The Conference Committee: Congress' Final Filter

by Albert Gore

Congress has never come to grips with the archaic ways and the often dictatorial-like powers of conference committees. It is here, in secret meetings often not even announced until the last minute, that a few men can sit down and undo in one hour the most painstaking work of months of effort by several standing committees and the full membership of both houses. It is here, after the tumult and shouting and public debate has faded from the House and Senate and after the headlines have shifted to a new subject, that appropriations measures, tax bills, and other substantive legislation can suffer remarkable mutation.

After the conference committee's "report," or agreed action, is taken, the two houses must then vote on it up or down, in toto, without amendment. There is usually scant explanation or debate before the vote to accept or reject. The conference deliberations are not published, and the reports are often all but unintelligible to the public and the Congress alike—sometimes legislators are not aware of what they have voted for. And perhaps most important, there is usually a finality about conference committee decisions. Any Senator or Congressman who opposes only a specific provision is faced with two choices, accepting the provision or trying to defeat the entire bill, a move which would cost weeks or months of work. Often, the important legislation comes up right before recess or holiday, which makes a fight against the conference report even more unlikely. For these reasons, the reports, even when they distort the intent of either house, are rarely challenged.

One such committee, on which I served, met in secret on a cold December night in 1969. By 2:30 a.m., it reached a decision which would increase personal income tax exemptions from $600 to $750 (in stages), a beneficial step. But part of the decision also ultimately gave an enormous tax reduction to the relatively few with very large "earned"

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incomes (salaries, bonuses, commissions, as opposed to "dividend" or "interest" income). The head of General Motors, and others with like earned incomes, may gain as much as $90,000 per year from this reduction. And the reduction was available only to those in the top brackets and denied to everyone else below them.

This conference committee, made up of seven Senators and nine Representatives, had been appointed by the President of the Senate and the Speaker of the House, respectively. (In practice, the chairmen and ranking minority members of the standing committees handling a given piece of legislation actually name the conferees. Almost invariably, they name themselves.) The committee was brought together to compose, "settle" in congressional cloakroom jargon, the hundred or so differences between the versions of the Tax Reform Act of 1969 as it had passed each house of Congress. It is in such committees, established in similar fashion every time there are differences between the House- and Senate-passed bills, that final details of most important legislation are decided on—and these details may often be the essence of the legislation.

Tax Reform, Nixon-Style

The reduction in tax on large earned income was actually just an extra dividend added to the already staggering benefits the rich have received through tax breaks in recent years. It is generally believed, I think, that we have a graduated income tax based on ability to pay. Since 1964, however, the tax rates have become much less graduated, and each successive "reform" appears to give even more money back to the wealthy. Prior to 1964, the tax rates ran from 20 per cent to 91 per cent—a spread of 71 percentage points. In the Tax Reduction Act of that year, the minimum tax rate, on the first taxable dollar of income, was lowered to 14 per cent—but at the upper levels, the maximum rates were reduced from 91 to 70 per cent of income.

In 1969, President Nixon recommended what he called tax "reform"—another cut in the top tax rates. I countered by introducing a bill to raise the personal exemption for each taxpayer and dependent. (The $600 exemption had been fixed in 1948 at what was, even then, an admittedly low level as measured by the cost of living. By 1969 the cost of living had about doubled, yet the $600 personal exemption remained.) After making some modifications, the House passed the Nixon Administration bill which lowered the top tax rate, this time from 70 to 65 per cent, with no reduction whatsoever in the rates applicable at the bottom. And, in addition, the bill proposed to cut the top rate on earned income from 70 to 50 percent. This provision was added by the Nixon Administration at a midnight session of the House Ways and Means Committee just before the bill was approved and reported to the

full House. It represented an extra $200-million loss to the government, or gain to the highly paid, and the ordinary taxpayer would have to make up the deficit. The earned income measure was passed by the House with the tax bill as a whole under the notorious "gag" rule, which permits no amendments. In the Senate, I took single-shot aim at the measure, because I found it odious in the extreme. The Finance Committee, of which I was a member, adopted unanimously an amendment to strike this provision from the tax bill—an amendment offered by the committee chairman, Senator Russell Long.

During the detailed discussions and debate in the Senate, no suggestion was made that this provision be restored to the bill, and there was no one to lament publicly its elimination. In fact, in order to make the legislative history and the Senate's position clear, Senator Long, in his initial discussion of the bill on the Senate floor on November 24, 1969, stated:

> In establishing the new tax rates, the committee deleted from the bill a House provision limiting to 50 percent the maximum marginal rate applicable to an individual's earned income. This action was taken because the committee believed that a 50-per cent top marginal rate, though beneficial for work incentives, would provide unduly large tax reductions to those with substantial earned income.

The most important difference between the House and Senate tax bills was the amendment I had offered and won on the floor of the Senate to strike out the Nixon-proposed rate changes and substitute instead an increase in personal exemption from $600 to $800. Another difference, of course, was the earned income provision, which the House had adopted and the Senate had not. Both of these, among others, had to be resolved in conference committee.

On the first point, the conferees agreed on a compromise which eliminated the rate changes and adopted a gradual increase in personal exemption from $600 to $750. Finally, at about 2 a.m. on the last day of the conference, the chairman, Representative Wilbur Mills, brought up the last item in disagreement, the reduction in the top rate for earned income. The argument became quite heated, despite the fact that no one could advance any better justification for the provision than restating a point made by Edwin S. Cohen, assistant secretary of the Treasury, before the Senate Finance Committee: "We do get to the point where with respect to services. . . inordinately high rates may cause a person to spend more time trying to figure out some of the incentives in the law than he does concentrating on his work. . . ."

In other words, the best way to guarantee the efficiency of corporate leaders, to relieve their minds of the burdensome task of getting around the taxes, would be to reduce the taxes and give them the money, anyway. This argument could be carried further—the best way to insure maximum productivity of the nation's highly paid would be to charge them no taxes at all, freeing their imaginations from material things and onto the disinterested plane of public service.

Odious in the Extreme

The debate continued until finally conference committee chairman Mills suggested a compromise—that the 50 per cent earned income figure be set as a maximum "effective" rate (an average of all taxable income) rather than the "marginal rate" (applicable to the last dollar of income). This would involve much less money, only a $15-million loss in revenue to the Treasury. I felt I had won my main battle on the personal exemption increase, so I agreed to go along with this compromise.

Chairman Mills then announced that the conference committee would adjourn "for the night," but would meet again at noon that same day to sign the conference report, which the staff would meanwhile prepare. As we

began to depart, I noticed a whispered conference between Senator Wallace Bennett, a ranking Republican on the Senate Finance Committee, and the Assistant Secretary of the Treasury. Unavoidably, I overheard Senator Bennett say, "Let's meet in my office."

At the 10 a.m. Democratic caucus, Senator Long suggested to me that when the conference committee reconvened it might be necessary to "give" the Administration "something" in order "to avoid a veto." He made some imprecise reference to the 50 per cent ceiling on high bracket earnings. I was thus forewarned that a deal had been made. Sure enough, on the reconvening of the conference committee at noon for the announced purpose of "signing the conference report," more or less a formality, Chairman Mills quickly reopened the earned income tax rate question. Senator Long, despite his statement on the floor of the Senate in support of his own amendment to knock the provision out of the bill, went on the offensive in support of the Nixon Administration position. Senator Bennett, who had voted to strike it out, joined Senator Long, as did others.

The committee quickly voted in favor of giving corporate officials, doctors, lawyers, and other highly paid taxpayers an absolute top marginal tax rate of 50 per cent on their earned income—to give them the whole $200 million. This was a clear breach of our earlier agreement but it availed me nothing to make this charge, which I did angrily, for I was hopelessly outnumbered.

This conference report was presented to the Senate and House on December 22, 1969, and adopted by both houses the very same day. On the floor of the Senate, three days before Christmas, it was impossible for me to hold up a multi-billion-dollar tax bill on which months of hard work had been spent.

There was never a separate vote on the earned income provision by either Senate or House, and the general public never really became aware of it.

Occasional Stumpholes

Theoretically, the conferees support the position of their respective houses. Obviously, however, one side or the other, or both, must alter its position. But the personal views of conferees often make their support of the views of their own house ineffective; indeed, given the personal sympathies of the conferees one can usually, though not always, correctly forecast the shape of the agreement to be reached by the conference committee.

The latter point is well illustrated by the action of Congress last year on the SST appropriation. This was not a party affair. It was more nearly a test of the power of the industrial-military complex to prevent a reordering of national priorities. A majority of Senate conferees had strongly supported the Pentagon position on the SST, and the agreement ultimately reached by the conference committee was freely predicted. The "compromise" agreement reached by the conferees merely reduced by a token amount the funds which could be spent on further SST development this year.

But in this case the issue was so clear-cut, and the "compromise" so patently a surrender of the Senate position, that the Senate stuck by its guns and refused to agree to the conference report. Even more important to stiffening Senators' backbones against the intense lobby was the fact that the headlines stayed with the SST and did not shift away from that issue to some new seven-day wonder. As a result, the SST was finally voted down.

This kind of rejection does not usually occur. It happened with the SST and a few other issues of public interest, but generally the results of the conference committee are accepted, even when the conferees either have abandoned their house's position or have inserted something in

the bill that wasn't in the version of either house. (Theoretically, this should not happen, but it sometimes does—as in the recent federal pay raise bill when the conference committee inserted a provision transferring certain powers over federal pay raises to the President, a provision that had not been included in either the House or Senate bills. But even after Senator Stennis called the procedure a "stumphole," resting on the "recommendation of someone way out yonder—whom we do not know," the conference report passed the Senate by a vote of 40 to 35.)

I can think of some instances where conference committees have done their work well, where the Senate conferees did not give in too easily on the measures adopted by their house, and where the public interest was served. But often this happened because of a quirk of fate, a momentary situation that had nothing to do with the bill under question, illustrating again how dependent the conference decision is on the changing political fortunes.

Unlocking the Conference Door

There is nothing wrong, in principle, with the conference as a procedure. It is impossible to conduct the business of a bicameral legislative body without some regularized machinery for the arbitration of differences between the two houses, and the conference committee can be a good and workable method. But several specific steps are required to make the conference committee more useful and more responsive. Some would require changes in the rules of either Senate or House. Others would require only that greater attention and care be exercised in following existing rules.

First, the slate of conferees should be actually voted on by the full membership of each house. This would help to insure that conferees are selected who will fairly represent the views of each house and would also

involve the full membership more directly in the conference process. As things now stand, the rank and file of the membership of both houses feel that matters are out of their hands after initial floor action on a bill has been completed.

Second, a record of the conference actions should be kept, and the day following the termination of a conference all votes taken during the conference should be published in the Congressional *Record*. This would put conferees on notice that they will be judged not only by their constituents but, more importantly in some cases, by their fellow members on their conduct during the conference bargaining sessions.

It should be borne in mind that the conferees from each house vote separately on any question effecting a change in the position taken by their own house; that is, Senate conferees vote independently of House conferees on any motion to recede from a Senate position. Neither set of conferees can complain of being outvoted by the other. One side can, of course, be out-threatened and intimidated.

A powerful House Appropriations subcommittee chairman can tell Senate conferees that unless appropriations for a dam in his home district are voted there will simply be no bill at all. Senate or House conferees, who may not particularly care which dam in a given series is built first, will readily give in and vote to recede from the Senate position. On more important matters, however, the Senate conferees would be inclined to put up more fight if they knew they must individually be held accountable for their votes.

Third, the report issued by the conference committee should be improved. Simple but reasonably full explanations of actions taken, and their effects on the positions previously adopted by the two houses, should be included.

Fourth, statements of conferees disagreeing with the majority on major points should be incorporated in the report, just as minority, individual, or supplemental views are now included in the reports of standing committees. It is a rare thing for a member of a conference committee today to raise a post-conference objection. On occasion a conference member may decline to sign the conference report, but there is not often a sufficient explanation for his action or nonaction.

Fifth, no vote should be taken in the Senate or House on a conference report until the report has been printed and available to members for at least 48 hours. This may result in some distress in the closing days of a session, but proper leadership must be counted on to provide more orderly scheduling in both houses than has been the case in recent years.

These changes in rules or current practice would make the conference a more useful tool and should result in better legislation more attuned to the wishes of the general congressional membership. But in the final analysis, no changes in the rules will automatically bring about good conferences. After all is said, written, and done, the attitude of individual members toward their work will determine how good the final version of any legislation is. If sufficient numbers of Senators were really interested in looking into the work of their conferees, they could under existing rules refuse to approve any given conference report until proper explanations for all actions were forthcoming. I am sorry to say that few Senators are willing to go to this much trouble. The rules we now have, even statutory provisions, are blandly ignored or blithely set aside by "unanimous consent"—surely one of the greatest enemies of orderly procedure and good legislation.

The Congress must improve the quality of its work. It must improve its "image," and the best way to do that is to improve its product. I know of no better place to start than with the conference committee. ■

Memo of the Month

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SUBJECT: SUBSTANDARD APPEARANCE OF PERSONNEL. (CIC)
REFERENCE TELECON, 15AF CS/AIR DIV CMDRS, 7 APR 71. IT IS APPARENT FROM NUMEROUS REPORTS RECEIVED IN THIS HQ, AND PERSONAL OBSERVATIONS DURING VISITS TO THE FIELD, THAT TOO MANY OF OUR PEOPLE BOTH OFFICERS AND ENLISTED, MALE AND FEMALE, ARE NOT CONFORMING TO THE DRESS AND APPEARANCE STANDARDS AS OUTLINED IN RECENT CHANGE 4 TO AFM 35-10. IT IS NOT ONLY THE RESPONSIBILITY OF EACH INDIVIDUAL TO ADHERE TO THESE STANDARDS, BUT MOST IMPORTANT IT IS THE RESPONSIBILITY OF EACH COMDR AND SUPERVISOR TO INSURE STRICT UNDERSTANDING AND ADHERENCE BY ALL PEOPLE UNDER THEIR SUPERVISION. IN ORDER TO ASSURE STRICT COMPLIANCE WITH PRESCRIBED STANDARDS, THE COMDR HAS DIRECTED THE FOLLOWING PROCEDURES BE IMPLEMENTED ONE WEEK AFTER PUBLICATION YOUR LOCAL BASE PAPER OF AN OI RELEASE WHICH WILL FOLLOW BY SEPARATE MESSAGE. THESE PROCEDURES APPLY TO 15AF OWNED BASES. COMMANDERS WHO ARE TENANTS ON OTHER THAN 15AF BASES WILL WORK WITH THE HOST COMMANDER, BUT WILL TAKE THAT ACTION WITHIN THEIR ORGANIZATIONS NECESSARY TO