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Interview With Senator Mathias

By Steve Kreseski



Senator Charles "Mac" Mathias, Jr. (R.) has represented Maryland in the United States Senate since 1969. He serves as Chairman of the Senate Rules Committee and is a member of the Senate Judiciary, Governmental Affairs and Foreign Relations Committees. This interview took place last July in the Senator's Baltimore office.

S: In general, Senator Mathias, how can the average American expect the Republican victory of 1980 to influence or even reshape his or her lifestyle during the next three or four years?

M: The best answer to that question is that everyone will benefit by recovery of the economy and a new vigor in the American economy. As with the old saying "all ships rise on the rising tide", that would seem to be the case with the American people. If, with a new surge in American productivity, we could create new jobs and further increase the standard of living and the opportunities for everyone, then we would all benefit.

S: The Republican Party has certainly followed the path of the legendary Phoenix having arisen from the ashes of 1974. Is that Party now as cohesive and united a group as the Reaganites would have Americans believe?

M: Well, I suspect the Republican Party will contain as many differences of opinion as it always has since Abraham Lincoln's day. As you know, the Republican Party did not spring like Venus from the sea in one perfect shape, but was the collection of a great number of political groups. Although they had varying opinions, they were all cohesive on the one subject of freedom, specifically, freedom for the American slaves. This was the great central core of the Party, an issue of civil liberties and an issue of civil rights, which formed the cord that bound Republicans together. Over the years the emphasis has changed from time to time. Interest in specific subjects has ebbed and flowed. I would suspect that among Republicans today you will find great differences of opinion. Now that has not been as visible in the last six months because the concentration has been on the economic recovery. When we move from that subject to general legislation, and when we begin to talk about voting rights, women's issues, abortions, or a constitutional amendment for a balanced budget, then you will find that there is a wide and healthy diversity of view.

S: Senator, how do you fit in as a member of the new Republican Party?

M: I hope that I can make some contribution to the new Republican Party by occasionally reminding it of the values of the old Republican Party—The Lincoln Republican Party. The historical Republican interest has been with the issue of human freedom, and that means freedom from unnecessary governmental interference, among other things. I think that is part of the Republican tradition. I am not willing to

adopt the course of a new radicalism that is sometimes apparent in political life today which I do not find conservative by any definition. Instead it is a kind of a radicalism that wants to desert some of the traditional values of the Republican Party and to the extent that I can help moderate that radical trend, I would like to do it.

S: Does the fact that you recently enjoyed a landslide election to an unprecedented third term as a Republican Senator from Maryland give you a greater amount of political freedom to take somewhat more controversial positions in shaping legislative policies?

M: It seems to me, if you have spent a substantial number of years in the Congress and have enjoyed the confidence and the trust of people by successive reelection to the Congress, that you owe it to the public and you owe it to yourself from time-to-time to speak out on subjects that may not be very popular or that may not be universally approved, but which are of significance in the general scheme of things. I think it is not so much the fact of having been reelected by a handsome majority that gives you that freedom and responsibility, but perhaps even more, the years of experience.

S: As indicated by the polls, you have traditionally enjoyed support from a large number of Democrats, often causing you to travel a road independent of the mainstream of your Party. Senator, is such a position determined by personal conviction or by political necessity?

M: No, I think it is not political necessity. It really is a question of personal conviction. There is too much that life offers, it seems to me, to make it worthwhile to constantly trim your sails, alter your opinions, and twist your judgment for political necessities. When you are elected to a responsible public office, the only proper employment of your time in that

office is really to say what you think, to give your best judgment. If you are not doing that, then you are wasting your time.

- S:** Of particular interest to individuals in the legal profession, Senator, is President Reagan's opportunity to appoint a new Justice to the United States Supreme Court. What qualities determine your own recommendation to the President?
- M:** Well the Constitution, of course, imposes upon the Senate the duty of Advice and Consent to appointments to the Court. The qualities that I think I would look for are: legal ability, integrity and character. These three factors would clearly be the important hallmarks of a great appointment to the Court.
- S:** Along those same lines Senator, do you agree with President Reagan's belief that a member of the Supreme Court should interpret the Constitution strictly rather than broadly to create new law, particularly in the area of social policy?
- M:** Of course the Court should interpret the Constitution. But, it must constantly interpret the Constitution in the light of new situations. For example, when John Marshall was a member of the Court, there was obviously no necessity for the Court to deal with television. Or there was obviously no necessity for the Court to deal with the problems of nuclear science. So that in interpreting the Constitution, today, the Court has to deal constantly with new subject matter. Perhaps you can say that is making new law, but in fact it is simply the Court applying the old and basic law to totally new human situations.
- S:** You have sponsored several key legislative bills regulating the election process. What helpful criticisms do you have of the American democratic process, and in addition, what reforms are still necessary?
- M:** I personally believe it is a great

mistake to have as much private money in the political process as exists today. I think campaign spending gives a poor perception of the process. I think many people in the public still believe that political office is bought and sold, whether that is the truth or not. So I continue to press for campaign financing, not only for the Presidency, but for the Congress. In that way people can be assured that Congress is a representative body in which the size of campaign contributions is not a significant factor. Secondly, I think the Presidential primary process should be altered. In the past several presidential elections, we have seen highly qualified candidates shunted to the side at any early point in the process because of the nature of the primary system today. I would look very carefully at that.

- S:** Given the experience of the Equal Rights Amendment, should a more responsive process be available to Americans through which to amend the Constitution?
- M:** Well, I view the amendment of the Constitution as a very serious subject. The Founding Fathers made it difficult to amend the Constitution, with a very serious purpose. And I think it should be difficult to amend the Constitution. Not because I do not fully support the ERA (which I do), but because I think that if the Constitution were too easily amended, then amendments would creep in which do not have the kind of public support which guarantees that the public respects and obeys the law.
- S:** What is your position in regard to the stated policy of the Reagan Administration to increase defense expenditures by 7% annually after inflation?
- M:** Well, I agree that there are some areas in our defense establishment that need reinforcement. The Navy is an example that I have frequently cited. On the other hand, I am not for saying that we need to increase defense

spending by a flat percentage. It seems to me that the Congress and the Executive have a duty to ascertain the present state of our defense, to ascertain the potential threat that we face and to come up with a national estimate of what is needed—not some blind figure, or some arbitrary figure, but what is actually needed. That is the amount we should provide. It may be more than 7% or it may be less than 7%.

- S:** Your record reflects continued support for a strong military force, but do such costly programs as the B1 Bomber and MX Missile adequately address America's current defense problems?
- M:** Our defense needs, it seems to me, involve attention to conventional arms to the Navy, Army and other defense components. To the extent that we do need strategic weapons, I think we have to give attention to some new strategic bomber. There is still a hot debate within the Air Force itself as to whether the B1 is really the plane that we need, or whether we should wait until the design evolves into a truly strategic bomber, which some experts believe is very close. Secondly, the deployment by the Soviet Union of several new types of missiles has created anxiety about our fixed-base strategic deterrent. It has induced us to begin the development of the MX missile, although we have not yet decided how the missile should be deployed. What we can do immediately is to address the problems in conventional arms, and I would hope that we would take the time to make the prudent decisions on strategic arms. It ought not to be made hastily as it would be an investment that will bring dividends to the American people over the next generation.
- S:** Senator, as a long-time advocate of negotiations for an enforceable arms limitations treaty, do you recommend that President Reagan initiate renewed discus-

sions with the Soviet Union? If so, when and on what terms?

M: Well, I am glad that the Reagan Administration has indicated its intention to reopen arms control negotiations. That was first stated at Rome when the Foreign Ministers of NATO met. There was a commitment by Secretary of State Alexander Haig to negotiate on theater nuclear weapons within the Salt framework. Then, more recently, when Eugene Rostow came before the Senate for hearings on his nomination as the Director of the Arms Control Disarmament Agency, he indicated that there was a sense of urgency within the Administration, and that they indeed did want to propose some discussions with the Soviet Union on arms control leading to a Salt III Agreement or, at the very least, a revision of Salt II. Thus, it is recognized within the Reagan Administration that there is an urgent national necessity for going forward with arms control talks, and I applaud that.

S: Do you agree with a *quid pro quo* Arms Control Policy?

M: Well, what we need in an agreement is a verifiable agreement, one in which we can be reason-

ably assured that we know what is happening. We need an agreement that is equitable, and that addresses the problems of each side. They are not always exactly the same problems. We may be concerned about certain developments in the Soviet Union, and they may be concerned about a different kind of development in our defense establishment. I think to be successful, an agreement has to be equitable in dealing with the problems of each side.

S: As a member of the Foreign Relations Committee, what policies do you believe the Senate should pursue in response to the problem of the entry of illegal aliens into this country?

M: We now have an estimated 6 million undocumented aliens in this country. Of that number, perhaps as many as half are of Mexican origin, and the other half come from all over the globe. I think it is urgent that we find a solution to the problem, because it is going to get larger and not smaller as the years go on. There is no single answer. Of course one facet is to reduce the incentive for seeking illegal entry into the U.S.A. If Mexicans can find employment at home, their incentive to swim across the Rio Grande River at night is going to be reduced. So we have a concern about the standard of living in other countries which drives their citizens to look to the United States as the only hope.

S: Does the problem also contain the hidden benefit of focusing U.S. attention on the long-neglected countries of South and Central America?

M: I think it does, because this is where many of these people come from. We also, of course, are going to have to take certain legal measures within the United States to cope with the problem because, as people come in and establish families here, the problem grows geometrically. The origin of the problem, however,

is in the unhappiness of the people in their native lands.

S: Senator, you have worked ardently to insure funding for many of Baltimore City's developmental projects. In what areas will the Reagan budget cuts have the most significant impact on us?

M: The budget cuts will have very significant impact upon many urban problems. I think one of the things that I will be watching closely is to see that the safety nets are in place and are operating successfully, because the President has assured the nation that the poorest of the poor will have protection, and will have the benefit of the so-called "safety nets". But, in many urban programs, the local communities or the private sector are expected to pick up the slack. It will be the duty of Congress to watch with great vigilance how this process is progressing, and if there are distress signals.

S: Will Baltimore's Renaissance stall during the early 80's?

M: Well, I am very proud of the fact that we have accomplished so much in Baltimore in the last 10 or 15 years. That has been the work of many hands. It seems to me that anyone who has walked around Harbor Place on a busy day sees some evidence of the success of programs that made Harbor Place possible, and I would hope that lesson would not be forgotten. If programs are that successful, then they should not be totally abandoned.

S: Could the environmental quality of the Chesapeake Bay deteriorate as a result of the Reagan Administration action to weaken the Environmental Protection Agency's regulatory powers?

M: I am concerned about EPA's diminished ability to interest itself in the Bay. We have just completed a five-year study of environmental aspects of the Bay. It would be extremely helpful for the EPA to be able to follow that study with a series of advisory opinions based on the study and



directed to state or local agencies and private industry that operate in the vicinity of the Bay. We will lose some of the value of the study if we are not able to promulgate the results of the study, and make it available. It may be a matter of interest that the study took place, but to make it a matter of profit in the public sense of profit—people are going to have to know what the study disclosed, and they are going to have to be able to govern themselves in the light of those findings in the years to come. So, I think if EPA is not allowed to carry out its basic function in this regard, we will have, in large measure, wasted the 25 million dollars that have already been spent. It is just one example of how the effort to save money today can really be more expensive in the long run if we are not very careful where and how we make the cuts.

S: Senator, what are the greatest satisfactions of your office?

M: Well, there were two examples today. As I was crossing Hopkins Plaza this afternoon, a woman who was sitting on a bench jumped up and said, "Oh I didn't expect to see you today, but I want to tell you how wonderful your office has been in helping the YWCA in getting their project completed." I came back to the office and there was someone waiting who said, "I just came to see you and to tell you how much it has meant to have your help in getting our projects completed." The ultimate satisfaction really is to see your help to other people enable them to do things that they might not be able to accomplish without that little bit of encouragement.



People Helping People
The United Way

Interest-Free Loans: Recent Developments Provide Tax-Saving Opportunities

by Edward A. Johnston and
David M. Abramson

The 1961 decision of the United States Tax Court in *J. Simpson Dean*, 35 T.C. 1083 (1961), set forth in broad form the general principle that interest-free loans from a corporation to a shareholder do not give rise to imputed taxable income. A series of recent cases involving challenges to this doctrine by the Internal Revenue Service have been uniformly rejected by the courts. Thus, a properly structured interest-free loan provides many opportunities to corporations and individuals for significant income tax savings. The rationale of *Dean* is that although the borrower may have realized an economic benefit to the extent of the interest expense which would otherwise have been incurred, any imputed interest income would be fully offset by a deductible expense (I.R.C. §163), leaving the borrower in the same overall economic and tax position.

An example will serve to illustrate the income tax advantage of a classic interest-free loan between a shareholder and his controlled corporation. Assume that a corporation has \$100,000 extra cash available. If invested by the corporation, the interest earned on the \$100,000 is taxable to it, reducing the amount ultimately available to the shareholder. Any such interest income distributed to the shareholder is taxed a second time as a dividend. If the corporation instead lent that same \$100,000 directly to the shareholder as an interest-free demand loan, taxation is avoided at the corporate level: the corporation does not have to pay taxes on the interest generated by the \$100,000. There is no tax consequence to the corporation as a result of the interest-free loan, and under *Dean* and its progeny there is no imputed income to the shareholder.

Substantial gift and estate tax savings can also arise when interest-free loans are used, rather than the traditional Clifford Trust,¹ to shift income

from high-to-low-bracket taxpayers. For example, suppose a daughter in a high tax bracket has \$100,000 to help her elderly father. The father is in a low-income bracket and has extensive medical bills. If the daughter puts that \$100,000 into a Clifford Trust, she has to contend with detailed Clifford Trust statutory requirements, the \$100,000 must remain in the Trust for over ten years, and the daughter has gift tax consequences based on the actuarial value of the assumed earnings of the Trust and a resultant use of the unified gift and estate tax credit.² All of this can be avoided if the daughter gives her father the \$100,000 as an interest-free demand loan. There are no statutory requirements for an interest-free loan, the \$100,000 is not committed for any length of time, and the daughter has no gift tax consequences. Income generated by the Clifford Trust or the interest-free loan is taxable to the father, but this tax is offset by the father's low-income bracket and deductions for medical expenses. In both the interest-free loan and the Clifford Trust, the principal will be includable in the estate of the decedent daughter, but in the case of the loan, no gift is deemed to have been made, and therefore there is no reduction in the unified tax credit available to the decedent's estate. See: *Crown v. Commissioner*, 67 T.C. 1060 (1967), *aff'd*, 585 F.2d 234 (1978).

Although these examples are set forth in general terms, and there are numerous factors affecting both the potential tax benefits and savings from interest-free loans, they do serve to highlight the attractiveness of interest-free loans. A discussion of *Dean* and several other recent cases is helpful in fully understanding how interest-free loans should be structured, as well as some of the potential trouble spots.³

In *Dean*, an interest-free loan of an