 minutes, fourth longest in Senate history (*Congress and the Nation* 1981, 42). Baker's genius is that he understood the importance of a congenial atmosphere and its importance to the institution as a whole and to himself in particular.

In addition to inherent powers of persuasion, a Senate majority leader also has institutional resources available to him. These resources find their origin in the Standing Rules of the Senate and the precedents of the Senate which serve to guide future action. In the Grove City case, Baker had to call on his powers of persuasion to get enough members to agree to undo parliamentary knots that they tied themselves into, but if not for the motion to reconsider and the motion to table, Baker could never have put the Senate back on track toward the goals of the majority party: defeating the *Grove City* amendment and passing DOJ authorizing legislation. He certainly could not have avoided the dreaded Senate precedent of majority cloture if not for the opportunities that the motion to reconsider provided. The motion, however, had to be backed up with the votes to get it adopted. It took a lot of persuasion to convince the Senate to backtrack and avoid that outcome, but Baker was able to do it. Baker was able to successfully bring persuasion to bear in nearly all the cases included in this study. He did so with the help of procedural tools, and, with the help from a few friends and allies. Thus, procedural advantages should be coupled with persuasion.

One of the most important procedural tools was shown to be an effective one because it could be used in conjuction with strategies of persuasion. Scheduling, as a prerogative of the majority leader in consultation with the minority leader, is a resource

used to assist a majority leader to accomplish his goals. Martin Luther King's birthday is a federal holiday due to some shrewd strategic scheduling. Further, the use of holds, or more accurately the decision to no longer honor them to the extent that they had been, helped Baker to obtain better control of the legislative process. The power over scheduling also allows a majority leader to have items held at the desk that have been reported from committees. Should a member step on the majority leader's prerogative of arranging for consideration, either by a UCA or by a motion to proceed to consideration of a bill, the leader may have an item held at the desk, protecting it from being called up by another. Since so many bills are reported from various committees, a majority leader can make a good case that some things simply have to be left off the calendar and in that way mute potential criticism for having items held at the desk. Further, control over the scheduling of recesses and adjournments allow a leader to introduce rewards and threats into the leadership equation. Senators value their time away from the floor and from Washington. Control over when the Senate will go out for a holiday and other purposes gives a leader leverage against obstruction. That assertion contravenes many books on the Senate that argue that a scheduled recess or adjournment empowers members seeking to obstruct. The problem for those members is that others are less likely to turn on the leadership to force them to take down an offending measure than they are to turn on members who insist on keeping the Senate in session beyond a scheduled recess or adjournment. In most cases, a determination is made by members as to which side, the leadership or the obstructing members, is the more reasonable and the leadership usually

gets the call. Baker was the quintessential force for reason and compromise, thus making members particularly loathe to turn on him.

Baker had his share of problems, however. The number one problem that confronted Baker, and it can probably be generalized to include all majority leaders, was obstruction of the legislative process. The Senate seems built to accommodate obstruction. Accordingly, majority leaders seem to be obsessed with filibusters. For Baker, "extended debate" was acceptable in keeping with his passion for democratic theory and the Senate norm of deliberation. Filibusters, on the other hand, were not acceptable. It suggests something about Baker that only once during his tenure as majority leader did he resort to what he has called the use of "raw power." In a repeat of the infamous "Black Monday" in 1977 in which he also played a role, Baker broke a filibuster led by fellow Republican Lowell Weicker, albeit a liberal Republican, who was assisted by Democrat Howard Metzenbaum. It is important to note, as chapter five illustrated, that Baker resorted to this unpleasant precedent only after DOJ authorization had failed to become law for two years running and he did not want it to become a three year failure. This may have helped justify in his mind the use of raw power in having numerous amendments summarily ruled out of order by the chair as being dilatory, non-germane, or improperly drafted. In his view, there comes a time when, after sufficient deliberation, the Senate must get on with business. Some measures are important enough to the leader or to his party that taking them down is not an acceptable means for allowing the Senate to move forward. Such was the case with DOJ authorization in 1982.

In the case of the 1982 DOJ bill, the opponents' main source of ammunition was taken away from them and, consequently, the filibuster was broken. Also suggestive of Baker's *modus operandi* was that he allowed periodic appeals of the chair's rulings to be made by the filibusterers, unlike Byrd and "Black Monday" in 1977. It was important to Baker that he not mistreat any member and, further, that they not feel like they were mistreated. He understood that he was part of the institutional context and any mistreatment of members would eventually come back to hurt the institution.

Procedural resources are only effective if the majority leader has the votes or other members at least think he has the votes. Baker's success on cloture votes came only because he either had the votes or was able to get them. Thus, in many ways a Senate majority leader is limited in what he can accomplish to those actions for which he has the chamber's support. The votes have to be there. This is why Baker failed to accomplish what some have said, including himself, was his number one priority: getting Senate proceedings televised. Baker was unable to accomplish that goal for the entire four year period in which he was the majority leader, although he continually kept that item on the agenda. Baker may have had the goodwill of his colleagues which enabled him to bring votes over to his side on most issues, but on some things, like televised proceedings, enough members were adamant in their opposition that Baker could only accept defeat.

It was no doubt Baker's attempts at persuasion in the early 1980s that set the stage for the success of the resolution in the mid 1980s that brought television cameras into the Senate for the first time. It was, however, under the leadership of another majority leader that the goal was obtained. Televised coverage of the Senate, after all, was an item that

was on Baker's personal agenda that was not necessarily on the party's agenda. Contemporary congressional literature is right on that point: a majority leader cannot dictate his personal wishes to the chamber. Not even Lyndon Johnson, the standard by which all contemporary majority leaders are judged, could dictate to the Senate. The so-called "Johnson treatment" was just a sophisticated form of persuasion, and one not especially suited to Howard Baker.

Baker did not want to exercise his powers in a dictatorial manner nor would he want dictatorial powers in the first place. Baker has spoken and written quite eloquently on his views on democracy and democratic methods. His 1980 book *No Margin for Error* is replete with passages about these views. Baker's actions on the bills included in this study accentuate the point by illustrating Baker's deference and tendency to delegate. That approach was instrumental to his success. Since the leadership of Mike Mansfield, the expectations of members has been more in line with his style than that of Lyndon Johnson. Members of the contemporary Senate expect leaders to assist them in accomplishing their own personal goals, electoral and policy, rather than ramming bills through the process. In this sense, Baker took lessons from Mansfield more so than from Johnson.

Other academically oriented scholars have also come to the same conclusion: Baker was an effective persuader that allowed him success on most of his goals, making the use of raw power unnecessary (Adams 1973; Myers 1973; Arieff 1981; Annis 1985, 1995). Thus, we add this study to that already loud chorus. This study, however, adds a

new verse. That verse asserts that the study of leadership in the Senate best flows from a neo-institutional perspective.

The neo-institutional perspective's basic assumption is that the institution affects behavior. A majority leader is part of the institution in that he has a significant effect on the behavior of others as a result of the position he holds. This study illustrates how Baker, in particular, affected the behavior of others and usually in his favor. A majority leader has the most influence over limits on debate and amendments, if any. In this sense, he is like the House Rules Committee. For the majority leader and the House Rules Committee, the "rule" can be rejected. For the House, the formal rule reported by the Rules Committee can be defeated on the floor and for the Senate majority leader, the ad hoc rule, which comes in the form of a unanimous consent request, can be objected to by any membr and, thus, prevent it from taking affect. More often than not, the "rule" is accepted.

The difference between traditional neo-institutionalism and the assertions put forward in this study is that, for the latter, there is no equilibrium point aside from the preferences of Howard Baker. Further, a specific outcome could not be induced except in a few special circumstances. Baker had to bring members, sometimes kicking and scratching to be sure, over to the "correct" and preferred outcome. He had to rely on persuasion to do it. That he, or any leader, is able to do that at all is evidence that a leader is no mere servant. Somtimes he may play the role of a servant, but that is only a means to an end. Service served Lyndon Johnson well when he was majority leader and it serves Trent Lott, the current majority leader.

At times, a leader will escalate a floor confrontation from an accomodating and deferential stance to something approaching raw power, taking care along the way to escalate a small bit at a time. If a leader resorts too quickly to raw power, there can be only a few limited outcomes. He could win, but so alienate other members, even in his own party, as to undermine his own leadership long-term. If the use of raw power is attempted and unsuccessful in forcing a target to alter course, the leader must publicly back down and there is often no face-saving way of doing that. The leader will make sure that the outcome of such a confrontation can have but a single outcome, victory for himself. In this way, if a floor fight involving the leader escalates to a dangerous level, a wise leader takes a lesson from Sun Tsu, a Chinese warrior who argued centuries ago that a battle must be structured and prepared for in such a way that the outcome is inevitable (1971). In the Senate, however, no outcome can ever be truly inevitable. This is due to the fact that a majority leader may be first among equals, but he is not a general or an admiral. If, however, a leader's persuasive skills are honed finely enough, he can bring members over to his position. Baker, if this study is any indication, had very finely honed skills of persuasion and knew which situations called for what strategies, further enhancing his leadership effectiveness. In essence, Baker knew how to influence the behavior of others without making them feel manipulated.

It is hoped that future researchers and scholars will not ignore resources, both personal and external, persuasive and procedural, when they draw conclusions about party leadership in either chamber. It is also hoped that this study will spark new ideas and approaches to the study of congressional leadership. It has already stimulated this

author's own interest in some ideas as a future research agenda. That would include something along the lines of a statistical Logit model with a binary dependent variable to represent a bill's passage (or not), an amendment's passage, or success by a majority leader in getting a unanimous consent agreement. The list of independent variables might include attempts at shame, ego-stroking, reward, threat, and the other persuasive devices outlined in this dissertation, to see if they are effective on an aggregate. Some institutional resources also may be added, such as whether a particular rule is invoked or precedent utilized to see if it increases the probability of passage or agreement. It may be that one of them or some combination of strategies may be more useful than others. The fact that a majority leader, or any one else for that matter, uses the resources outlined in this study at all indicates that they are at least perceived as effective.

The next logical step, however, would be a comparative analysis to see if Baker was unique in comparison to other contemporary majority leaders. Now that this study has hopefully laid the groundwork for explorations of party leadership on the floor of either chamber of Congress we can expect more analyses of leader and floor behavior. This study, given the examples of strategic manipulation, may even contribute to the further construction of formal theories of party leadership. Nevertheless, this case study of Senate party leadership was conducted from a neo-institutionalist perspective, a somewhat different approach than has been done recently. It has allowed conclusions to be drawn that may have already been drawn previously, but we can now be more confident in them. They cannot be emphasized too much: majority leaders have the resources to effectively lead the Senate, although they may not win every battle. Further,

if success is measured by getting adopted various motions, fending off others, getting bills through the Senate in line with the party's wishes and those of President Reagan, Howard Baker was particularly effective in using persuasion and procedure to maximum effect. For measures on which he and President Carter were in agreement, Baker was willing to extend his abilities at getting bills through the Senate and to the president's desk. At times, however, when his own principles or those of his party could not be compromised, his actions belied his reputation as a conciliator. Such situations were rare. In most cases, Baker was able to find some accommodation that was acceptable to all interested parties. As one scholar put it,

> Baker...generally addressed the concerns of all interested parties, limited the problems that might arise and generally left all sides in good spirits. That both the White House [when Baker was Reagan's chief-of-staff] and the Senate were more serene places when he left than when he arrived is an eloquent testimony to his success, no small legacy for this introspective yet friendly man. It may be, especially in the television age, that the American people prefer Presidents (sic) who use uncommon eloquence to chart bold new courses. Yet the divisions and sometimes polarizations that inevitably ensue render invaluable the presence of another kind of leader, the kind who can build bridges between competing interests and their champions, both on an ideological and a personal level. Here, Howard Henry Baker, Jr. had no peer (Annis 1995, 216).

This study stands as testimony to why that was the case.

APPENDIX A

A Sample Hold From 1982*

September 28, 1982

Hon. Howard Baker,
Majority Leader,
U.S. Senate, Washington, D.C.

Dear Howard: Per our conversation, this will confirm the objection to any time agreement to the consideration of the National Peace Day amendment during Senate floor action on H.J. Res. 599, the Continuing Resolution. If any further time agreement is proposed, please notify the undersigned.

Sincerely,

John East,
Jeremiah Denton

* Reprinted from Tiefer 1989, 561.

APPENDIX B

Provisions of the Economic Recovery Tax Act of 1981 (PL 97-34)

As Signed by the President on August 13, 1981.*

All Effective January 1, 1982, Unless Otherwise Noted

Individual Tax Cuts

•**Rate Cuts.** Reduced all individual income tax rates by 5 percent Oct. 1, 1981, 10 percent July 1983. Each cut would be applied to marginal tax rates, or those rates imposed on the last dollar of income. The changes were to be reflected in lower withholding in paychecks beginning Oct. 1.

•**Investment Income.** Reduced the top rate on investment, or "unearned," income from 70 percent to 50 percent, the existing maximum for earned income.

Reduced the maximum rate on capital gains — which were taxed at 40 percent of the investment income rate — from 28 percent to 20 percent, effective June 10, 1981.

•**Indexing.** Increased individual income tax brackets, the zero bracket amount and the personal exemption to reflect annual increases in the Consumer Price Index (CPI), beginning with the 1985 tax year. For example, if the CPI increased 10 percent during the preceding year, the lowest tax bracket, currently $3,400 to $5,500 would be changed to $3,740 ($3,400 plus 10 percent) to $6,050 ($5,500 plus 10 percent). The tax rates would remain the same.

•**Marital Deductions.** Allowed two-earner married couples filing joint returns in 1982 to deduct 5 percent of up to $30,000 (a maximum deduction of $1,500) of the lesser of their two incomes. The deduction would increase to 10 percent (a maximum of $3,000) in 1983 and after.

•**Child Care.** Increased to 30 percent from 20 percent the tax credit for child and dependent day care expenses in connection with the taxpayer's employment, for those earning $10,000 or less. The credit would be reduced one percentage point for each $2,000 in additional income, up to $28,000. Those earning over $28,000 would be eligible for a 20 percent credit.

•Increased the maximum amount of expenses eligible for the credit from $2,000 to $2,400 for one dependent and from $4,000 to $4,800 for two or more dependents.

•**Charitable Contributions.** Allowed individuals who did not itemize deductions on their tax returns to deduct charitable contributions as follows: up to 25 percent of contributions of $100 or less (a $25 maximum deduction) in 1982 and 1983; 25 percent of up to $300 in 1984 (a $75 maximum); 50 percent with no cap in 1985; and 100 percent in 1986. The provision would expire after 1986.

•**Sale of Residence.** Extended from 18 months to 24 months the period an individual was allowed to defer taxes on proceeds from the sale of a primary residence if that money was used to buy another home at the same or greater cost. The provision applied to all sales after July 20, 1981, and in cases where the 18-month "rollover" period had not expired by July 20, 1981.

•Increased from $100,000 to $125,000 the one-time exclusion from tax of capital gains from the sale of a home by those aged 55 and over, effective July 21, 1981.

•**Foreign Earned Income.** Allowed an individual working oversees to exclude from tax up to $75,000 of foreign earned income in 1982. The exclusion would increase $5,000 each year over the next four years to $95,000 in 1986 and after. The provision, if elected by the taxpayer, would replace current tax breaks for the excess living costs of those working abroad.

•Provided an allowance for "reasonable" housing costs in excess of a base amount, 16 percent of the salary of a grade GS-14, Step 1, government worker (the current base amount would be $6,059).

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* Reproduced from *Congressional Quarterly Almanac,* Volume XXXVII, 1981, 92-95.

Business Tax Cuts

•**Accelerated Depreciation.** Replaced the complex existing system for depreciating assets over their "useful" lives with a simplified approach called the Accelerated Cost Recovery System (ACRS). Under ACRS, investments in plant and equipment would be grouped in four classes, each having a standard schedule of deductions that could be taken over a fixed recovery period. Businesses could write off the value of an asset over three, five, 10 or 15 years at an accelerated rate. The provisions were made retroactive to Jan. 1, 1981.

•Classified assets as follows:

Three years: Automobiles, light trucks, equipment used in research and development, racehorses, and machinery and equipment that under existing law had a depreciation range of up to four years. A one-time, 6 percent investment tax credit would be allowed.

Five Years: All other machinery and equipment, public utilities with a current depreciation range of 18 years or less, single-use farm structures (such as hen houses) and some petroleum storage facilities. A 10 percent investment tax credit would be allowed.

Ten years: Public utility property with a current depreciation range from 18.5 years to 25 years, railroad tank cars, some mobile homes and other structures (such as theme parks). A 10 percent investment credit would be allowed.

Fifteen years: Public utility property with a current depreciation range of more than 25 years and all other buildings. A 10 percent investment tax credit would be available for the public utility property only.

•Permitted taxpayers to depreciate an asset over a period of time longer than that designated in one of the four depreciation classes.

•Allowed through 1984 all assets except 15-year real estate to be written off using an accelerated depreciation system that combined the 150 percent declining balance and straight-line methods. The declining balance method allowed a firm to deduct 15 percent of the total value of the investment the first year and 15 percent of the undepreciated value in each subsequent year. Under the straight-line method, assets would depreciate an equal percentage each year — for example, 10 percent for each of 10 years.

•Allowed all assets except 15-year real estate to be depreciated in 1985 at an even faster rate using 175 percent declining balance (17.5 percent of the undepreciated value would be written off in the early years) and after 1985, using 200 percent declining balance (20 percent of the undepreciated value written off in the early years).

•Allowed structures other than low-income housing to be depreciated using the 175 percent declining balance method, with straight-line depreciation for the later years; 200 percent declining balance could be used for low-income housing.

•Gave taxpayers the option of substituting straight-line depreciation for all of the above methods.

•**Small Business Depreciation.** Allowed "expensing," or the immediate deduction, by small businesses of the cost of new or used machinery and equipment, of up to $5,000 in 1982 and 1983, $7,500 in 1984 and 1985, and $10,000 after 1985.

•**Used Property.** Increased from $100,000 to $125,000 in 1981 through 1984, and to $150,000 in 1985, the maximum amount of used property eligible for an investment tax credit.

•**Credit Carryover.** Extended from seven to 15 years the period over which businesses could carry forward unused tax credits and offset them against future tax liability.

•**Leasing.** Liberalized leasing laws to make it easier to transfer investment tax credit and accelerated depreciation benefits from businesses that were not profitable enough to use such benefits to businesses that could use them.

•**Rehabilitation of Old Buildings.** Increased the current 10 percent investment tax credit for the rehabilitation of old buildings to 15 percent for buildings 30-39 years old, 20 percent for buildings 40 years and older, and 25 percent for certified historic structures.

•Allowed more rapid depreciation (175) percent declining balance instead of straight-line) for buildings constructed on the site of a demolished historic structure.

•**Research and Development.** Allowed a 25 percent tax credit for new spending on research and development above and beyond the average annual amount spent on such activities over the three preceding years. The provision applied to all expenditures made after June 30, 1981, through Dec. 31, 1985.

•Increased deductions for corporate contributions of new equipment to a university or college for research.

•**Foreign Research.** Allowed firms to offset all of their U.S. research and development expenses against U.S. income, instead of against both foreign and U.S. income. The provision aimed to prevent the moving abroad of U.S. corporate research activities.

•**Accumulated Earnings.** Increased from $150,000 to $250,000 the amount of earnings a business could accumulate without paying an accumulated earnings tax.

•Exempted from the provision service corporations in health, law, engineering, architecture, accounting, actuarial science, performing arts and consulting.

•**Shareholder Size.** Increased from 15 to 25 the maximum number of shareholders a small business could have and still retain the option of having its individual shareholders, not both the corporation and the shareholders, taxed on income.

•**Small Business Accounting.** Simplified the use of "last in, first out" (LIFO) accounting. LIFO is generally an attractive accounting method to use during times of high inflation, but, under current law, had been considered too complex for small businesses to undertake.

•**Corporate Rate Reduction.** Reduced the lowest corporate income tax rates from 17 percent on the first $25,000 of income to 16 percent in 1982 and 15 percent in 1983, and from 20 percent on the next $25,000 to 19 percent in 1982 and 18 percent in 1983.

•**"Incentive" Stock Options.** Created so-called "incentive" stock options for employees to buy their employer's stock and for which the employee would be taxed only when the stock purchased under the option was sold. Under existing law, employees were taxed on ordinary income at the time they were granted such options.

•**Targeted Jobs Tax Credit.** Extended for one year the targeted jobs tax credit program created by the 1978 tax bill (PL 95-600), which was due to expire at the end of 1981, and expanded the group of disadvantaged workers for which employers could receive the credit.

•**Mutual Savings Banks.** Provided preferential tax treatment for mutual savings banks that converted into stock associations.

•**Trucking Licenses.** Allowed trucking firms a five-year deduction for the loss in value of their operating licenses resulting from the 1980 trucking deregulation bill.

Energy Provisions

•**Royalty Owners.** Increased from $1,000 to $2,500 the tax credit allowed small oil royalty owners to offset the windfall profits tax in 1981.

•Provided an exemption from the windfall profits tax on oil production of two barrels a day for 1982-84 and three barrels of oil a day for 1985 and after. (Although the values of the barrel-a-day exemptions varied with the price of oil, they were likely to be substantially higher than the $2,500 credit).

• "**Stripper" Oil.** Exempted from the windfall profits tax all independently produced oil from "stripper" wells — those that produce an average of 10 barrels a day or less. The provision would begin in 1983.

•**Newly Discovered Oil.** Reduced from 30 percent to 15 percent by 1986 the windfall profits tax on newly discovered oil. The reduction would be phased in: 27.5 percent in 1982; 25 percent in 1983; 22.5 percent in 1984; 20 percent in 1985; and 15 percent in 1986 and after.

•**Charitable Organizations.** Expanded the current exemption from the windfall profits tax for charitable organizations to include homes for disadvantaged children.

Savings Incentives

•**Individual Retirement Accounts (IRAs).** Increased to the lesser of $2,000 or 100 percent of compensation (from $1,500 or 15 percent of compensation) the amount an individual could deduct for annual contributions to an IRA.

•Increased from $1,700 to $2,250 the deduction for contributions to "spousal" IRAs, those set up by a working spouse for both himself, or herself, and a non-working spouse. A requirement that contributions must be equally divided between the two spouses was dropped.

•Allowed deductible IRA contributions both for those not covered and for those covered by an employer-sponsored plan. In cases where an individual was covered by an employer-sponsored plan, voluntary contributions to that plan would be deductible up to $2,000.

•Permitted divorced spouses to contribute at least $1,125 a year to an IRA that had been set up for them by the other spouse. Under existing law, such persons could no longer contribute to such an IRA after divorce.

•**Self-Employed Retirement Plans (Keogh).** Increased from $7,500 to $15,000 the amount a self-employed individual could deduct for contributions to his or her own retirement plan.

•**Dividend and Interest Exclusion.** Repealed as of Jan. 1, 1982, the current $200 exclusion ($400 for couples) allowed for interest and dividend income, and reinstated a previous $100 ($200 for couples) exclusion for dividend income only.

•Allowed taxpayers, beginning in 1985, to exclude 15 percent of up to $3,000 ($6,000 for couples) of interest income.

•**Savings Certificates.** Allowed Banks, savings and loans, credit unions and other depository institutions to issue one-year savings certificates that would yield 70 percent of the yield on one-year Treasury bills (currently about 14 percent).

•Permitted individuals to exclude up to $1,000 of the interest on such certificates; couples could exclude up to $2,000.

•Permitted the certificates to be issued only from Oct. 1, 1981, through Dec. 31, 1982, and stipulated that they must be offered in denominations of $500.

•Required institutions, other than credit unions, issuing the certificates to make at least 75 percent of their net new savings available for home or agricultural loans.

•**Employee Stock Ownership Plans (ESOPs).** Replaced the existing additional 1 percent investment tax credit allowed employers for contributions to tax credit ESOPs with a payroll-based tax credit. The new credit would be phased in gradually up to .75 percent of compensation of employees covered by the plan in 1985. The provision would expire Dec. 31, 1987.

•Increased from 15 percent of payroll to 25 percent the tax deductions allowed employers for contributions to an ESOP that borrowed money to buy stock in the company, provided the contribution was used to pay off the loan.

•Repealed a requirement that voting rights be transferred to employees participating in a profit-sharing ESOP.

•**Dividend Reinvestment.** Allowed public utilities shareholders who elected to receive dividends in the form of newly issued common stock rather than cash to exclude from tax up to $750 a year ($1,500 for joint returns). The provision would expire at the end of 1985.

•**Legal Service Plans.** Extended through Dec. 31, 1984, the current exclusion from employee income of employer contributions to, and the value of benefits received from, a prepaid legal service plan for employees. The existing provision would have expired Dec. 31, 1981.

Estate and Gift Taxes

•**Exemption.** Increased from $175,625 to $600,000 by 1987 the total amount of estate and gift transfers that would be exempt from estate and gift taxes. The change would be phased in as follows: $225,000 in 1982; $275,000 in 1983; $325,000 in 1984; $400,000 in 1985; $500,000 in 1986; and $600,000 in 1987 and after. By 1987 less than 1 percent of all estates would be taxed.

•**Estate Value.** Made it easier to base the value of an estate on its current use rather than to use its generally higher fair market value when determining taxes.

•**Rate Reduction.** Reduced the top estate and gift tax rate from the current 70 percent to 50 percent by 1985. The rate was set at 65 percent in 1982, 60 percent in 1983 and 55 percent in 1984. When fully phased in, the top rate would apply to gifts and estates over $2.5 million.

•**Marital Deduction.** Repealed existing limits on tax-free estate and gift transfers between spouses.

•**Gift Tax.** Increased the annual gift tax exclusion from $3,000 to $10,000 per donee, with an unlimited exclusion for tuition and medical expenses; allowed gift taxes to be paid on an annual rather than quarterly basis.

•**Generation-Skipping Tax.** Extended for one year, to Jan. 1, 1983, current transitional exemptions from the tax on generation-skipping transfers.

Commodity Tax Straddles

•**Annual Tax.** Restricted the use of a tax shelter technique called the commodity tax straddle by imposing a maximum 32 percent tax on the net gain of an individual's commodity futures holdings as of the last day of a tax year, even if the gain had yet to be realized. The straddle, which involved the purchase of offsetting futures contracts, had been used widely to avoid or defer taxes.

•**Exemption.** Exempted professional hedgers — those who buy or sell futures as a protection against price fluctuations in commodities they use or supply — from the annual tax on straddles.

APPENDIX C

Unanimous Consent Agreement Relating to House Joint Resolution 266, The Economic Recovery Tax Act of 1981*

Ordered, That during consideration of H.J. Res. 266, a joint resolution to provide for a temporary increase in the public debt limit, debate on any amendment in the first degree shall be limited to 30 minutes, to be equally divided and controlled by the mover of such and the manager of the bill, unless the amendment has a special time limit contained in the following list:

Sponsor, subject, time (30 minutes equally divided unless otherwise specified.)

Baucus-Increase write-off allowed certain small businesses for purchases of limited amounts of new equipment.

Baucus-Exclude from double taxation the first $100,000 of undistributed dividends.

Baucus-Index cap used to value land for estate taxes to the GNP deflator.

Baucus-Restore depreciation back to 175 percent.

Bentsen-Stock option.

Bentsen-Qualified progress expenditures.

Biden-Day care tax credit.

Bradley-Research and development.

Bradley-Eliminate tax on savings.

Bradley-3-year tax cut aimed at those under $50,000, 2 hours.

Bumpers/Kennedy-3-year tax cut redistribution to protect from inflation and Social Security, 2 hours.

Bumpers-Change definition of capital assets to eliminate luxury items.

Bumpers-Strike portion of the bill that reduces minimum tax on capital gains.

Byrd, R.C.-Depreciation schedule for generating equipment in coal-powered utilities and for pollution control equipment in coal-powered utilities.

Chiles-Resolution on small business, financial institutions and farms.

Cranston-Treatment of public utility property for "normalization".

DeConcini-Earnings limitations.

DeConcini-ESOP.

Dixon-Bank forward contracts.

Dixon-Individual retirement accounts.

Dodd/Heinz-Expensing option for construction of all residential rental housing, 40 minutes.

Eagleton-Social Security-de-couple from unified budget.

Exon/Bradley-Trigger for third year of tax cut, 2 hours.

Ford-Reduce tax on taxable income of principle campaign committees.

Glenn-Expand tax credit for incremental research and development. 1 hour.

Glenn-Exclude domestically performed R&D from Sec. 861 of Internal Revenue Code, 1 hour.

Hart-Commission on taxation.

Hart-Substitute individual tax cuts for indexing, 2 hours.

Hart-Tax on imported oil.

Heflin-Social Security interest rates.

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* Reproduced from *Congressional Record* 1981 (97th Congress, 1st session), 16909.

Heflin-Tax credit on pecans.
Huddleston-Horse depreciation.
Huddleston-Earned income tax credit.
Kennedy-Retirement income tax credit for elderly.
Kennedy-Tax credit for home heating.
Kennedy-Deny business tax cuts to businesses that raise prices.
Kennedy/Wallop-Energy Conservation.
Kennedy-Estate and gift tax.
Kennedy-Increase limit on corporate charitable contributions from 5% to 10%.
Kennedy-Cap on 10-5-3.
Kennedy-Reduce tax expenditures in proportion to direct spending cuts.
Kennedy-Reduce the tax deductions for business meals and first class airfare.
Kennedy-Phase in the 70% to 50% cut over two years.
Kennedy-Allow the investment credit to be carried back for a longer period and/or make the investment credit transferable.
Leahy-Extend capital gains one-time exclusion for sale of home to handicapped.
Levin-Adoption and foster care tax credit-40 minutes.
Levin-Exclusion for first $100 of interest income.
Long-Expense and depreciation.
Matsunaga-Exempt energy investment tax credit from the "at risk" provision.
Melcher-IRS regulations on imputed interest rate.
Melcher-Refundable tax credit for non-ferrous metal smelting.
Metzenbaum-Increase tax credit for day care.
Metzenbaum-Adoption and foster care tax credit.
Mitchell-Tax relief for small businesses by simplifying inventory accounting for tax purposes.
Moynihan-Thor power.
Moynihan-Technical amendments on straddle.
Nunn-Procedures to enable IRS to share information on non-tax crimes with Justice Department-1 hour.
Pryor-Social Security earnings limitation.
Riegle-Refundable investment tax credit.
Riegle-Marriage penalty.
Sasser-Social Security resolution interfund borrowing.
Sasser-Repeal excise tax on custom gunsmith.
Sasser-Marriage penalty.
Stennis-Establish interest commission for study of possible stable and lower rate.
Hatfield-Oegon *(sic)* veterans home loans.
Boschwitz-Permit expensing in 1981.
Symms-Timber state and gift tax area.
Heinz-Definitions of pollution control expenditures eligible for Sec. 103 financing-1 hour.
Heinz-Repeal Sec. 189 (rental housing const.)-1 hour.
Heinz (with Domenici)-Targeted job tax credit-2 hours.
Hawkins (with Metzenbaum)-Daycare centers-1 hour.
Lugar-Tax credit for volunteer fire depts.
Packwood-Day care.
Roth-Railroad Rolling Stock, 10 minutes.
Boschwitz-Federal Home Loan Bank Board, 10 minutes.
Mattingly-Moratorium Fringe Tax.

Jepsen-Tax exemption for People who Adopt.
Rudman-Home Heating.
Helms-Deduction for Loss of Motor Carrier Operating Authority.
Wallop-Investment Tax "At Risk" ITC.
Durenburger-Technical amendment-Private Foundations.
D'Amato-Tax Straddle-7 day Look Back.
Quayle-Rehabilitation Housing.
Symms-3 Estate Tax amendments-30 minutes total on all 3.
D'Amato-State Legislatures Travel Exemption.
Lugar-Depreciation of Mobile Homes, 20 minutes.
Packwood-Prepaid Legal, 20 minutes.
Gorton-Tax considerations of Stock Conversion of Mutual Savings Bank, 10 minutes.
Dole-Agreed upon Oil Amendment.
Dole-Fiscal Responsibility.
Stevens-Performing Arts.
Percy-Transitional Rule on Straddle, 1 hour (for Percy).
D'Amato-Savers Credit.
Jepsen Related Party Rule for Farmers.
Tower-Tight sands.
Dole-Stock Options.
Dole-Cash Management.
Dole-Withholding on Foreign Investment in U.S. R/E.
Chafee-Repeal Demolition of Historic Structures.
Chafee-Credit for Rehabilitation in Historic Districts.
Roth-Depreciation on Structures.

Provide, That in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the Minority Leader or his designee.

Ordered further, That a time limitation of 6 hours be imposed on the resolution to be equally divided and controlled, respectively, by the Senator from Kansas (Mr. Dole) and the Senator from Louisiana (Mr. Long): *Provided,* that the said Senators, or either of them, may, from the time under their control on the passage of the said resolution, allot additional time to any Senator during the consideration of any amendment: *Provided further,* That the listed amendments be the only amendments in order, and that at no later than 3:00 p.m. July 29, 1981 the bill be advanced to third reading: *Provided further,* That if any of the listed amendments have not been called up by that time, there be 5 minutes, equally divided and controlled on each amendment: *Provided further,* That following third reading of the resolution, it be returned to the Calendar and that the motion to reconsideration of the joint resolution not be debatable: *Provided further,* That immediately after the joint resolution is returned to the Calendar, the Senate proceed to vote on the cloture motion presented by the Senator from Louisiana (Mr. Johnston): *Provided further,* That if cloture is invoked, the Majority Leader, inspite *(sic)* of the prohibitions of Rule XXII, can move to the consideration of the House or Senate tax bill, the conference report dealing with a tax bill, the conference report dealing with the reconciliation bill, the House reconciliation bill, or one appropriation bill: *Provided further,* That any motion to proceed to either the House tax bill or an appropriation bill not be permitted to waive any present right of any Senator: *Provided further,* That no call for the regular order during the consideration of any of these measures be permitted to return the Senate to the unfinished business.

APPENDIX D

Dialog Between Majority Leader Baker, the Presiding Officer and Others During Consideration of DOJ Authorization*

Presiding Officer (Mr. Warner): "The majority leader is recognized."

Mr. Baker: "Mr. President, I call up amendment No. 428."

The Presiding Officer: "The amendment is not in order as not being germane."

Mr. Baker: "Mr. President, I call up amendment No. 429."

The Presiding Officer: "The amendment is not in order. It is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 430."

The Presiding Officer: "The amendment is not in order. It is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 431."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment 432."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "I call up amendment No. 433, Mr. President."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 434."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call amendment No. 435."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 436."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 437."

The Presiding Officer: "The amendment is not in order because it is dilatory."

* From *Congressional Record* 1982, 2342-2352.

Mr. Baker: "I call up amendment No. 438, Mr. President."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 439."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 440."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "I call up amendment No. 441, Mr. President."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 442."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 443."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 444."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 447."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "I call up amendment No. 450, Mr. President.

The Presiding Officer: "The amendment is not is order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 451."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 452."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Baker: "Mr. President, I call up amendment No. 453."

Mr. Weicker: "Point of order, Mr. President."

The Presiding Officer: "The amendment No. 453 is not in order because it is not germane."

[Mr. Baker addressed the Chair.]

Mr. Weicker: "Point of order."

The Presiding Officer: "The majority leader is recognized."

Mr. Weicker: "Point of order."

Mr. Metzenbaum: "Point of order."

Several Senators: "Point of order."

Mr. Metzenbaum: "Mr. President, a point of order has been made and Senators have asked for recognition."

The Presiding Officer: "The Chair asks for order."

Mr. Baker: "Mr. President, I am perfectly pleased to permit a point of order to be made. Which is the last amendment that was called up?"

The Presiding Officer: "Amendment No. 453 and the Chair ruled it was not in order as it is not germane."

Mr. Weicker: "Point of order."

Mr. Baker: "Mr. President, I yield the floor."

Mr. Weicker: "Mr. President, I appeal the ruling of the Chair."

Mr. Baker: "On what ruling is the appeal being made?"

Mr. Weicker: "On the last ruling of the Chair, amendment No. 453."

The Presiding Officer: "I ask the Senator from Connecticut to restate his point of order."

Mr. Weicker: "Parliamentary inquiry. If I am not mistaken, the Chair ruled amendment No. 453 as being not in order because it was dilatory."

The Presiding Officer: "As not germane."

Mr. Weicker: "Or not germane."

The Presiding Officer: "The Senator is correct."

Mr. Weicker: "I appeal that ruling of the Chair and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? Their is a sufficient second." The yeas and nays were ordered.

Mr. Baker: "Mr. President, I move to table the appeal and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The question is on agreeing to the motion of the Senator from Tennessee (Mr. Baker). The yeas and nays have been ordered and the clerk will call the roll."

[Vote occurs here on Baker motion to table the Weicker appeal of the Chair's ruling that amendment no. 453 was not germane. Motion passes 65-28.]

Mr. Baker: "Mr. President, I call up amendment No. 460."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 462."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 463."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 464."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 465."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 466."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 467."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 468."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 469."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 470."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 474."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 477."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 480."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 481."

The Presiding Officer: "The amendment is not in order because it is not germane."

Mr. Baker: "Mr. President, I call up amendment No. 454."

The Presiding Officer: "The amendment is not in order because it is not dilatory *(sic)*."

Mr. Weicker: "Point of order, Mr. President."

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, I am not seeking recognition."

Mr. Robert C. Byrd: "Mr. President, the Senator from Connecticut is seeking to make a point of order. He is entitled to be recognized."

The Presiding Officer: "The Senator from Connecticut is recognized. The Chair had the understanding that the Senator from Tennessee sought the floor. The Senator from Tennessee was not seeking the floor, so the Senator from Connecticut is recognized."

Mr. Weicker: "I make the point of order that I make an appeal from the ruling of the Chair on amendment No. 454. I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

Mr. Baker: "I move to lay the appeal on the table. I ask for the yeas and nays."

The Presiding Officer: "Is there as sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays have been ordered. The clerk will call the roll."

[Vote on Baker motion to table Weicker motion to appeal the ruling of the Chair . Motion Agreed to 67-25.]

Mr. Baker: "Mr. President, I call up amendment No. 455."

The Presiding Officer: "The amendment is out of order."

Mr. Weicker: "Mr. President, a parliamentary inquiry."

The Presiding Officer: "The Senator will state it."

Mr. Weicker: "What is the amendment? I did not get the number."

The Presiding Officer: "Amendment No. 455."

Mr. Weicker: "Amendment No. 455?"

The Presiding Officer: "The Senator is correct."

Mr. Weicker: "Mr. President, I make the point of order: I appeal the ruling of the Chair, and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

Mr. Baker: "Mr. President, I move to table the appeal, and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

Mr. Baker: "Mr. President, Senators should be on notice that the rollcall vote will be 15 minutes in length but no more than 15 minutes in length."

The Presiding Officer: "The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the appeal of the ruling of the Chair. On this question, the yeas and nays have been ordered, and the clerk will call the roll."

[Vote on Baker motion to table Weicker motion to appeal the Chair's ruling. Passed 68-23.]

Mr. Weicker addressed the Chair.

The Presiding Officer: "The Senator from Connecticut."

Mr. Weicker: "Mr. President, I move to table S. 951 and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is not a sufficient second. The question is on the motion to table."

Mr. Weicker: "Mr. President, I ask for the yeas and nays."

Mr. Baker: "Mr. President, did the Senator ask for the yeas and nays? Would the Chair restate his request?"

The Presiding Officer: "There has been another request for the yeas and nays. Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The question is on agreeing to the motion of the Senator from Connecticut (Mr. Weicker). The yeas and nays have been ordered and the clerk will call the roll."

[Vote (VT82N32) on Weicker motion to table S. 951. Motion rejected 30-60.]

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, I call up amendment No. 456."

The Presiding Officer: "The Chair rules that the amendment is not in order because it is dilatory."

Mr. Weicker: "Point of order, Mr. President."

The Presiding Officer: "The Senator from Connecticut."

Mr. Weicker: "I appeal the ruling of the Chair and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

Mr. Baker: "Mr. President, I move to lay the appeal on the table and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The question is on agreeing to the motion to lay the appeal on the table. The yeas and nays have been ordered. The clerk will call the roll."

[Vote on Baker motion to table the Weicker appeal of the Chair's ruling. Motion agreed to 65-26.]

Mr. Baker: "Mr. President, I call up amendment No. 459."

The Presiding Officer: "The amendment is not in order because it is a dilatory amendment."

Mr. Weicker: "Mr. President, a point of order."

The Presiding Officer: "The Senator from Connecticut."

Mr. Weicker: "I appeal the ruling of the Chair, and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

Mr. Baker: "Mr. President, I move to table the appeal, and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the appeal from the ruling of the Chair. On this question the yeas and nays have been ordered, and the clerk will call the roll."

[Vote on Baker motion to table the Weicker motion to appeal the ruling of the Chair. Motion agreed to 65-25.]

The Presiding Officer: "The majority leader."

Mr. Baker: "Mr. President, I call up amendment No. 461."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Weicker: "Mr. President, point of order."

The Presiding Officer: "The Senator from Connecticut."

Mr. Weicker: "I appeal the ruling of the Chair and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The majority leader."

Mr. Baker: "Mr. President, I move to table the appeal from the ruling of the Chair."

The Presiding Officer: "The question is on agreeing to the motion of the majority leader to lay on the table the appeal."

Mr. Weicker: "Mr. President, I ask for the yeas and nays."

Mr. Metzenbaum: "Mr. President, I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is a sufficient second." The yeas and nays were ordered.

The Presiding Officer: "The question is on agreeing to the motion of the Senator from Tennessee to lay on the table the appeal from the ruling of the Chair. They yeas and nays have been ordered, and the clerk will call the roll."

[Vote on Baker motion to table the Weicker motion to appeal the Chair's ruling. Motion agreed to 65-25.]

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, in just a moment I intend to call up another amendment. It is now 1:15 in the morning and we have completed, I believe, 21 votes today. I hope there will not be a request for the yeas and nays on any of the motions that may be made. I hope the yeas and nays will not be given and that we can dispense with the remainder of the amendments which are, I believe the Chair may rule, dilatory, from which there may be an appeal. I have made no effort to try to circumvent or short-circuit the appeal process. I think the Senate has been very patient and fair in this respect. But I think that now when three of those amendments remain, it is time to get to the business at hand. Mr. President, I call up amendment No. 471."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Weicker: "Point of order."

The Presiding Officer: "The Senator from Connecticut."

Mr. Weicker: "Mr. President, I appeal the ruling of the Chair *and ask for the yeas and nays*" [emphasis added.]

The Presiding Officer: "Is there a sufficient second? There is not a sufficient second."

Mr. Weicker: "Mr. President, I suggest the absence of a quorum."

The Presiding Officer: "The majority leader is recognized."

Mr. Weicker: "I suggested the absence of a quorum, Mr. President, before the majority leader was recognized. Let us wire it in up there. A point of order, Mr. President."

Mr. Baker: "The call for a quorum call is dilatory. The Chair is mandated by the precedents to observe the presence of a quorum and rule that way."

The Presiding Officer: "The majority leader's point is well taken. The Chair is able to count a quorum in the Chamber at this time. Therefore, the call for a quorum at this time is dilatory. The majority leader is recognized."

Mr. Baker: "Mr. President, I move to table the appeal."

Mr. Weicker: "I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is not a sufficient second. The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut. The motion to lay on the table was agreed to."

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, I call up amendment No. 473."

The Presiding Officer: "The amendment is not in order because it is dilatory."

Mr. Weicker: "Point of order."

The Presiding Officer: "The Senator from Connecticut."

Mr. Weicker: "I appeal the ruling of the Chair and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is not a sufficient second. The majority leader is recognized."

Mr. Baker: "Mr. President, I move to table the appeal."

The Presiding Officer: "The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut. The motion to lay on the table was agreed to."

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, I call up amendment No. 475."

The Presiding Officer: "The amendment is not in order because it is improperly drafted. The Senator from Connecticut."

Mr. Weicker: "Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second. There is not a sufficient second. The majority leader is recognized."

Mr. Baker: "Mr. President, I move to lay on the table the appeal."

The Presiding Officer: "The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut. The motion to lay on the table was agreed to."

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, I call up amendment No. 479."

The Presiding Officer: "Amendment No. 479 is not in order because it is improperly drafted."

Mr. Weicker: "Mr. President, I appeal the ruling of the Chair and I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second? There is not a sufficient second."

Mr. Baker: "Mr. President, I move to table the appeal."

The Presiding Officer: "The question is on agreeing to the motion to lay on the table the appeal of the Senator from Connecticut. The motion to lay on the table was agreed to."

The Presiding Officer: "The majority leader is recognized."

Mr. Baker: "Mr. President, It is now 1:20 a.m. Mr. President, I call up amendment No. 473."

Mr. Metzenbaum: "Mr. President--"

Mr. Baker: "Mr. President, may I inquire, has amendment No. 473 been dealt with?"

The Presiding Officer: "Amendment No. 473 has been dealt with."

[Mr. Metzenbaum addressed the Chair.]

Mr. Metzenbaum: "Mr. President, I did not mean to rise until the Chair ruled, but the Chair made a ruling with respect to the fact that a quorum was present. I know there are some instances in which that has been accepted as a ruling in parliamentary procedure, and there are also rulings in which it has not been permitted to count the House. I just wish to take this means of making certain that we have not established a precedent that the Chair is going to determine whether or not a quorum is or is not present in the future by counting the number of Members seated in the Chamber. I do not make it an issue at the time. I know the Parliamentarian can cite decisions in which that has been permitted in some instances and in post cloture filibuster by amendment, but it is my understanding that there have also been instances in the rules where that has not been the appropriate procedure to follow. I do not wish to appeal any decision, but I wish to raise the issue with the Parliamentarian so that we do not establish a precedent that we will all have to be living with."

The Presiding Officer: "The Senator from Ohio is advised by the Chair that there is, in fact, precedent in postcloture proceedings. A precedent can be found at page 249 of the postcloture procedure. The Chair will not proceed to read that, but that is sufficient precedent under the rules of the Senate."

Mr. Baker: "Mr. President, the Senate has now had more than 20 votes on this measure today. It is now past 1:20 a.m."

Baker: "Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10:30 a.m. today."

Mr. Weicker: "I object."

The Presiding Officer: "Objection is heard."

Baker: "Mr. President, I now move that the Senate recess until the hour of 10:30 a.m. today."

Mr. Weicker: "I ask for the yeas and nays."

The Presiding Officer: "Is there a sufficient second. There is not a sufficient second. The question is on agreeing to the motion to recess." [The motion was agreed to and at 1:21 a.m., the Senate recessed until 10:30 a.m. today, February 25, 1982.]

APPENDIX E

A Colloquy Between Majority Leader Baker and Proxmire

Baker: Mr. President, during a fierce snowstorm one winter not very long ago, many congressmen and Senators were stranded at their homes and unable to report to the Capitol. Fourwheel-drive pickups and special trucks were sent in to aid in the transportation of Members, including the leadership. In the course of the day, Senators started arriving in the late morning, and among those in the first group to enter the Chamber that day to greet those of us who were not so hardy was the Senator from Wisconsin (Mr. Proxmire). All of us were making frantic telephone calls to seek aid and assistance in finding our way to the Capitol. Bill Proxmire had jogged through the snow to this Hill. He was here to greet us in the finest fettle and rarest form. Since 6:10 last evening, Senator Proxmire has added a new chapter to the annals of physical and intellectual endurance. While the distinguished Senator from Washington and I do not agree on many issues, nor even on his parliamentary technique perhaps, I wish to take this occasion to commend him for his conviction and his stamina. (P. 22303).

Proxmire: Mr. President, will the Senator from Tennessee yield? [Baker does so and Proxmire continues]. I thank my good friend the majority leader, and I will not speak more than 16 additional hours. The Senator from Tennessee is a very hardy man in more ways than one. One who can lead that pack of Republicans the way he does and keep them together in good humor, deep them all happy, and keep them all loving him when they are people so disparate and at the same time enjoy the kind of very warm and really affectionate relations with Democratic Senators is quite a person. Mr. President, I also thank my own leader, the distinguished Senator from West Virginia, who so graciously came in last night when I frankly needed some relief. He gave me just that kind of relief and did so in a most gracious and most helpful and most practical way.

Baker: Mr. President, I have to confess to the Senator that after a brief time of enlightenment in listening to the remarks of the Senator from Wisconsin, I wended my way home and checked periodically by telephone to see how things were progressing. I was advised that the Senator from West Virginia, the distinguished minority leader, and I believe the Senator from Nebraska, Mr. Exon, had momentarily relieved the Senator. I marveled at the time at your stamina and I continue to do so. I express my appreciation to you for the remarks you just made (*Congressional Record* 1981, 22303).

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