

It is my opinion that the SBA's position as contract guarantor is an absolute necessity for the survival of small business. What we are talking about is equality plain and simple—and it is time big business quit slamming the door in the little guy's face. There may be those of us who disagree in principle with tax-exempt bonds. But as long as these bonds are a marketplace reality—and currently the best answer to the pollution control problem—small and big business both must be allowed to reap the benefits.

I find only one problem with this piece of legislation—that of its definition of a small businessman. H.R. 9056 does not include qualifying language so as to correct one pressing problem: That of resident aliens who, as small businessmen, receive these vital loans. Since rules of the House prohibit my amending this bill to the effect that recipients of SBA loans must be U.S. citizens, I intend to introduce this legislation separately. I thereby shall correct what I consider to be the only flaw in H.R. 9056.

On behalf of my California farmers and small businessmen—and in defense of free enterprise—I rise in support of H.R. 9056.

Mr. MATSUNAGA. Mr. Speaker, I rise in support of H.R. 9056, a bill to amend the Small Business Act and Small Business Investment Act of 1958. H.R. 9056 has been referred to by Washington representatives of the National Federation of Independent Business representing 430,000 member firms, as "probably the most innovative and important piece of small business legislation to come before Congress since the Small Business Act of 1958."

The bill would prohibit SBA from discriminating against food producers by arbitrarily denying them the assistance which is available to other small businesses. It would also establish in the Small Business Act the interest rate provisions for natural disaster loans made by SBA and would create a new financing program for assisting small business in meeting pollution control requirements. Agricultural related firms would become eligible for the first time, for SBA loans, and would equalize their ability to comply with OSHA, EPA, and other regulatory laws.

Title III of the bill would be of special assistance to the small businessman. It would make it possible for small business to finance the purchase of pollution abatement equipment and technology by using SBA's lease guarantee authority in conjunction with the tax-exempt public bond market. It would permit the pooling of the needs of several small firms to make them eligible for the same low-cost financing now available to their larger competitors.

H.R. 9056 is a bill which would provide equity to businessmen now denied needed assistance. I urge its support by my colleagues.

The SPEAKER pro tempore (Mr. BOLING). The question is on the motion offered by the gentleman from Iowa, Mr. SMITH, that the House suspend the rules and pass the bill H.R. 9056, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the

rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### AMENDING THE FEDERAL RULES OF EVIDENCE

Mr. HUNGATE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1549) to amend the Federal Rules of Evidence, and for other purposes, as amended.

The Clerk read as follows:

S. 1549

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That rule 801(d) (1) of the Federal Rules of Evidence (88 Stat. 1938) is amended by adding at the end thereof a new clause (C), as follows: "(C) one of identification of a person made after perceiving him; or".*

SEC. 2. This Act shall become effective on the fifteenth day after the date of enactment of this Act.

Passed the Senate June 19 (legislative day, June 6), 1975.

The SPEAKER pro tempore. Is a second demanded?

Mr. WIGGINS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Missouri (Mr. HUNGATE) will be recognized for 20 minutes and the gentleman from California (Mr. WIGGINS) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Missouri.

Mr. HUNGATE. Mr. Speaker, the Senate bill 1549 is a bill that amends the Federal rules of evidence, and in particular, rule 801(d)(1). I believe that in order to understand the bill fully that some background is necessary.

The 93d Congress enacted the Federal rules of evidence. The House passed the rules of evidence bill overwhelmingly by a vote of 377 to 13.

As passed by the House, rule 801(d)(1) of the rules of evidence reads:

A statement is not necessary if . . . the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is . . . one of identification of a person made after perceiving him.

The Senate version of the rules of evidence bill struck from the bill the language "one of identification of a person made after perceiving him." The impact of this was to make inadmissible evidence of out-of-court identifications. At the conference, the Senate strenuously insisted upon its version of rule 801(d)(1). In order to get a bill, the House acquiesced in a Senate version and agreed to the conference report striking the language "one of identification of a person made after perceiving him."

The Senate has now changed its mind and is willing to accept the House version of rule 801(d)(1).

The vehicle for doing this is the bill S. 1549.

Mr. JOHN L. BURTON. Mr. Speaker, will the gentleman yield?

Mr. HUNGATE. I yield to the gentleman from California.

Mr. JOHN L. BURTON. Mr. Speaker, I would inquire of the gentleman from Missouri whether this was the only provision in which this House gave in to the other body on the rules of evidence? I thought there were several things where the Senate had its own way.

Mr. HUNGATE. The gentleman's statement is correct.

This is not the only incident.

The fact is, Mr. Speaker, that this bill was worked on for some 12 or 14 years, I believe, by the Judicial Conference and the bar association and came to the House of Representatives and this particular section passed the House of Representatives and went over to the Senate without controversy, it came out of the subcommittee and the full committee without any real controversy.

If I am in error then I hope someone will contradict me. I think that I am right.

It got over to the other body and a distinguished Member of the other body who is no longer here and who was on the conference committee was quite upset with this provision.

The House worked on this bill roughly 2 years. We were up to December 16 or later, at the end of the session, and it was made rather plain to us that they would engage in what the Senate calls extended debate, and what others call other things. If we did not accept this, we would not get the bill. Of course, the bill is quite lengthy, and we thought rather than sacrifice all the work that had been done over that length of time that we would go ahead and accept that provision.

Mr. JOHN L. BURTON. If the gentleman will yield further, now we are going to reinstate this provision?

Mr. HUNGATE. The other body has reflected upon this, and the distinguished gentleman who put it in is no longer there. I worry about people who are forgotten so soon when they are gone.

Mr. JOHN L. BURTON. If the gentleman will yield further, that is because the gentleman did not mention the distinguished gentleman's name.

Mr. HUNGATE. I want to be parliamentary at all times. He was an able and distinguished gentleman, but he retired.

Mr. JOHN L. BURTON. It would be improper to mention former Senator Ervin's name in this colloquy?

Mr. HUNGATE. I would not mention it in any way except a praising way, although I am in disagreement in this case.

The Senate has now reviewed this whole matter, and the other body agrees now that the House was correct in the first place.

We are into the subject matter, and to highlight what I think the facts are. We have a robbery or a burglary, or some crime committed, and they are trying to decide who did it. They bring the victim down to the police station, and they put several people across the line-up, and the victim says, "That is the guy who did it. That is the one."

So then they proceed on the basis of this, and when they get to trial, they call the same fellow who made positive identification within a week of the of-

fense and ask him, "Is this the man? Is this the defendant?"

"Oh, I don't know. I don't know. I don't recognize him."

What is suggested here is that in the field of organized crime—and in some of the even more unorganized crime—there are people of a more vicious nature who suggest to these witnesses that if they would ever like to see their children or their wives again, they had better not recognize this fellow. Or there may be financial reward.

The feeling of those who press for the law the way it came to the House and the way it would be now written is that this is protection for the public against the changing testimony of witnesses.

The second part of the argument is this. If one is going to identify the man or woman, his identification is probably more accurate, say, within a week after the offense. The trial comes up one or two years later, and the fellow has had a chance to grow a beard or dye his hair, and probably the victim's first identification is best. That is the general nub of the argument.

This is a typical situation with which this rule would deal. A crime takes place, as indicated. The witness sees it and identifies the person. By the time of the trial, the witness has what some would suggest is a convenient lapse of memory.

Current Federal case law—please hear this—permits the use of the identification. The passage of S. 1549 will, in effect, codify existing Federal law. We are not coming in here and taking away any rights people have had before. We just leave that part the way it is.

Rule 801(d)(1), as S. 1549 proposes, will not permit the use of just any out-of-court identification. There are preconditions to the use of this evidence. The person who made the identification must testify and must be subject to cross-examination about the out-of-court identification. If this precondition is satisfied, then the court must determine whether the out-of-court identification procedures meet constitutional standards. If they do, then rule 801(d)(1) says the evidence is admissible—if they meet constitutional standards.

Courtroom identification is generally very suggestive. It takes place a long time after the offense. The witness knows the defendant is in the room. He knows where he nearly always sits—next to the defense attorney.

Out-of-court identifications that meet the preconditions are not so suggestive.

S. 1549, I submit is a good bill, and the two amendments are purely technical. One changes the effective date from July 1, 1975, to 15 days after it becomes law, so it would not be a retroactive statute.

The other amendment makes a stylistic change.

S. 1549 will codify present Federal case law. It will make available to judges and juries what we believe to be a more reliable type of identification evidence. I urge the Members to support it.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. WIGGINS).

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

Mr. Speaker, I would like to express my support of S. 1549 amending one provision of the Federal rules of evidence to conform with existing case law in many of the U.S. circuits.

S. 1549 merely returns to the rules of evidence a paragraph which it originally contained when written by the Judicial Conference, transmitted by the U.S. Supreme Court and when first passed by the House of Representatives as H.R. 5463 on February 6, 1974. The bill excludes from hearsay restriction evidence of a prior eyewitness identification—but only if the witness testifies at trial and is subject to cross-examination. This provision was not originally accepted by the Senate and the House-Senate Conference Committee deleted it from the House bill. The Senate now has seen the wisdom of the House version and S. 1549 returns rule 801(d)(1) to its original condition.

The bill returns to existing case law and applies to situations where an eyewitness has previously identified a person out of court. It would admit into evidence testimony of that identification. For example, testimony by a police officer that at a lineup John Doe identified the defendant as the man who robbed his store.

Why is this necessary? Because in some instances the eyewitness may forget, in others he may have been threatened by the defendant to withdraw the identification, and in still others the eyewitness may be able to give only the most inconclusive identification in court.

In such cases, the prior out-of-court identification was more reliable than that given in court because it was made closer to the time of the actual event and moreover, in a setting much less suggestive than the courtroom.

This bill still requires the eyewitness to testify at the trial and be subject to cross-examination. It does not remove any other of the pre-trial identification requirements promulgated by the U.S. Supreme Court. The out-of-court identification must have been made under circumstances insuring its reliability and the right to counsel exists as it did under the strictures of the Kirby against Illinois and Wade against California cases.

The argument that this bill would "open the door to all kinds of out-of-court eyewitness identification" ignores both the letter and purpose of the bill.

Only identifications that would have been admissible under the Supreme Court rulings would become admissible now.

In conclusion, this bill serves to return this section of the hearsay rule to the status it had reached by process of natural judicial evolution. This status was one calculated to strike the best balance between the rights of the defendant and those of the State, and to insure admissibility of the most trustworthy evidence.

Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), a member of the subcommittee.

Mr. HYDE. Mr. Speaker, I wish to voice my support for the adoption of S. 1549.

This bill merely returns to the rules

of evidence a provision originally passed by the House but deleted by the Senate and the House-Senate Conference Committee when the rules were originally passed.

One of the Nation's most noted experts on evidence, Judge Jack B. Weinstein, has called this deletion "the most incomprehensible action of Congress in modifying the Rules of Evidence."

Writing in a five-volume, exhaustive analysis of the rules, Judge Weinstein goes right to the heart of the entire issue of admitting prior eyewitness identifications when he states:

Most trial judges recognize that the identification in the courtroom is a formality that has little reliability and much in the way of suggestibility. The experienced judge gives much greater credence to the out-of-court identification—*4 Weinstein's Evidence* 109.

Writing earlier in a judicial opinion, Judge Weinstein cited the example of the blind man who detects someone picking his pocket and grabs him until the police arrive. At trial, the blind man cannot look across the courtroom and point to the defendant as the man who robbed him. But the identification that he made at the time of the crime was seen by the policeman. How is justice served by not admitting that out-of-court identification? *U.S. v. Barbati*, 284 F.Supp. 409, E.D.N.Y. 1968.

As my distinguished colleague Mr. WIGGINS has stated, an out-of-court identification made while the memory is fresh is certainly more reliable than a mere ritual performed in court after time has dulled the memory.

I urge support of S. 1549.

GENERAL LEAVE

Mr. HUNGATE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill S. 1549 now under consideration.

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

There was no objection.

Mr. WIGGINS. Mr. Speaker, I reserve the balance of my time.

Mr. HUNGATE. Mr. Speaker, I have no further requests for time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri (Mr. HUNGATE) that the House suspend the rules and pass the Senate bill S. 1549, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### TAX-EXEMPT STATUS OF OBLIGATIONS USED TO PROVIDE CERTAIN IRRIGATION FACILITIES

Mr. ULLMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 9968) to amend section 103 of the Internal Revenue Code of 1954 with respect to certain obligations used to provide irrigation facilities.

The Clerk read as follows: